



**AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, September 13, 2022**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://cityofberkeley-info.zoomgov.com/j/1611765730>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-254-5252 or 1-833-568-8864 (Toll Free) and enter Meeting ID: 161 176 5730. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

*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, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. 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. Pledge of Allegiance to the Flag
2. Adjourn in memory of Leisl Griffith Redmond, City of Berkeley Employee
3. Adjourn in memory of Neil Mayer, Former City of Berkeley Employee

**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 to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, 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. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## 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." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move 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.*

## Recess Items

- 1. Contract No. 084534-1 Amendment: NextGen Health Care Information Systems, Inc. for Electronic Health Records**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 084534-1 with NextGen Healthcare Information Systems, Inc., increasing the amount by \$188,955 for a total contract value not to exceed \$1,008,291 and extending the term from September 30, 2010 through June 30, 2024.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Information Technology, (510) 981-6500
- 2. Contract No. 31900288 Amendment: Disability Access Consultants for ADA Transition Plan**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to execute an amendment to Contract No. 31900288 with Disability Access Consultants (DAC) for Americans with Disabilities Act (ADA) Transition Plan and On-Call ADA accessibility consulting services, increasing the contract amount by \$122,000 for a total not-to-exceed amount of \$606,800 and extend the contract term to June 30, 2023.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 3. Contract No. 32100194 Amendment: Bay Cities Paving & Grading, Inc. for Construction and Repairs**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 32100194 with Bay Cities Paving & Grading, Inc. for work on the Street Rehabilitation FY 2021 Project, Specification No. 21-11422-C, increasing the current contract amount by \$260,000, for a total amount not to exceed \$4,556,733.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

- 4. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of July 7 (closed), July 12 (closed and regular), July 18 (closed), July 26 (special and regular) and August 3 (special).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900

## Consent Calendar

- 5. Contract: Municipal Resource Group for Addressing Impacts Resulting from Great Resignation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with Municipal Resource Group (MRG) for professional services needed to respond to the impacts within the City as a result of the Great Resignation. Total contract direct costs will not exceed \$87,675.  
**Financial Implications:** General Fund - \$87,675  
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000
- 6. Contract No. 32100053 Amendment: Orsolya Kuti, DVM to Provide On-site Veterinary Services for Berkeley Animal Care Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32100053 with Orsolya Kuti for on-site veterinary services for Berkeley Animal Care Services, increasing the contract amount by \$8,000 for a new total not to exceed amount of \$228,000, and extending the contract term to September 14, 2023.  
**Financial Implications:** See report  
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 7. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 13, 2022**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$440,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 8. Request for Proposal for Project Homekey**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing City Manager to: 1. Release a Request for Proposals (RFP) for a Homekey Round 3 Project; and 2. Consider a reservation of up to \$8.5M in General Funds collected pursuant to Measure P, and/or other funding source, to support a future Homekey project.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

**9. Contract: Tiana Sanchez International LLC for HHCS Equity Consultant**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Tiana Sanchez International, LLC. (Contractor) to provide equity consulting services for the Department of Health, Housing and Community Services (HHCS) from October 1, 2021 to May 30, 2023 in an amount not to exceed \$120,000.

**Financial Implications:** See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

**10. Contract No. 31900043 Amendment: Kings View Professional Services for Mental Health Reporting Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900043 with Kings View Professional Services to provide mental health financial reporting services through June 30, 2024 in an amount not to exceed \$220,628.

**Financial Implications:** Mental Health Realignment-Administration Account - \$57,100

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

**11. Accept Future of Public Health Funds from the State of California**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to submit grant agreements to the State of California, to accept the grants, and to execute any resultant revenue agreements and amendments for the Future of Public Health program for an amount of \$912,213 for the Fiscal Year 2023.

**Financial Implications:** See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

**12. Donation of Painting Services from MB Jessee Painting, Inc.**

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting the donation of painting services and materials from MB Jessee Painting, Inc., estimated to be a value of \$8,994, to paint interior areas of 1900 6th Street building in accordance with Administrative Regulation 3.19, Donations to the City from Individuals of Outside Organizations.

**Financial Implications:** \$8,994 (Donation)

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

**13. Contract No. 8392 Amendment: Innovative Claim Solutions (ICS) for claims administration of the City's Workers' Compensation Program**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to extend Contract No. 8392 with Innovative Claims Solutions (ICS) to provide third-party claims administrative services, Medicare, Medicaid, and SCHIP Extension Act (MMSEA) Section 111 Mandatory Reporting to the Centers for Medicare & Medicaid Services (CMS), for an additional term of three years from July 1, 2022 through June 30, 2025 at a decreased annual rate of \$570,000 for a total contract amount of \$7,393,611 for year 2023.

**Financial Implications:** See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

**14. AHEAD, Inc: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to increase spending authority with AHEAD, Inc. ("AHEAD") for the purchase of Varonis software licenses and professional services, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) increasing the amount by \$71,481 for a total amount not-to-exceed \$236,305, and the period beginning September 29, 2022 through September 28, 2023.

**Financial Implications:** IT Cost Allocation Fund - \$71,481

Contact: LaTanya Bellow, Information Technology, (510) 981-6500

**15. Lease Agreement: 80 (North Building), 82/84 & 90 Bolivar Drive in Aquatic Park with Waterside Workshops**

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Waterside Workshops to use the 80 (North Building), 82/84 & 90 Bolivar Drive in Aquatic Park for a lease term anticipated to begin November 1, 2022 and ending November 1, 2031.

**Financial Implications:** See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

**16. Donation: Memorial Bench at the Cesar Chavez Park in memory of Walt and Trudee Rowson**

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Cesar Chavez Park at the Berkeley Marina in memory of Walt and Trudee Rowson.

**Financial Implications:** \$3,400 (Donation)

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 17. Donation: Memorial Bench at the Cesar Chavez Park in memory of Don Rothenberg**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Cesar Chavez Park at the Berkeley Marina in memory of Don Rothenberg.  
**Financial Implications:** \$3,400 (Donation)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 18. Donation: Memorial Bench at the Indian Rock Park in memory of Dave Altman**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Indian Rock Park at the Berkeley Marina in memory of Dave Altman, a longtime Berkeley rock climber and a treasured member of the rock-climbing community.  
**Financial Implications:** \$3,400 (Donation)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 19. Contract: Bellingham Inc. to Replace and Repair Docks at the Berkeley Marina**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with Bellingham Inc. to repair and replace docks at the Berkeley Marina in a total amount not-to-exceed \$550,000, which includes a contract amount of \$480,000 and a 14.58% contingency in the amount of \$70,000.  
**Financial Implications:** Marina Fund - \$550,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 20. Revenue Grant: California Office of Traffic Safety (OTS) for the 2023 "Selective Traffic Enforcement Program (STEP) Grant**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the Chief of Police to accept the "Selective Traffic Enforcement Program (STEP)" grant and enter into the resultant grant agreement and any amendments, with the California Office of Traffic Safety. This OTS grant is for \$180,000 for the period of October 1, 2022 through September 30, 2023, which is Federal Fiscal Year 2023  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900

## Consent Calendar

### 21. 2022 Vision Zero Program Grant Applications

**From: City Manager**

**Recommendation:** Adopt three Resolutions:

1. Certifying that the Berkeley Vision Zero Action Plan, the Berkeley Bicycle Plan, and the Berkeley Pedestrian Plan, collectively meet the Safe Streets and Roads for All grant program requirement for a Comprehensive Safety Action Plan.
2. Authorizing the City Manager to submit a grant application to the federal Safe Streets and Roads for All (SS4A), accept the grant awarded, and execute any resultant agreements and amendments.
3. Authorizing the City Manager to submit a grant application to the federal Reconnecting Communities Pilot Grant Program (RCP), accept the grant awarded, and execute any resultant agreements and amendments.

**Financial Implications:** See report

Contact: Liam Garland, Public Works, (510) 981-6300

### 22. Red Curbs and Visible Signage

**From: Disaster and Fire Safety Commission**

**Recommendation:** The Disaster and Fire Safety Commission (“Commission” or “DFSC”) respectfully requests that Council immediately take the following remedial actions to improve emergency vehicle access and residents’ ability to evacuate in the event of a wildfire, while we await implementation of more comprehensive long-term actions such as the Safe Passages program. In identified high fire risk areas (Fire Zones 2 and 3) and in other high-risk areas, such as where hazardous chemicals are stored or used: 1. Inspect, fix or replace all parking restriction signage as necessary; 2. Red curb all fire hydrant areas to the maximum extent allowed by law; and 3. Direct the Fire Department and Public Works to identify areas that could be pinch points for fire trucks to travel.

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, (510) 981-3473

### 23. Appointment of Judy Appel to Mental Health Commission for the City of Berkeley

**From: Mental Health Commission**

**Recommendation:** Adopt a Resolution appointing Judy Appel as a representative of the Special Public Interest Category (family member), to complete her first 3- year term beginning September 14, 2022 and ending September 13, 2025.

**Financial Implications:** None

Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

### 24. Taking Action on the City of Berkeley’s Commitment to Abortion Access

**From: Peace and Justice Commission**

**Recommendation:** Adopt a Resolution Taking Action on the City of Berkeley’s Commitment to Abortion Access.

**Financial Implications:** Staff time

Contact: Okeya Vance-Dozier, Commission Secretary, (510) 981-7100



## Council Consent Items

- 25. Pacific Center for Human Growth: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Mayor Arreguin to the Pacific Center for Human Growth, for the planning and production of a historical quilt to honor their 50th anniversary. Funds would be relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.  
**Financial Implications:** Mayor's Discretionary Funds - \$1,000  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 26. Ordinance Amendment: Correction to the COVID-19 Emergency Response Ordinance, BMC Chapter 13.110.**  
**From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt the first reading of an Ordinance correcting BMC Chapter 13.110, the COVID-19 Emergency Response Ordinance, to clarify the effect of Ordinance No. 7,762-N.S. upon tenant protections that were inadvertently omitted during the last update of BMC Chapter 13.110.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 27. Resolution in Support of High-Quality, Equitable Healthcare Services at UCSF Children's Hospital Oakland**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Adopt a Resolution in support of patients, nurses, doctors, caregivers and other employees at UCSF Children's Hospital Oakland; and send resolution to the UC Board of Regents, UC Office of the President, and UCSF Health.  
**Financial Implications:** None  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 28. Berkeley Youth Alternatives (BYA) Charity Golf Classic: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$200 from Councilmember Taplin, to support the 4th Annual Charity Golf Classic hosted by Berkeley Youth Alternatives (BYA).  
**Financial Implications:** Councilmember's Discretionary Funds - \$200  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Council Consent Items

- 29. California Marriage Equality Resolution (Prop 8 Repeal)**  
**From: Councilmember Taplin (Author), Councilmember Droste (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution Urging the California Legislature to Place a Measure on the Ballot to Repeal Article I Section 7.5 of the State Constitution, a.k.a. Proposition 8; and send copies to the Offices of the Speaker of the Assembly, Senate President Pro Tempore, and Governor.  
**Financial Implications:** None  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 30. Referral: Keep Innovation in Berkeley** (*Reviewed by the Land Use, Housing, & Economic Development Committee*)  
**From: Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments, codified performance standards, and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore: 1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards. a. Performance standards should regulate and mitigate potential impacts on quality of life, public health, and environmental health, such as noise, odors, fumes, vibrations, dust, light pollution, hours of operation, and disposal and storage protocols for flammable, combustible, chemical, and hazardous substances. 2. Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate. 3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements. 4. Reviewing Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted. 5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.  
*Policy Committee Recommendation: Approve the item with a positive recommendation.*  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Council Consent Items

- 31. Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Center for Independent Living's 50th Anniversary**  
**From: Councilmember Robinson (Author), Councilmember Bartlett (Author)**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmember Robinson and Councilmember Bartlett, to the Center for Independent Living to fund a Berkeley mural project, street festival, CIL open house, three-day conference on independent living, and other activities for their 50th Anniversary.  
**Financial Implications:** Councilmembers' Discretionary Funds - \$500  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## 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 use the "raise hand" function 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 – Old Business

- 32. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers** *(Continued from July 26, 2022. Item contains revised and supplemental materials)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.  
**Financial Implications:** None  
Contact: Jennifer Louis, Police, (510) 981-5900; LaTanya Bellow, City Manager's Office, (510) 981-7000

## Action Calendar – New Business

- 33. An Ordinance Repealing Chapter 12.76 of the Berkeley Municipal Code and Repealing Ordinance 7643-NS.**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an ordinance repealing Chapter 12.76 of the Berkeley Municipal Code and repealing Ordinance 7643-NS.  
**Financial Implications:** None  
Contact: Farimah Brown, City Attorney, (510) 981-6950, Dee Williams-Ridley, City Manager, (510) 981-7000, Paul Buddenhagen, City Manager's Office, (510) 981-7000

## Council Action Items

- 34. Equitable Safe Streets and Climate Justice Resolution** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Adopt a resolution committing the expenditure of City and state/federal matching/recurring funds on city-maintained roads, sidewalks, and bike lanes to accelerate safety improvements in a manner consistent with City, State, and Federal policy on street safety, equity, accessibility, and climate change; refer to the City Manager fully integrate Complete Streets design as defined by the NACTO Urban Street Design Guide in the default engineering standard for city streets; restrict city use of the Manual on Uniform Traffic Control Devices (MUTCD) to only documented cases that require its use for compliance with Federal/State regulations; in all other cases, restrict use of the MUTCD to “engineering judgment.”  
*Policy Committee Recommendation: Send the item to Council with a positive recommendation.*  
**Financial Implications:** See report  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 35. Efficiency Unit Ordinance** *(Reviewed by the Land Use, Housing, & Economic Development Committee)*  
**From: Councilmember Taplin (Author), Councilmember Robinson (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager and Planning Commission to adopt objective standards for Efficiency Units pursuant to California Housing and Safety Code § 17958.1, developing an ordinance to amend the Berkeley Municipal Code modeled after standards implemented in the City of Davis, the City of Santa Barbara and other cities.  
*Policy Committee Recommendation: Approve the item with a positive recommendation.*  
**Financial Implications:** Staff time  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Information Reports

36. **City Council Short Term Referral Process – Quarterly Update**  
**From: City Manager**  
Contact: Mark Numainville, City Clerk, (510) 981-6900
37. **Federal Economic Relief Spending in Berkeley**  
**From: City Manager**  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
38. **Sanctuary City Contracting Compliance Report for FY 2022**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
39. **Environment and Climate Commission 2022 Work Plan**  
**From: Environment and Climate Commission**  
Contact: Billi Romain, Commission Secretary, (510) 981-7400
40. **Planning Commission Fiscal Year 2022-23 Work Plan**  
**From: Planning Commission**  
Contact: Alene Pearson, Commission Secretary, (510) 981-7400

## 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.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

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 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 <https://berkeleyca.gov/>.

Agendas and agenda reports may be accessed via the Internet at:  
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>  
and may be read at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor  
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:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet.

*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 September 1, 2022.*

A handwritten signature in black ink, appearing to read "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](#).*

### **Vision 2050**

1. Ben Gerhardstein, on behalf of Walk Bike Berkeley, North Berkeley Now, Bike East Bay and BNHCA.

### **Berkeley Marina Area Specific Plan (BMASP)/Cesar Chavez Park**

2. Emily Galpern
3. Masha Gutkin
4. Sandy Emerson
5. Daniel Larlham
6. Luke Bailey
7. Garril Page
8. Sandra Blair
9. Kathleen McLaughlin
10. David Mandel

11. Roberta Wyn
12. Meryl Siegal
13. Tro Vatro
14. Wini Williams
15. Miranda Morris
16. Shoshana Uribe (2)
17. Linda Karr
18. Morissa Zuckerman
19. Cynthia Gould
20. Judy Grether
21. Charlene Woodcock
22. Nicole Bloom
23. Kerna Trottier
24. Tamara Birdsall
25. Katya Gerwein
26. Remi Omodele
27. Mary Behm-Steinberg
28. Wanda Warkentin
29. Elsa Tranter
30. Gail Mandella
31. Majid Ghajeh
32. Bill Reynolds
33. Dorothea Dorenz
34. Ingrid Crickmore
35. Stacey Singleton
36. Yvette Bozzini
37. Barbara Haber
38. Ryan Hart
39. Garril Page
40. Doug Dohrer
41. Barbara Li Santi
42. Susan Griffin
43. Irene Jung-Huang
44. Nancy Newman
45. Elizabeth Rood
46. Ric Keeley
47. Steve Tracy
48. Ken and Silvana Blum
49. Nancy Hormachea
50. Gail Harrison
51. Judy Ballinger
52. Deborah Scott
53. Eric Naiman
54. Gina Hassan
55. David Wallin
56. Sally Nelson

57. Laurie Lenrow
58. Summer Brenner
59. Erica Roberts
60. Sarah Elzea
61. Ernest Isaacs
62. Bob Schildgen
63. Tamar Oppenheimer
64. Chloe Chaundhry
65. Gillian Heather Geller
66. Francie Shaw
67. Lesli Salzinger
68. Susan Gluss
69. Jack Kurzweil
70. Suzanne Pegas
71. Peter Gleick
72. Herb Schwartz
73. Tobey Wiebe
74. Jean Tepperman
75. Bruce Bagnell
76. Tracey Cosgrove
77. Hannah Meara
78. Margot Smith
79. Kathleen Evans
80. Leslie Sakai
81. Stefani Berger
82. Gael Alcock
83. Wini Williams
84. Shantee Baker
85. Sarah Daniels
86. Melissa Hayes
87. Anne Rowe
88. Nicole S.
89. Shahryar Muzaffar
90. Joan Wheeler
91. Leigh Lightfoot
92. Alex Nguyen
93. Daniel Larlham
94. Kat Schaaf
95. Kelly Hammargren
96. Maureen Fitzgerald
97. Esther Brass
98. Alexandre Chorin
99. Meryl Siegal
100. Maureen Daggett
101. Robert Bloomberg (2)
102. Katharine Carrillo



103. Ilse Eden
104. Dan Slobin
105. Arthur Braufman
106. Mimi Moungovan
107. Feleciana Feller
108. Ken Krich
109. John Porter
110. Jonathan Newman
111. James McGrath
112. Sarah Van Cleave
113. Leah Shelleda
114. Collette Tureene
115. Maxina Ventura
116. Shoshana Dembitz
117. Martin Nicolaus (Book – Love Letters to the Park)
118. Janine Brown
119. Sally Francis
120. Alan McCornick
121. Kit Robinson
122. Riley Taylor
123. Randy Marks
124. Susan Oppie
125. 6 similarly-worded form letter (I greatly appreciate)
126. 28 similarly-worded form letters ((I am one of the rapidly)

**Fishing at the Berkeley Waterfront: What is it Worth? – A Draft Summary Report**

127. San Francisco State University

**IKE Kiosks**

128. Dahlia Armon
129. Todd Andrew (2)
130. Jane Tierney
131. Linda Press Wulf
132. Soula Culver
133. Annie Barrows
134. Margit Roos-Collins
135. Wini Willaims
136. Stephanie Thomas
137. Clay Collett
138. Maxina Ventura
139. Bruce Brody and Lin Druschel
140. Morgan Read
141. Margot Smith
142. Susan Boat
143. Kieron Slaughter (2)

144. Luma Corte, on behalf of Fourth Street Merchants
145. Patricia Zambryski
146. Janice Murota (2)
147. Constance Anderson
148. Zipporah Collins
149. Joseph Klems
150. David Bullitt, on behalf of Heroic Italian Restaurant
151. Karen Rusiniak
152. David Ndeto, on behalf of TCHO Chocolate
153. Jack Lavac, on behalf of Visit Berkeley & Berkeley Film Office
154. Donald Rothberg
155. James Lerager

**Temporary Suspension of the Use of Tear Gas, Smoke and Pepper Spray,  
Associated with the Protest at People's Park**

156. Jack Kurzweil
157. Eric Friedman
158. Ron Jacobs
159. Metzli Hamelius
160. Lily Colby
161. Gerard Jamin
162. Hali Hammer
163. Terri Compost
164. Carol Denney
165. Summer Brenner
166. Sarah Cadorette
167. Tobey Wiebe
168. Russell Lee
169. Thomas Luce
170. Zepatitis B
171. Yadi
172. Maryann O'Sullivan
173. Gabe Gartland
174. Nathan Sweet
175. Juliet Lee
176. Emilio Fentanes
177. Sheila Goldmacher
178. John Selawsky
179. Anne-Lise Francois
180. Phoebe Anne Sorgen
181. Alissa Weber
182. Jan Ruchlis
183. Sara Antunovich
184. Melanie Lawrence
185. Councilmember Harrison (2)
186. Martina Reaves

187. Anna Tseselsky
188. Alan Haber
189. Toby Blome
190. Maxina Ventura
191. Tom Pache
192. Wendy Alfsen
193. Margaret Pritt
194. Adele and David Crady
195. Vicki Young
196. Glenda Pawsey
197. Ken Kratz
198. Anya Worley-Ziegmann
199. Sharon Gillars
200. K.B. Townsend
201. Amy Eden
202. Robert Feuer
203. Rachel Jamison
204. Sarena Kuhn
205. Karly Stark
206. AJ Schaerer
207. Ashe DeLong
208. Justin Lee
209. Sydney Selix
210. 29 similarly-worded form letters (Hello, my name is)

### **Save People's Park**

211. Diana Bohn
212. James Mattson
213. Chrissy Hoffman
214. Derek Gaither
215. Lavell Young (2)
216. Paul Lee
217. Blair Beekman
218. Keith Nickolaus
219. Patricia Maud Engel
220. Bryan Graham
221. Ken Kratz
222. Terri Compost

### **Wildfire Safety**

223. David Schindler
224. Henry DeNero, on behalf of the Hillside Association of Berkeley and it's Hillside Fire Safety Group (2)
225. Bruce Brody
226. Suzi Peterson and Alan Sher
227. David Sprague

228. Sondra Schlesinger

**Park Usage Fees - Kite Festival, S.F. Mime Troupe, et al**

- 229. Eric Friedman
- 230. Judith Thomas
- 231. Sally Nelson
- 232. Gael Alcock
- 233. Esfandiar Imani
- 234. Summer Brenner
- 235. Jill Schalet
- 236. Louise Kimball
- 237. Susan Ashworth
- 238. Barbara Ancher
- 239. Rafael Gonzalez
- 240. Wini Williams

**Youth Commission**

- 241. Cecilia Lunaparra
- 242. 21 similarly-worded form letters

**Warrantless Searches/BPD Policy 311**

- 243. Jennifer Wilks
- 244. Alexandra Mitnick
- 245. T.C Shu
- 246. Li Shu
- 247. David T.
- 248. Gary Amado
- 249. Billy McDonald
- 250. Iris Hagen Ratowsky
- 251. Thomas Luce
- 252. Summi Kaipa
- 253. Betty Kano

**Shellmound**

- 254. Stephanie Manning
- 255. Richard Schwartz (2)
- 256. Peter Walker
- 257. David Lutes
- 258. California Norma
- 259. Linda Newton
- 260. Elana Auerbach
- 261. John Curl
- 262. Jyl Lutes
- 263. Christy Fischer, on behalf of Trust for Public Land
- 264. Sylvie Woog

### **Hopkins Corridor**

- 265. George Porter, on behalf of Commission on Aging
- 266. Bob Flasher (2)

### **E-Bikes**

- 267. Fredda Cassidy
- 268. Jeff Hoover
- 269. Julie Elis
- 270. Robert Byler

### **Housing Element**

- 271. Kendra Ma, on behalf of TranForm
- 272. Ellen Lake, on behalf of the Kala Art Institute
- 273. Harvey McKeon
- 274. North Berkeley Now Housing and Climate Action
- 275. Sophia DeWitt, on behalf of East Bay Housing Organization

### **Junior Jackets Sports Team Asked To Leave San Pablo Park**

- 276. Moni Law (2)
- 277. Angela Jernigan
- 278. Sheila Jordan
- 279. Jr Jackets

### **Tenants Opportunity to Purchase Act (TOPA)**

- 280. 12 similarly-worded form letters

### **Pedestrian Safety**

- 281. Wende Micco
- 282. Roger Hallsten
- 283. Rachel Bradley
- 284. Robin Kirby

### **Bio Lab/Bayer**

- 285. Berkeley Neighborhood Council
- 286. Dana Perls, on behalf of Friends of the Earth

### **COVID-19, Monkeypox, Vaccinations and Masks**

- 287. Marilyn Kaplan (2)
- 288. Anne McClintock

### **Harriet Tubman Terrace**

- 289. Libby Lee-Egan and Mari Mendonca

### **Joining the Department of Housing and Community Development (HCD) Lawsuit**

- 290. Susan Candell

### **Crime**

- 291. Katya Stoakes
- 292. Alex Merenkov
- 293. Isobel Dozier

**Shattuck Cinemas**

- 294. Charlene Woodcock

**BART Development**

- 295. Jean Peters
- 296. Malea Raffetseder

**Toxic Pesticides**

- 297. Maya Cohen

**SB 9**

- 298. Dorothy Berndt

**Golden Duplex**

- 299. Henry Caro

**Unresolved City Matter – Closing Business License**

- 300. Bill Creasi

**CalPERS Bills Going Up**

- 301. Eric Lerman

**Union Pacific Railroad**

- 302. Robert Kroll

**Rat Birth Control**

- 303. Andie Grace
- 304. Tony Benado

**Telegraph Avenue is an Eyesore**

- 305. Joann Philbin

**Property Tax Exemption for Nonprofits**

- 306. Barbara Gilbert

**Toxic Waste Disposal**

- 307. David Lerman

**1598 University Avenue Planned 8-Story Building**

- 308. Bill Kristy

**Homelessness**

309. Mike Palmer

**Bond Measure L**

310. Geoff Lomaz (3)

311. Henry Oyekanmi

**West Berkeley Budget Priorities**

312. 4 similarly-worded form letters

**Rent Control**

313. Bryce Nesbitt

**Affordable Housing**

314. Ann Campbell

**EDI to Phase Out Bowel and Bladder Care**

315. Tamar Michai Freeman

**City of Berkeley Corruption**

316. Walter Wood

**Teaching BUSD Kids To Swim**

317. David Lerman

**Recruit Solano Avenue BID Advisory Board Members**

318. Todd Andrew

**Incessant Dog Barking**

319. Norma J F Harrison

**Misuse of jessearreguin.com Website**

320. David Lerman

**Underground Wiring on Eton Avenue**

321. Fredora H. Darmstadt

**Restoring Bus Service**

322. Marilyn Sagna

323. Ika Simpson

**5G Cell Towers**

324. Omowale Fowles

**Natural Gas Ban in Berkeley**

325. Stella Kim

**No Whites Allowed – POC House**

326. Janice Barton

**Public Financing**

327. Omowale Fowles

328. Catherin Huchting

**Measure P**

329. Joel Libove

**Covid Eviction Moratorium**

330. Daniel Lorence

**Things I Miss About Berkeley**

331. M.E. Lawrence

**Car-Free Berkeley**

332. Ken Stein

**University Campus Police Department**

333. Carol Denney

**Electric Vehicle Charging Stations Infrastructure**

334. David Lerman

**Genetically Modified Mosquitoes**

335. David Luz

**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.





Office of the City Manager

**RECESS ITEM**  
**CONSENT CALENDAR**  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: LaTanya Bellow, Deputy City Manager  
Subject: Contract No. 084534-1 Amendment: NextGen Health Care Information Systems, Inc. for Electronic Health Records

**RECOMMENDATION**

Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 084534-1 with NextGen Healthcare Information Systems, Inc., increasing the amount by \$188,955 for a total contract value not to exceed \$1,008,291.20 and extending the term from September 30, 2010 through June 30, 2024.

**NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS**

The action to amend the contact during recess was required to assure resources by the vendor for a pertinent and necessary network upgrade in October 2022. This essential upgrade will include features to support mental health service provision which is a key service for the City. If we did not enter into the amended contract, we would experience an indeterminately extended delay in applying critical functionality for mental health service provision.

**FISCAL IMPACTS OF RECOMMENDATION**

Funds for additional professional services and software maintenance, in the amount of \$188,955, will be available in the Department of Health, Housing, and Community Services' FY2023 and 2024 General Fund budget as itemized below. Spending for this contract in future fiscal years will be subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

\$98,675	FY 2023: Professional Services Budget Code: 011-51-506-555-0000-000-451-612990 (General Fund, HHCS, Professional Services)
\$40,778	FY 2023: Software Maintenance Budget Code: 011-51-506-555-0000-000-451-613130 (General Fund, HHCS, Software Maintenance)
\$139,453	FY 2023 Subtotal: Professional Services and Software Maintenance

\$49,502	FY 2024: Software Maintenance Budget Code: 011-51-506-555-0000-000-451-613130 (General Fund, HHCS, Software Maintenance)
<hr/>	
\$49,502	FY 2024: Subtotal: Professional Services & Software Maintenance

CURRENT SITUATION AND ITS EFFECTS

The Public Health Division utilizes the HIPAA-compliant **NextGen Practice Management (PM) and Electronic Health Record (EHR)** System to manage secure patient health information and to streamline related business processes, including integrated electronic claiming and remittance files. The system has been upgraded to include: ePrescribing; a Quest Laboratory Tests and Results interface; an Immunization Registry Interface with the State CAIR2 system; NGShare for secure referrals and communication with other providers; and custom grant reporting modules.

We recently implemented NextGen system changes to support and bill for Telehealth services which are delivered without face to face encounters at City facilities. This is critical during the COVID-19 pandemic. The NextGen PM-EHR system has also been upgraded to produce the Berkeley High School Health Center Grant Data that replaced manual data entry with a secure export of files to an external grant reporting system.

The NextGen PM-EHR system was certified to manage Meaningful Use Reporting. Medicare and Medicaid Programs have provided financial incentives for the Meaningful Use of certified EHR technology to improve patient care which qualified the City to collect \$437,750 during the past few years in incentives through Meaningful Use Reporting.

This Contract Amendment provides licensing and maintenance services through Jun 30, 2024 and it provides NextGen Professional Services in order to implement the following critical components:

- NextGen PM-EHR System 6.2021 Upgrade;
- Behavioral Health Module 4.5 Consulting, Training and Implementation;
- Administration and Configuration Training for IT;
- Implementation of the new Patient Portal;
- Implementation of an integrated Medication Inventory Module;
- New Template development for First Aide services and retrofitting of software items to accommodate the major system upgrade.

BACKGROUND

In September 2010, City Council approved a contract with NextGen Healthcare

Information Systems, Inc. to implement the PM and EHR system.

On June 28, 2011, Council approved a contract amendment with NextGen for data conversion and additional training and implementation support.

In August 2011, the City implemented the NextGen Practice Management (PM) Module, including electronic billing, at three Berkeley Public Health Clinics.

In June 2013, the City implemented NextGen's Electronic Health Record (EHR).

On July 2, 2013, Council approved a contract amendment with NextGen Healthcare Information Systems, Inc. for an Immunization Registry interface, for additional software licensing, and for three additional years of maintenance services (through FY 2016).

On July 14, 2015, City Council approved a contract amendment with NextGen Healthcare Information Systems, Inc. for the Patient Portal and for two additional years of software licensing and maintenance services (through FY 2018).

On June 26, 2018, City Council approved a contract amendment with NextGen Healthcare Information Systems, Inc for two additional years of software licensing and maintenance services.

On February 23, 2021, City Council approved a contract amendment with NextGen Healthcare Information Systems, Inc and for two additional years of software licensing and maintenance services.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The system replaces paper-based processes with secure online tools, which reduces paper consumption, mailings, and the need for Public Health patients to travel to clinics for routine information. In addition, the system supports electronic data exchange with other healthcare providers and produces electronic data for claims and grant reporting. The system operates on a virtual infrastructure thus reducing the City's carbon footprint.

#### RATIONALE FOR RECOMMENDATION

NextGen Inc. is a market leader in clinical software and is designated by the Centers for Medicare and Medicaid Services (CMS) as meeting federal requirements for Meaningful Use of Electronic Health Record (EHR) technology. The system supports Clinics in compliance with the Health Insurance Portability and Accountability Act (HIPAA), which outlines the privacy and security standards for health patient information

ALTERNATIVE ACTIONS CONSIDERED

Staff considered implementing and maintaining the PM-EHR system without vendor services. However, the risk of maintaining such a complex application without specialized support is too high, especially given the impact on Public Health services and workflow.

CONTACT PERSON

Debra Montgomery, Information Systems Manager, Department of Information Technology, 510-859-6755

Attachments:

1: Resolution

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

CONTRACT NO. 084534-1 AMENDMENT: NEXTGEN HEALTH CARE  
INFORMATION SYSTEMS INC. FOR ELECTRONIC HEALTH RECORDS

WHEREAS, the NextGen Practice Management (PM) and Electronic Health Record (EHR) System has provided a reliable and HIPAA-compliant system for collecting health patient information; and

WHEREAS, the NextGen Practice Management (PM) and Electronic Health Record (EHR) System has improved the efficiency of Public Health clinic operations and resulted in increased revenue; and

WHEREAS, the NextGen Practice Management (PM) and Electronic Health Record (EHR) System is a CMS-certified Electronic Health Record (EHR) technology, meets the requirements for achieving EHR Meaningful Use measures, and sets the stage to qualify for further American Recovery and Reinvestment Act (ARRA) incentive dollars through the State; and

WHEREAS, a software maintenance and support agreement with NextGen Healthcare Information Systems, Inc. is necessary for system updates; and

WHEREAS, additional funding in the amount of \$188,955 is available in the Department of Health, Housing, and Community Services' FY2023 and 2024 General Fund budget, and this contract amendment has been entered into the Citywide contract database and assigned contract number 084534-1, and spending for this contract in future fiscal years will be 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. 8460E with NextGen Healthcare Information Systems, Inc., increasing the amount by \$188,955 for a total contract value not to exceed \$1,008,291.20 and extend the term from September 30, 2010 through June 30, 2024.





Office of the City Manager

**RECESS ITEM**  
**CONSENT CALENDAR**  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Department of Public Works  
Subject: Contract No. 31900288 Amendment: Disability Access Consultants for ADA Transition Plan

**RECOMMENDATION**

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute an amendment to Contract No. 31900288 with Disability Access Consultants (DAC) for Americans with Disabilities Act (ADA) Transition Plan and On-Call ADA accessibility consulting services, increasing the contract amount by \$122,000 for a total not-to-exceed amount of \$606,800 and extend the contract term to June 30, 2023.

**NEGATIVE EFFECTS IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS**

The Disability Services Specialist responsible for overseeing the ADA Transition Plan has resigned and the City requires additional consultant support to help ensure continuity in these services and that the ADA Transition Plan stays on track.

**FISCAL IMPACTS OF RECOMMENDATION**

Funding for the duration of the contract amendment is available in the FY 2023 Public Works budget in the Capital Improvement Fund (501-54-624-698-0000-000-431-665110) via the approval of the First Amendment to the Annual Appropriations Ordinance.

Current contract amount.....	\$484,800
Amended contract amount.....	\$122,000
Total NTE	\$606,800

**CURRENT SITUATION AND ITS EFFECTS**

Disability Access Consultants (DAC) is currently under contract to survey all city facilities, parks, streets, websites, and programs to help create a new ADA Transition Plan and to address urgent accessibility issues and concerns.

The contract amendment and proposed increase of \$122,000 will also allow the consultant to provide critical and time-sensitive services such as evaluating and responding to public grievances and ADA accommodation requests, and providing accessibility reviews of plans and policies as needed until the City can backfill the Disability Services Specialist position.

#### BACKGROUND

The City's ADA Transition Plan has not been updated in almost twenty years. This is a plan required by the ADA to transition local governments from ADA noncompliance to ADA compliance, and the update is strongly encouraged. In July 2019, after a competitive Request for Proposals process, the City entered into a contract with DAC to work on creating an ADA Transition Plan, including surveying all City streets, parks, programs, facilities, and the website. The plan will be a multi-year approach to memorialize the City's ongoing commitment to ADA accessibility and prioritize funding and resources based on comprehensive data and community feedback. The plan is also expected to improve pedestrian safety, reduce liability, and provide information to better guide our capital improvements.

On April 27, 2021, by Resolution No. 69,823 – N.S. City Council authorized an amendment with DAC, increasing the contract by \$78,200 for a revised total not to exceed amount of \$484,800 and extending the contract term to June 30, 2022, for surveying of additional City sidewalks and to address urgent accessibility issues and concerns.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

ADA accessibility benefits many pedestrians including but not limited to people with disabilities, seniors, and parents with strollers and small children. Such improvements encourage the use of public transportation and travel without cars, thus reducing greenhouse gases and other negative impacts of driving.

#### RATIONALE FOR RECOMMENDATION

Due to the depletion of the contract budget, additional funding is needed to complete the ADA Transition Plan including addressing ADA compliance. An urgent need also exists for ADA services due to a recent vacancy.

#### ALTERNATIVE ACTIONS CONSIDERED

The City could issue a new request for proposals to complete the needed work, but doing so would interrupt continuity of services provided by the departed Disability Services Specialist and put the ADA Transition Plan off track.

#### CONTACT PERSON

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

Attachment:  
1: Resolution



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

CONTRACT NO. 31900288 AMENDMENT: DISABILITY ACCESS CONSULTANTS  
FOR ADA TRANSITION PLAN

WHEREAS, the City of Berkeley complies with Americans with Disabilities Act and related State and Federal laws; and

WHEREAS, On July 3, 2019, after a competitive Request for Proposals process, the City of Berkeley entered into a contract (Contract No. 31900288) with Disability Access Consultants (DAC) to survey the City facilities, sidewalks, programs and website and help create a new ADA Transition Plan; and

WHEREAS, on April 27, 2021 by Resolution No. 69,823 – N.S. City Council authorized an amendment with DAC, increasing the contract by \$78,200 for a revised total not to exceed amount of \$484,800 and extending the contract term to June 30, 2022 for surveying of additional City sidewalks and to address urgent accessibility issues and concerns; and

WHEREAS, amending the contract will allow staff to complete a new ADA Transition Plan; and provide urgent On-Call ADA services while the City's Disability Services Specialist vacancy is backfilled, and

WHEREAS, funding for the duration of the contract amendment will be available in the FY 2023 Capital Improvement Fund budget via the approval of the First Amendment to the Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to execute an amendment to Contract No. 31900288 with Disability Access Consultants for ADA Transition Plan increasing the contract amount by \$122,000 for a total not-to-exceed amount of \$606,800 and extend the contract term to June 30, 2023.





Office of the City Manager

**RECESS ITEM**  
CONSENT CALENDAR  
 September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Liam Garland, Director, Public Works  
 Subject: Contract No. 32100194 Amendment: Bay Cities Paving & Grading, Inc. for construction and repairs

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 32100194 with Bay Cities Paving & Grading, Inc. for work on the Street Rehabilitation FY 2021 Project, Specification No. 21-11422-C, increasing the current contract amount by \$260,000, for a total amount not to exceed \$4,556,733.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

Amending this construction contract will allow Bay Cities Paving & Grading, Inc. to proceed with landslide repairs and the construction of a retaining wall along Wildcat Canyon Road. It is critical that repairs and construction begin as soon as possible so that the slope repairs and new and repaired retaining walls are in place before the upcoming rainy season. Delaying this contract amendment until after Council recess would extend the construction period into the wet season and lead to an increased risk of structural failure.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract amendment is available from the FY 2023 Street Capital Program as follows:

Capital Improvement Fund (501-54-623-673-0000-000-431-665110)     \$260,000

No other funding is required and no other projects will be delayed due to this expenditure.

CURRENT SITUATION AND ITS EFFECTS

Several locations along the side of Wildcat Canyon Road experienced landslides due to storms during the 2021-2022 rainy season. These landslides affected the stability of slopes and existing retaining walls that support the roadway at four locations. It is

recommended that these repairs be performed before the next rainy season so that any further rains do not worsen the situation and lead to failure of the walls and roadway.

BACKGROUND

On April 27, 2021, Council authorized Contract No. 32100194 with Bay Cities Paving & Grading, Inc. for the Street Rehabilitation FY 2021 Project in an amount not to exceed \$4,296,733. In order to perform the landslide and retaining wall repairs on Wildcat Canyon Road, an amendment is needed to increase the contract authority for the Street Rehabilitation FY 2022 Project to \$4,556,733.

The provided services will support the Strategic Plan goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The repair work includes storm system improvements which will not only maximize the lives of the retaining walls but also reduce erosion of the hillside. Reduced erosion protects water quality by reducing sediments entering the storm drain system.

RATIONALE FOR RECOMMENDATION

Bay Cities Paving & Grading, Inc. is currently under contract with the City. It is practical and cost-effective to amend the contract with Bay Cities Paving & Grading, Inc. for the work on Wildcat Canyon Road. Contracted services are required as the City does not have the in-house expertise to complete this specialized work.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered for this work. Failure to repair and construct the retaining walls would result in continued degradation and eventual failure placing public infrastructure at risk.

CONTACT PERSON

Farid Javandel, Deputy Director, Public Works, 981-7061  
Joe Enke, Manager of Engineering, Public Works, 981-6411

Attachment:  
1: Resolution

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

CONTRACT NO. 32100194 AMENDMENT: BAY CITIES PAVING & GRADING, INC.

WHEREAS, there is a need for landslide and retaining wall repair work on Wildcat Canyon Road that should be performed before the rainy season; and

WHEREAS, the City has neither the labor nor the equipment necessary to undertake this construction work; and

WHEREAS, on April 27, 2021 by Resolution 69,817-N.S., the City Council authorized Contract No. 32100194 with Bay Cities Paving & Grading, Inc. in an amount not to exceed \$4,296,733 for work on the Street Rehabilitation FY 2021 Project, Specification No. 21-11422-C; and

WHEREAS, funds are available from the Capital Improvement Fund (501-54-623-673-0000-000-431-665110) in the FY 2023 budget.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to execute an amendment to Contract No. 32100194 with Bay Cities Paving & Grading, Inc. for work on the Street Rehabilitation FY 2021 Project, Specification No. 21-11422-C, increasing the current contract amount by \$260,000, for a total amount not to exceed \$4,556,733. A record signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Minutes for Approval

RECOMMENDATION

Approve the minutes for the Council meetings of July 7 (closed), July 12 (closed and regular), July 18 (closed), July 26 (special and regular) and August 3 (special).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. July 7, 2022-Closed Council Meeting
2. July 12, 2022-Closed Council Meeting
3. July 12, 2022-Regular Council Meeting
4. July 18, 2022-Closed Council Meeting
5. July 26, 2022-Special Council Meeting
6. July 26, 2022-Regular Council Meeting
7. August 3, 2022 Special Council Meeting

**MINUTES  
BERKELEY CITY COUNCIL SPECIAL MEETING**

**THURSDAY, JULY 7, 2022**

**4:30 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81831321606>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free); enter Meeting ID: 818 3132 1606. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

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## Preliminary Matters

**Roll Call:** 4:31 p.m.

**Present:** Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, Arreguin

**Absent:** Bartlett

**Public Comment - Limited to items on this agenda only – None.**

## CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

### 1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8

Property address:	Berkeley Inn 1720 San Pablo Ave, Berkeley, California
Agency Negotiators:	Dee Williams-Ridley, City Manager; Paul Buddenhagen, Deputy City Manager; Peter Radu, Assistant to the City Manager
Negotiating parties:	City of Berkeley & Pravin Patel
Property owner:	Ganga Holdings, LLC
Under negotiation:	Price and terms
Property address:	1250-1288 9th Street, Berkeley, California
Agency Negotiators:	Dee Williams-Ridley, City Manager; Paul Buddenhagen, Deputy City Manager; Keith May, Acting Deputy Fire Chief; Dionne Early, Community Development Project Coordinator – PW Real Property
Negotiating parties:	City of Berkeley & Smith and Walters, Inc
Property owner:	Smith and Walters, Inc.
Under negotiation:	Price and terms

**Action:** No reportable action taken.

### 2. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Paul Buddenhagen, Deputy City Manager, LaTanya Bellow, Deputy City Manager, Don Ellison, Interim Human Resources Director, Dawud Brewer, Employee Relations Manager.

Employee Organizations: Berkeley Fire Fighters Association Local 1227, Berkeley Fire Fighters Association, Local 1227 I.A.F.F. / Berkeley Chief Fire Officers Association; International Brotherhood of Electrical Workers (IBEW), Local 1245, SEIU 1021 Community Services and Part-time Recreation Activity Leaders, SEIU 1021 Maintenance and Clerical, Public Employees Union Local 1, Unrepresented Employees, Berkeley Police Association.

**Action:** No reportable action taken.

### 3. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(2):

a. Workers Compensation Appeals Board Case Number: ADJ11219150

**Action:** M/S/C (Wengraf/Arreguin) to provide direction to outside counsel and approve a settlement by Compromise and Release, or else in the alternative by stipulated award of permanent disability with an Award of lifetime future medical care, as to workers' compensation matter WCAB Case Number: ADJ11219150.

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

Councilmember Wengraf absent 6:45 p.m. – 6:55 p.m.

## **OPEN SESSION:**

Public Reports of actions taken pursuant to Government Code section 54957.1.

The City Council provided direction to outside counsel and approved a settlement by Compromise and Release, or else in the alternative by stipulated award of permanent disability with an Award of lifetime future medical care, as to workers' compensation matter WCAB Case Number: ADJ11219150.

## **Adjournment**

**Action:** M/S/C (Arreguin/Robinson) to adjourn the meeting.

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

Adjourned at 6:55 p.m.

I hereby certify that the forgoing is a true and correct record of the special closed meeting of July 7, 2022 as approved by the Berkeley City Council.

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Rose Thomsen, Deputy City Clerk

# BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

**TUESDAY, JULY 12, 2022**

**4:00 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

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*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free); enter Meeting ID: 874 9594 9850. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

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## Preliminary Matters

**Roll Call:** 4:05 p.m.

**Present:** Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Kesarwani, Bartlett

Councilmember Kesarwani present at 4:09 p.m.

Councilmember Bartlett present at 4:13 p.m.

**Public Comment - Limited to items on this agenda only – 3 speakers**

## CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

### 1. PUBLIC EMPLOYEE APPOINTMENTS PURSUANT TO GOVERNMENT CODE SECTION 54957(b):

a. **Title of position to be filled:** Director of Police Accountability

**Action:** No reportable action taken.

## OPEN SESSION:

No reportable action taken.

## Adjournment

**Action:** M/S/C (Arreguin/Wengraf) to adjourn the meeting.

**Vote:** All Ayes.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on July 12, 2022.

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Mark Numainville, City Clerk

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, July 12, 2022**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

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*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, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. 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:** 6:08 p.m.

**Present:** Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Bartlett

Councilmember Bartlett present at 6:10 p.m.

## Report from Closed Session

City Council met in closed session on July 7, 2022, Pursuant to Government Code Section 54956.9(d)(2) and provided direction to outside counsel and approved a settlement by Compromise and Release, or else in the alternative by stipulated award of permanent disability with an Award of lifetime future medical care, as to workers' compensation matter WCAB Case Number: ADJ11219150.

## Ceremonial Matters:

1. Adjourned in Memory of Thomas Lord, Local Activist and Former Commissioner

**City Manager Comments:** None

**Public Comment on Non-Agenda Matters:** 10 speakers.

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 16 speakers.

**Action:** M/S/C (Arreguin/Droste) to accept supplemental materials from Councilmember Taplin on Item 18.

**Vote:** All Ayes.

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

**Vote:** All Ayes.

## Consent Calendar

### 1. FY 2023 Annual Appropriations Ordinance

**From:** City Manager

**Recommendation:** Adopt second reading of Ordinance No. 7,828-N.S. adopting the FY 2023 Annual Appropriations Ordinance (AAO) in the amount of \$754,176,624 (gross appropriations) and \$625,939,999 (net appropriations).

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

**Financial Implications:** See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

**Action:** Adopted second reading of Ordinance No. 7,828-N.S.

## Consent Calendar

- 2. goBerkeley SmartSpace Pilot Program Implementation Recommendations**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,829-N.S. repealing and reenacting Berkeley Municipal Code Chapter 14.52 Parking Meters to enable demand-responsive paid parking for non-RPP permit holders in the 2700 blocks of Durant Avenue, Channing Way, and Haste Street and the 2300-2400 blocks of Piedmont Avenue (a portion of Residential Preferential Parking Program Area I) for the duration of the grant-funded goBerkeley SmartSpace pilot program, and allow payment via license plate entry pay stations (“pay-by-plate”) to improve convenience and enforcement.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted second reading of Ordinance No. 7,829–N.S.
- 3. Voting Delegates – League of California Cities Annual Conference**  
**From: City Manager**  
**Recommendation:** Designate, by motion, a voting delegate and alternate for the business meeting of the Annual League of California Cities conference to be held on Friday, September 9, 2022, in Long Beach.  
**Financial Implications:** See report  
Contact: Mark Numainville, City Clerk, (510) 981-6900  
**Action:** Approved recommendation appointing Councilmember Hahn as the voting delegate and Councilmember Taplin as the alternate.
- 4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 12, 2022**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$3,620,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Approved recommendation.

## Consent Calendar

5. **Contract No. 32000243 Amendment: Waters Moving & Storage for Facility Moves**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000243 with Waters Moving & Storage for moving office furniture between various Health, Housing, & Community Services Department (HHCS) facilities, as part of HHCS program relocations. These facility sites include, but are not limited to, the North Berkeley Senior Center, West Berkeley Service Center, 830 University Avenue, and 1947 Center Street. The contract is being amended to add to the scope and increase the original contract by \$10,000 to the original contract amount of \$50,000 to move Aging Services back into the newly rehabilitated North Berkeley Senior Center. The total amended amount will not exceed \$60,000 for the period June 1, 2020 through December 30, 2022.  
**Financial Implications:** General Fund - \$10,000  
 Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,445–N.S.
6. **Contract No. 8958F Amendment: Bartel Associates, LLC for Actuarial Consulting Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 8958F increasing contract amount by \$110,000 with Bartel Associates, LLC for Actuarial Consulting Services, for a revised total contract amount not to exceed \$380,000 through December 31, 2023.  
**Financial Implications:** Various Funds - \$110,000  
 Contact: Donald E. Ellison, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 70,446–N.S.
7. **Contract No. 31900045-3 Amendment: Vestra Resources, Inc. for Additional Geographic Information System (GIS) Projects**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 31900045-3 with Vestra Resources, Inc. for Geographic Information System (GIS) professional services, for a total not to exceed \$28,679 and for a total contract value of \$64,990 from September 15, 2018 to June 30, 2024.  
**Financial Implications:** IT Cost Allocation Fund - \$28,679  
 Contact: Michael Sinor, Information Technology, (510) 981-6500  
**Action:** Adopted Resolution No. 70,447–N.S.



## Consent Calendar

- 8. Contract No. 31900193 Amendment: Hamilton Tree Service, Inc. for As-Needed Tree Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 31900193 with Hamilton Tree Service, Inc, for as-needed tree services, increasing the amount by \$300,000 for an amended total amount not to exceed \$500,000.  
**Financial Implications:** Various Funds - \$300,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,448–N.S.
- 9. Contract No. 31900218 Amendment: West Coast Arborists, Inc. for As-Needed Tree Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend contract No. 31900218 with West Coast Arborists Inc., for as-needed tree services, increasing the amount by \$200,000 for an amended total amount not to exceed \$700,000.  
**Financial Implications:** Various Funds - \$200,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,449–N.S.
- 10. Contract No. 32200076 Amendment: OBS Engineering, Inc. for John Hinkel Park Amphitheater Area Improvements Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200076 with OBS Engineering, Inc. for the John Hinkel Park Amphitheater Area Improvements Project, increasing the amount by \$26,000 for an amended total amount not to exceed \$1,145,580.  
**Financial Implications:** Parks Tax Fund - \$26,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,450–N.S. as revised in Supplemental Communications Packet #2 by the City Manager to increase the amount by \$80,000 for an amended total amount not to exceed \$1,199,580.

## Consent Calendar

11. **Berkeley's Financial Condition (FY 2012 – FY 2021): Pension Liabilities and Infrastructure Need Attention**  
**From: Auditor**  
**Recommendation:** We recommend City Council request that the City Manager report back by November 2022, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the City Manager and Finance Department. They have agreed to our findings and recommendations. Please see our report for their complete response. This audit report has been updated with new information regarding the City's Section 115 Trust.  
**Financial Implications:** See report  
Contact: Jenny Wong, Auditor, (510) 981-6750  
**Action:** Approved recommendation.
  
12. **Contract No. 32000196 Amendment: Szabo & Associates for Communications Consulting Services**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000196 with Szabo & Associates for communications consulting services for the Mayor's Office, increasing the contract amount by \$78,000 for a new total not to exceed \$227,500, and extending the contract term to June 30, 2023.  
**Financial Implications:** Mayor's Office Budget - \$78,000  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Adopted Resolution No. 70,451–N.S.

## Council Consent Items

13. **Joining the House America Initiative**  
**From: Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution joining House America, an initiative of the U.S. Department of Housing and Urban Development and the U.S. Interagency Council on Homelessness to form partnerships with state, tribal and local governments to rehouse people experiencing homelessness.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Adopted Resolution No. 70,452–N.S.
  
14. **Support for Assembly Constitutional Amendment 3**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Send a letter of support for ACA-3 to members of the state legislature including Senator Kamlager (D-Los Angeles), Senator Skinner (D-Berkeley), and Assemblymembers Kalra and Wicks.  
**Financial Implications:** Staff time  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Approved recommendation as revised in Supplemental Communications Packet #1 by Councilmember Taplin.

## Council Consent Items

- 15. Support for AB-1816: Reentry Housing and Workforce Development Program.**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Send a letter of support for Assembly Bill 1816 to Assemblymember Isaac Bryan (D-Los Angeles) and state legislators representing the City of Berkeley (Skinner/Wicks).  
**Financial Implications:** Staff time  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Approved recommendation as revised in Supplemental Communications Packet #1 by Councilmember Taplin.
- 16. Support for SB 1063: Flexibility for Energy Innovation**  
**From: Councilmember Robinson (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Send a letter to Senator Nancy Skinner and Assemblymember Buffy Wicks in support of Senate Bill 1063, which would authorize the California Energy Commission (CEC) to make new technology standards effective sooner, enabling the Commission to expedite the rollout of new green technologies and be more responsive to climate emergencies.  
**Financial Implications:** Staff time  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170  
**Action:** Vice-Mayor Harrison added as a co-sponsor. Approved recommendation.

## Action Calendar – Public Hearing

### 17. Zoning Ordinance Amendments Making Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt first reading of an Ordinance containing technical edits, corrections and other non-substantive amendments to the following sections of the Zoning Ordinance:

BMC Section 23.202.140 (R-SMU Zoning District)

BMC Section 23.204.020 (Commercial Districts -- Allowed Land Uses)

BMC Section 23.204.030 (Additional Permit Requirements)

BMC Section 23.204.060 (C-U Zoning District)

BMC Section 23.204.130 (C-DMU District)

BMC Section 23.206.202 (Manufacturing Districts – Allowed Land Uses)

BMC Section 23.302.030 (Temporary Uses and Structures)

BMC Section 23.302.070 (Use-Specific Regulations)

BMC Section 23.404.040 (Public Notice)

BMC Section 23.502.020 (Glossary)

**Financial Implications:** None

Contact: Jordan Klein, Planning and Development, (510) 981-7400

**Public Testimony:** The Mayor opened the public hearing. 1 speaker. M/S/C (Arreguin/Wengraf) to close the public hearing.

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

Councilmember Droste absent 7:15 p.m. – 7:20 p.m.

**Action:** M/S/C (Hahn/Harrison) to adopt first reading of Ordinance No. 7,830-N.S. Second reading scheduled for July 26, 2022.

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

## Action Calendar – Old Business

18. **Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual** (Continued from May 24, 2022) (Item contains revised material) (Reviewed by the Public Safety Committee)

**From:** Councilmember Droste (Author), Councilmember Taplin (Author)

**Recommendation:** Revise Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department (BPD) Law Enforcement Services Manual to enable officers of the Berkeley Police Department to conduct detentions and warrantless searches individuals on parole/probation consistent with and supportive of the provisions in the probationer's/parolee's release conditions.

*Policy Committee Recommendation: Send the item to the City Council with a qualified positive recommendation, as revised by the committee and subject to legal review.*

**Financial Implications:** See report

Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

**Action:** Moved to Consent Calendar. Adopted the policy revision as introduced in the supplemental material submitted by Councilmember Taplin. Councilmembers Droste and Hahn added as co-sponsors on the supplemental material.

*In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement or rehabilitative purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.*

*~~Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status.~~ **Individuals contacted or detained who are found to be on searchable Supervised Release for Violent Offenses<sup>1</sup> may be searched pursuant to the terms of their Supervised Release conditions.** The decision to detain a person and conduct a probation or parole search or otherwise enforce probation or parole conditions **for those on supervised release for nonviolent crimes<sup>2</sup>**, should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime **or which demonstrate that the individual is connected in some way to criminal activity or that the individual is an imminent threat to officer or citizen safety.** In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class.*

<sup>1</sup> Offenses involving the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, and the use of force or threats to public safety. Battery on a Peace Officer (Penal Code § 243(b)), Reckless Evasion in a Vehicle (Vehicle Code § 2800.2(a)), or a violent felony as defined in Penal Code § 667.5(c)., fall into the categories of violent crimes, weapons offenses, sex crimes and/or crimes involving threats to public safety in accordance with state law.

<sup>2</sup> "Non-Violent Offenses" are defined as offenses in which violence or use of a weapon or threat to life safety is not a factor.

## Action Calendar – Old Business

**19. Restoring and Improving Access to City of Berkeley Website and Archival Materials** *(Continued from June 14, 2022)*

**From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor)**

**Recommendation:** Direct the City Manager to:

1. Restore at previous URLs all PDF documents previously hosted on the City of Berkeley website.
2. Create a publicly accessible archival copy of the City's previous website, CityofBerkeley.info, that can be accessed without logins and via internet search engines. Include a prominent disclaimer noting the date the website, page, or document was archived, with links redirecting to the active website or other responsive resource.
3. On the new website, update Commission pages to include a minimum of 2 years of historic agendas and other materials and update City Council and Council Committee pages to include at least 3 years of complete materials.
4. By July 15, 2022 develop and make available to all City staff and to the public training at beginner to expert levels on use of the City's Records Online search function and create more extensive and less technical self-help resources covering basic and expert use.
5. In recognition of increased public traffic, update the Records Online homepage to explain how the portal works and link to more robust self-help resources and alternative search functions.
6. Coordinate with agency staff to include all relevant records (agendas, minutes, etc.) from Rent Board and Housing Authority in Records Online Portal.
7. Update any remaining 404 pages to explain that the City's website has been moved/updated, and provide links to helpful pages, search functions and/or pathways to access responsive materials. As quickly as possible, consider implementing redirects with wildcards to direct as many old links to relevant new website pages in lieu of the standard 404 page. E.g. cityofberkeley.info/planning\* to the Planning Department site map/homepage, or Department Specific 404 page explaining new navigation.

Refer to the City Manager the following additional improvements to Records Online:

1. Within Records Online, provide unique archival/search categories for each City Commission, Board, Committee and Rent Board, and consider other useful categories, to assist users in narrowing results and identifying responsive materials.
2. Allow Records Online search results to be sorted by date and by other searchable factors. Consider means to integrate records online into default site search bar.
3. Explore and report back to Council options for improving the scope of Records Online, improving search options and sorting, and making all materials – or materials from January 1, 2000 (or an earlier recommended date) forward, searchable using internet search engines.

**Financial Implications:** Staff time

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

**Action:** Item 19 continued to July 26, 2022.

## Action Calendar – New Business

**20. Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

**From: 4 x 4 Joint Committee on Housing City Council/Rent Board**

**Recommendation:**

1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

Contact: Matt Brown, Rent Stabilization Board, (510) 981-7368

Recess 8:10 p.m. – 8:20 p.m.

**Action:** 54 speakers. M/S/C (Arreguin/Harrison) to:

Delay final action tonight and continue Item #20 to the July 26, 2022 regular City Council meeting and direct the City Attorney to bring back revised measure language reflecting the following changes:

1. Bring back revised language for Section 13.76.050.F to continue the exemption from just cause and rent control for owner occupied “Golden Duplexes” if the duplex was owner-occupied as of July 1, 2022 and continues to be occupied by the same owner. Once the current owner no longer resides there, then it would be no longer be exempt.

**Action:** M/S/Failed (Wengraf/Kesarwani) to take no action on the golden duplex provisions in Part 1 of the Main Motion.

**Vote:** Ayes – Kesarwani, Taplin, Wengraf, Droste; Noes – Harrison, Hahn, Robinson, Arreguin; Abstain – None; Absent – Bartlett (Recused – resides in golden duplex).

**Action:** M/S/Failed (Arreguin/Harrison) to approve Part #1 of the Main Motion.

**Vote:** Ayes – Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Taplin, Wengraf, Droste; Abstain – None; Absent – Bartlett (Recused – resides in golden duplex).

Councilmember Bartlett recused 9:45 p.m. – 10:35 p.m.

2. Remove the language in Section 13.76.050.N which would repeal the exemption of lawfully established and fully permitted Accessory Dwelling Units from just cause for eviction protections. Also, refer to the City Manager to explore noticing requirements of rent/eviction control exemption for ADU units.

**Action:** M/S/C (Arreguin/Robinson) to suspend the rules and extend to 11:30 p.m.

**Vote:** All Ayes.

## Action Calendar – New Business

**Action:** M/S/C (Hahn/Harrison) to approve Part #2 of the Main Motion.

**Vote:** All Ayes.

3. Bring back the proposed language in Section 13.76.040 to modify the new construction exemption for SB 330 replacement units and other units if permitted by state or local law.

**Action:** M/S/C (Arreguin/Harrison) to approve Part #3 of the Main Motion.

**Vote:** Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Taplin, Wengraf, Droste.

4. Bring back the proposed language in Section 13.76.060.Q as proposed by the Rent Board, “Rent Stabilization Ordinance/Decontrol”.

**Action:** M/S/C (Arreguin/Harrison) to approve Part #4 of the Main Motion.

**Vote:** Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – Taplin; Absent – Droste.

5. Remove the language in Section 13.76.130, “Additional Occupants.”

**Action:** M/S/C (Arreguin/Harrison) to approve Part #5 of the Main Motion.

**Vote:** All Ayes.

**Vote:** Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Droste; Abstain – Taplin, Wengraf.

## Information Reports

### 21. Youth Commission Work Plan 2022

**From:** Youth Commission

Contact: Ginsi Bryant, Commission Secretary, (510) 981-6700

**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda - 7 speakers.**

## Adjournment

Adjourned at 11:30 p.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on July 12, 2022.

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Mark Numainville, City Clerk



## Communications

### **Item #19: Restoring and Improving Access to City of Berkeley Website and Archival Materials**

1. David Lerman (2)

### **Berkeley Marina Area Specific Plan and Cesar Chavez Park**

2. Laura Katz
3. Sarah Elzea
4. Helen Greenspan
5. Margaret and Laura Goodman
6. Kristi Bennewitz
7. Ric Keeley
8. Robin Slovak
9. Nancy Schimmel
10. Leslie Brogan
11. Kate Greswold
12. Mort Cohn
13. Rose Glickman
14. Karen Hoffman
15. Nel Benningshof
16. Phyllis Olin
17. Claire Kahane
18. Kathleen Tandy
19. Kellie Gan
20. Nick Despota
21. Robin Freeman
22. Carol Ginsburg and Joseph Como
23. Kate Greswold
24. Sahana Rajasekar
25. Caroline Powell
26. Stefani Berger

### **Vacancy Tax**

27. Elana Auerbach
28. Avram
29. Barbara Gilbert (2)
30. Toni Mester

### **Hopkins Corridor**

31. Rachel Bradley
32. Tanya Bustamante, on behalf of The Commission on Aging
33. Susan Taylor

### **eScooters**

34. Robert Byler
35. Anne McClintock (2)
36. Melanie Beasley, on behalf of the City Manager's Office

**People's Park**

37. Moni Law

**Climate**

38. Thomas Lord

**Neighbors Smoking – Modify B.M.C. 12.70.035**

39. Anne Marie (2)

**Plastic Bag Ordinance**

40. Dakota Peebler

**Hybrid Council Meetings**

41. Elana Auerbach

**Homelessness**

42. M. Emillie Keas

43. Gordon Peterson

**Illegal Short-Term Rental**

44. Ramona Cavanaugh

**1740 San Pablo New Construction – Funding Application**

45. Kate Traynor, on behalf of BRIDGE Housing

**Reimagining Public Safety**

46. Nan McGuier

**Shellmound**

47. Zahcary Bell

**Eviction Moratorium**

48. Anne

**African American Holistic Resource Center (AAHRC)**

49. George Lippman, on behalf of Berkeley Peace and Justice Commission

**Traffic at Intersections of 80 and University and Gilman**

50. Nick Roosevelt

51. Farid Javandel

**SB 1183**

52. Seena Hawley

**BART Development**

53. Nancy Lieblich

**Needles and Drug Use Downtown**

54. Alex Merenkov

**Fire Anniversary of September 17, 1923**

55. Margot Smith

**Eviction of the Pacific Center at 2712 Telegraph Avenue**

56. Lasara Firefox

**Double Parking on Durant**

57. Alex Merenkov

**Housing Element**

58. Kelly Hammargren

**Fire Danger at People's Park**

59. Max Ventura

**Accept Haitian Migrants to Berkeley**

60. Nin Ichikawa

**UN Secretary General**

61. Thomas Lord

**Arson and Wildfires**

62. Barbara Gilbert

**Tenants Opportunity to Purchase Act**

63. Kelly Hammargren

64. 56 similarly-worded from letters from "campaigns@good.do"

**Supplemental Communications and Reports 1**

**Item #1: FY 2023 Annual Appropriations Ordinance**

65. Eric Friedman

**Item #14: Support for Assembly Constitutional Amendment 3**

66. Supplemental material, submitted by Councilmember Taplin

**Item #15: Support for AB-1816: Reentry Housing and Workforce Development Program**

67. Supplemental material, submitted by Councilmember Taplin

**Item #18: Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual**

68. Supplemental material, submitted by Councilmember Taplin

**Item #19: Restoring and Improving Access to City of Berkeley Website and Archival Materials**

69. Melanie Beasley, on behalf of the City Manager's Office

**Item #20: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

70. Revised material, submitted by the City Attorney's Office

71. Dan McDunn

72. William Campbell

73. Kevin Casey

**Supplemental Communications and Reports 2**

**Item #10: Contract No. 32200076 Amendment: OBS Engineering, Inc. for John Hinkel Park Amphitheater Area Improvements Project**

74. Revised material, submitted by Parks, Recreations & Waterfront

**Item #18: Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual**

75. Supplemental material, submitted by Councilmember Taplin

76. Revised material, submitted by Councilmember Droste

77. Bryce Nesbitt

78. Michael Brodheim

79. Todd Andrew

80. Andree Jones

81. Carolyn

82. Lorenzo Avila

83. Rachel Bradley

84. Isabelle Gaston

85. Steve Kromer

86. Rob Yohai

87. Jon McAuliffe

88. 38 similarly-worded form letters

**Item #20: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

89. Revised material, submitted by the City Attorney's Office

90. Joann Sullivan

91. Alicia Moore

92. Vanessa Marrero

93. Kirsten Rose

94. Norma Harrison

95. Debbie Woods

96. Jerry Fillingim

97. Charlene Woodcock

98. Robin R

99. Cecile Leneman

100. Erica Cleary

101. Yoni Mayeri
102. Chris Ballinger
103. Judy MacLean
104. Jeffrey Carter
105. John Tortorice
106. Sheila Goldmacher
107. Diana Bohn
108. Michele Muenning
109. John Selawsky
110. Fredric Fierstein
111. Angela Carlton
112. Beth Gerstein, on behalf of Councilmember Kesarwani
113. Thomas Luce
114. Diana Bohn
115. Anne McClintock
116. Matthew Lewis
117. Claudia Kawczynska
118. Debra Sanderson, Co-chair ADU Task Force
119. Julieta Pisani McCarthy
120. Cameroon Woo
121. 7 similarly -worded form letters

### **Supplemental Communications and Reports 3**

#### **Item #16: Support for SB 1063: Flexibility for Energy Innovation**

122. D.S.

#### **Item #18: Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual**

123. Supplemental material, submitted by Councilmember Taplin
124. Fran Haselsteiner
125. Sara Shnider
126. April Gilbert
127. Ben Finkel
128. Barbara Gilbert
129. Jake Teitebaum
130. Elliot Halpern
131. Kitt Saginor
132. Meryl Siegal
133. Karen Weidert
134. Diana Bohn
135. Laralynn Rapoza
136. John Rea
137. Mike Perlmutter
138. Carol Denney
139. Meghan Schwartz
140. Vicki Sommer

141. Terrence Kotsatos
142. Kellicia Kotsatos
143. Margaret Pritt
144. Raul Delarosa
145. Max Ventura
146. Tracy Rosenberg
147. Julia Cato
148. Glenda Citragno
149. Edward Opton
150. Lynda Caesara
151. Alicia Moore
152. Wendy Alfsen
153. Larry Hartsough
154. Elana Auerbach
155. John Vias
156. Josh Buswell-Charkow
157. Lisa Ferguson
158. Negeene Mosaed
159. Fred Krieger
160. Christoverre Kohler
161. Laura Klein
162. Debbie Woods
163. Anna Sophie Loewenberg
164. Jan Baerwald
165. Mark McGoldrick
166. Kelly Hammargren
167. Adolfo Cabral
168. Bill Newton
169. Beth Goldstein
170. Hongnian Guo
171. Dennis Weikel
172. Marcia Dubois
173. Stephanie Lim
174. Seena Hawley
175. Andrea Kamman
176. Dai Ying Zhang
177. Selena Chu
178. Laurie Lenrow
179. Kellicia Wong Kotsatos
180. David Lerman
181. Bill Pottinger
182. J. Frederick Clark Jr.
183. Gina Rieger
184. Joshua Reich
185. Simon Leemann
186. Alyse Jacobson

187. Becky Dalton
188. Sheila Moran
189. Ari Lev
190. Catherine Shalen
191. Sunny Yoon
192. Richard Bunce
193. Christine Staples
194. John E. Rosenthal
195. Suzanne McKee
196. Steven Berger
197. John Rice
198. Seth Engel
199. David Fogarty
200. Irene Marcos
201. Feliciano Mejia
202. Alex Jordan
203. Wenxia Maclay
204. Peter Hosemann
205. Julia Zhang
206. Diego Aguilar-Canabal
207. Bethany del Lima
208. William Rosen
209. Lisa Tsang
210. Shuang Li
211. Bruce Feingold
212. Frannie Mok
213. Susan Orbuch
214. wenijingxu@
215. Erik Schmitt
216. Audrey Richards
217. Mari Vlastos
218. Liz Ruhland

**Item #20: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

219. Norma Harrison
220. Neil Sawhney
221. Julia Cato
222. Tobey Wiebe
223. Karen Gosling
224. Negeene Mosaed
225. Becca Freed
226. Diana Bohn
227. Katharine Bierce
228. Chimey Lee
229. Bryce Nesbitt
230. Jeanne Clinton

231. Scott Curtin
232. Cris Benton
233. Michael O'Heaney
234. Tony Warwick
235. Michael Katz
236. Claire Sherman & Ed Anisman
237. Virginia Browning
238. Lauren Schiller
239. Lori Kossowsky
240. Laura Bixby
241. Daren Fields
242. Mathias Kondolf
243. Alejandro Garcia-Paredes
244. Katharine Vidt
245. Teresa Paris
246. Rebecca Champion
247. Erin Chalmers
248. Elena Gonzalez
249. Carol Perez
250. Lawrence Kaplan and Marie Champlin (2)
251. Stephen Knight
252. The Casita Coalition
253. Brenda Richardson
254. Sean McMurray
255. Barbara Gilbert (2)
256. Jeanne Clinton
257. Todd Andrew (2)
258. Tuan Ngo
259. Jesus Mejia
260. Rie Takahashi



**MINUTES  
BERKELEY CITY COUNCIL SPECIAL MEETING**

**MONDAY, JULY 18, 2022**

**4:00 P.M.**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87836924529>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free); enter Meeting ID: 878 3692 4529. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

## Preliminary Matters

**Roll Call:** 4:01 p.m.

**Present:** Droste, Hahn, Harrison, Robinson, Taplin, Wengraf, Arreguin

**Absent:** Kesarwani, Bartlett

**Public Comment - Limited to items on this agenda only – 1 speaker.**

## CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

### 1. PUBLIC EMPLOYEE APPOINTMENTS PURSUANT TO GOVERNMENT CODE SECTION 54957(b):

a. **Title of position to be filled:** Director of Police Accountability

**Action:** No reportable action taken.

## OPEN SESSION:

Public Reports of actions taken pursuant to Government Code section 54957.1.

No reportable action taken.

## Adjournment

**Action:** M/S/C (Arreguin/Robinson) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 8:38 p.m.

I hereby certify that the forgoing is a true and correct record of the special closed meeting of July 18, 2022 as approved by the Berkeley City Council.

---

Rose Thomsen, Deputy City Clerk

**MINUTES  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL**

**Tuesday, July 26, 2022  
3:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – RIGEL ROBINSON

DISTRICT 8 – LORI DROSTE

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*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89491193768>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

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*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

*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, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. 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:** 3:05 p.m.

**Present:** Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Kesarwani, Bartlett

Councilmember Kesarwani present at 3:07 p.m.

Councilmember Bartlett present at 3:21 p.m.

## Consent Calendar

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

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

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

## Consent Calendar

### 1. **Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245**

**From:** City Manager

**Recommendation:** Adopt two Resolutions:

1. Adopting a successor three-year Memorandum Agreement (MA) with the International Brotherhood of Electrical Workers Local 1245 (hereinafter referred to as the "Union") with a term of July 1, 2022 through June 30, 2025, authorizing the City Manager to execute and implement the revised terms and conditions of employment set forth in the Memorandum Agreement; and
2. Approving a new salary resolution for Representation Unit C that implements the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 69,962-N.S.

**Financial Implications:** See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

**Action:** Adopted Resolution No. 70,453–N.S. (IBEW Local 1245), and Resolution No. 70,454–N.S. (Representation Unit C).

## Consent Calendar

2. **Side Letter of Agreement – SEIU Local 1021 Maintenance and Clerical Chapters**  
**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter of Agreement with Service Employees International Union Local 1021 Maintenance and Clerical Chapters to modify Section 31.3 of the Memorandum Agreement regarding the Pre-Age 65 Retiree Health Insurance. Effective 7/1/2022 through 6/30/2023, the City shall contribute an additional \$200.00 toward both single and two-party rate for active employees who retire from city service and file such retirement within thirty (30) days of separation from the city with CalPERS. This enhanced retiree incentive shall continue until Section 31.4 become applicable.

**Financial Implications:** See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

**Action:** Adopted Resolution No. 70,455–N.S.

## Action Calendar – New Business

### 3. **Establishing Policy for Adequate Annual General Fund Contribution for Street Maintenance to Prevent Deterioration of Pavement Condition**

**From: Councilmember Wengraf (Author), Councilmember Kesarwani (Author), Mayor Arreguin (Author), Councilmember Taplin (Co-Sponsor)**

**Recommendation:** Adopt a Resolution establishing a Council fiscal policy to allocate \$8 million annually in General Fund monies for street maintenance, adjusted annually for inflation. The allocation will augment the existing General Fund street paving budget of \$7.3 million, for a total of \$15.3 million annually, adjusted for inflation. The policy allows for suspension in any year in which there is a budget deficit or emergency under two circumstances (1) the City Council draws upon \$1 million (or more) from its Stabilization Reserve in order to adopt a final budget; or (2) a two-thirds vote of the City Council.

This policy is needed to ensure that deferred street maintenance is supported by an ongoing adequate General Fund contribution. Without adequate ongoing street maintenance funding, analysis shows that a one-time infusion of resources will only lead to a temporary improvement in the pavement condition.

**Financial Implications:** See report

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

**Action:** 5 speakers. M/S/C (Wengraf/Arreguin) to adopt Resolution No. 70,456–N.S. with the changes to resolved clauses noted in the underlined text below.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a fiscal policy is hereby established requiring the allocation of \$8 million dollars annually from the General Fund to the Street Maintenance Fund, in addition to the existing baseline \$7.3 million allocation, for a total amount of \$15.3 million to be adjusted annually for inflation using the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics, or other construction index as recommended by the City Manager.

BE IT FURTHER RESOLVED that this fiscal policy to fund street maintenance at a level of \$15.3 million (as adjusted for inflation) may be suspended in any year in which the City Council draws upon \$1 million (or more) from the Stabilization Reserve in order to adopt a final budget or by a two-thirds vote of the City Council.

**Vote:** All Ayes.

## Action Calendar – New Business

### 4. **Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution determining public interest and necessity for issuing a general obligation bond in the amount of \$300 million for affordable housing, climate change resiliency, wildfire protection, and other public infrastructure improvements, submitting to the Berkeley electorate on the November 8, 2022 ballot a measure to authorize a general obligation bond in that amount, and finding that the proposed measure is not a project under the California Environmental Quality Act.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

**Action:** 15 speakers. M/S/C (Arreguin/Kesarwani) to continue Item 4 to a special meeting to be held on August 3 and provide direction to the City Manager to return with a revised single bond measure in an amount from \$600 million to \$650 million, and provide analysis of the various bond amounts, including average tax rate and various bond terms. Bond measure text should categories the funding as noted below.

\$300 million – street paving, sidewalks, and complete streets

\$150 million – affordable housing

\$150 million – other public infrastructure, undergrounding on evacuation routes, civic center improvements, infrastructure at the waterfront, the pier, parks, pools, or other public infrastructure.

**Vote:** All Ayes.

### 5. **Placing a Special Tax Measure on the November 8, 2022 Ballot to Fund Street Repairs, Sidewalk Repairs, and Traffic Safety Improvements; and Adopting the Vision 2050 Program Plan**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution submitting a ballot measure to fund street repairs, sidewalk repairs, and traffic safety improvements to a vote of the electors at the November 8, 2022 General Municipal Election.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

3. Adopt a Resolution adopting the Vision 2050 Program Plan.

**Financial Implications:** See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

**Action:** 6 speakers. M/S/C (Arreguin/Wengraf) to take no action on Item 5.

**Vote:** All Ayes.

Recess 5:59 p.m. – 6:15 p.m.

## Action Calendar – New Business

### 6. Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units

**From:** City Manager

**Recommendation:**

1. Adopt a Resolution submitting a ballot measure to tax vacant residential units to a vote of the electors at the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

**Action:** M/S/C (Arreguin/Robinson) to accept revised materials from Vice-Mayor Harrison on Item 6.

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

**Action:** 45 speakers. M/S/C (Arreguin/Harrison) to continue the item to the August 3 special meeting including revised material submitted at the meeting by Vice-Mayor Harrison.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – Droste.

## Adjournment

**Action:** M/S/C (Arreguin/Harrison) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 8:56 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on July 26, 2022.

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Mark Numainville, City Clerk

## Communications

### Item #6: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units

1. Adriel Hampton

## Supplemental Communications and Reports 1

- None



## Supplemental Communications and Reports 2

### **Item #4 Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements**

2. James McGrath

### **Item #6: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units**

3. Revised material, submitted by Councilmember Harrison

4. Kelly Hammargren

5. The Berkeley Progressive Alliance

6. Sam Greenberg, on behalf of East Bay for Everyone, Telegraph for People, and Cal Berkeley Democrats

## Supplemental Communications and Reports 3

### **Item #3: Establishing Policy for Adequate Annual General Fund Contributions for Street Maintenance to Prevent Deterioration of Pavement Condition**

7. Ben Gerhardstein, on behalf of Walk Bike Berkeley

### **Item #4 Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements**

8. Presentation, submitted by Public Works

9. Vanessa Marrero

10. Anne McClintock

11. Alejandro Garcia-Paredes

12. Rie Takahashi

13. Berkeley Tenants Union

14. Ignacio Dayrit

15. Karin Wertheim

16. Summer Brenner

17. La Fan

18. Chimey Lee

19. Michael Brown

20. Shelley Pitts

### **Item #6: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units**

21. Paola Laverde

22. Tracy Parent, on behalf of the Bay Area Community Land Trust

23. Robin Rattan

24. Sylvia Chapman

25. Julia Cato

26. Gale Garcia

27. Elana Auerbach

28. Bryce Nesbitt

29. Andrea Mullarkey, on behalf of SEIU 1021

30. Sandra Fini

31. Igor Tregub

32. Martin Nicolaus

- 33. Ida Martinac
- 34. Diana Bohn
- 35. Jordan Burns

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, July 26, 2022**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89491193768>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **894 9119 3768**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

*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, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. 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:** 9:00 p.m.

**Present:** Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** None

### Ceremonial Matters:

1. Recognition of Kathy Lee, Interim Director of Police Accountability, and 33-year City Employee
2. Recognition of the Excellent Work of the Independent Redistricting Commission

**City Manager Comments:** None

**Public Comment on Non-Agenda Matters:** 10 speakers.

## Consent Calendar

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

**Action:** M/S/C (Arreguin/Robinson) to accept revised materials from Councilmember Hahn for Item 32.

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

Councilmember Droste absent 9:31 p.m. – 10:22 p.m.

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

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

## Consent Calendar

- 1. Zoning Ordinance Amendments Making Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,830-N.S. containing technical edits, corrections and other non-substantive amendments to the following sections of the Zoning Ordinance:  
BMC Section 23.202.140 (R-SMU Zoning District)  
BMC Section 23.204.020 (Commercial Districts -- Allowed Land Uses)  
BMC Section 23.204.030 (Additional Permit Requirements)  
BMC Section 23.204.060 (C-U Zoning District)  
BMC Section 23.204.130 (C-DMU District)  
BMC Section 23.206.202 (Manufacturing Districts – Allowed Land Uses)  
BMC Section 23.302.030 (Temporary Uses and Structures)  
BMC Section 23.302.070 (Use-Specific Regulations)  
BMC Section 23.404.040 (Public Notice)  
BMC Section 23.502.020 (Glossary)  
**First Reading Vote:** Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Droste.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Adopted second reading of Ordinance No. 7,830–N.S.
  
- 2. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, and June 28, 2022.  
**Financial Implications:** To be determined  
Contact: Farimah Brown, City Attorney, (510) 981-6950  
**Action:** Adopted Resolution No. 70,457–N.S.

## Consent Calendar

- 3. Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, and June 28, 2022.  
**Financial Implications:** To be determined  
Contact: Farimah Brown, City Attorney, (510) 981-6950  
**Action:** Adopted Resolution No. 70,458–N.S.
- 4. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of June 2 (special), June 13 (closed), June 14 (regular), June 21-4 p.m. (special), June 21-6 p.m. (special), June 27 (closed) and June 28 (regular).  
**Financial Implications:** None  
Contact: Mark Numainville, Commission Secretary, (510) 981-6900  
**Action:** Approved the minutes as submitted.
- 5. Downtown Berkeley YMCA for Fitness Center Memberships for City Employees**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Downtown Berkeley YMCA in the amount of \$109,440, for fitness center memberships for City employees for the period July 1, 2022 through June 30, 2023.  
**Financial Implications:** Payroll Deduction Trust Fund - \$109,440  
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000  
**Action:** Adopted Resolution No. 70,459–N.S.

## Consent Calendar

- 6. Contract: Lehr for Emergency Response Vehicle Supplies/Equipment and Installation Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into contract with Stommel Inc. dba Lehr, for emergency response vehicle supplies/equipment and installation services, with the term of the contract from August 1, 2022 to September 30, 2022 in an amount not to exceed \$350,000. The contract may be extended for up to five additional years and shall not exceed \$750,000 in total.  
**Financial Implications:** Various Funds - \$750,000  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 70,460–N.S.
- 7. Mental Health Services Act (MHSA) Fiscal Year 2022-2023 Annual Update**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Mental Health Services Act (MHSA) Fiscal Year 2022-2023 Annual Update (MHSA FY23 Annual Update), which provides information on current and proposed uses of funds for mental health programming, and forwarding the MHSA FY23 Annual Update to appropriate state officials.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,461–N.S.
- 8. Contract No. 32200185 Amendment: Sonya Dublin Consulting to Provide Evaluation Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32200185 with Sonya Dublin Consulting to provide evaluation services, and any subsequent amendments or extensions, to add \$93,600 and bring the contract total to an amount not to exceed \$109,200 and extending the end date from June 30, 2022 to June 30, 2025.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,462–N.S.

## Consent Calendar

### 9. Shelter Plus Care Program Renewal Grants

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to receive funds and execute any agreements and amendments resulting from the renewal of the following grants: 1. Two Shelter Plus Care grants from U.S. Department of Housing and Urban Development (HUD): a) \$3,949,021 for Supportive Housing Collaborative Project (SHC) for the period June 1, 2022 through May 31, 2023; b) \$2,327,914 for COACH Project (COACH) for the period of January 1, 2022 through December 31, 2022. 2. One grant from HUD administered through the County of Alameda for \$881,045 to provide tenant-based rental assistance to individuals who are chronically homeless and disabled from March 1, 2022 through February 28, 2023.

**Financial Implications:** See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

**Action:** Adopted Resolution No. 70,463–N.S.

### 10. Contract Amendments: Mental Health Services Act Community Services and Supports, and Prevention and Early Intervention

**From: City Manager**

**Recommendation:** Adopt ten Resolutions authorizing the City Manager or her designee to execute amendments for the following contracts that are funded through Mental Health Services Act (MHSA) Community Services and Supports (CSS) and Prevention and Early Intervention (PEI); increasing the contract amounts as outlined below; totaling \$1,571,966 and extending the contracts through June 30, 2023:

1. Increasing CSS Contract No. 100042-1 with Lakehurst Hall by \$36,000 for a total contract amount not to exceed \$185,500 for Room Rental Fees for Berkeley Mental Health clients;

2. Increasing CSS Contract No. 108800-1 with Bay Area Hearing Voices Network by \$46,941 for a total contract amount not to exceed \$184,855 for hearing voices support groups;

3. Increasing CSS Contract No. 31900132 with Building Opportunities for Self-Sufficiency by \$100,000 for a total contract amount not to exceed \$400,000 for representative payee services;

4. Increasing CSS Contract No. 32200130 with Alameda County Behavioral Health Care Services by \$491,933 for a total contract amount not to exceed \$983,866 for Wellness Center operations;

5. Increasing CSS and PEI Contract No. 32000094 with Youth Spirit Artworks by \$100,000 for Transition Age Youth case management and linkage services, and \$32,046 for trauma support services. This amendment also includes \$78,000 for Tiny House Village services, which is non-MHSA funding, for a total contract amount not to exceed \$737,092;

6. Increasing PEI Contract No. 32000240 with Berkeley Unified School District by \$355,000 for a total contract amount not to exceed \$1,347,778 for services to support Berkeley students;

7. Increasing PEI Contract No. 088999-1 with Center for Independent Living by \$32,046 for a total contract amount not to exceed \$352,722 for services to support



## Consent Calendar

Older Adults;

8. Increasing PEI Contract No. 052129-1 with Pacific Center for Human Growth by \$100,000 for a total contract amount not to exceed \$515,150 for services to support the Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Agender, Plus (LGBTQIA+) population;

9. Increasing PEI Contract No. 32200146 with OnTrack Program Resources by \$100,000 for a total contract amount not to exceed \$175,000 for services to support African Americans; and

10. Increasing PEI Contract No. 3200111 with East Bay Sanctuary Covenant by \$100,000 for a total contract amount not to exceed \$200,000 for services to support the Latinx/Latina/Latino population.

**Financial Implications:** See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

**Action:** Adopted Resolution No. 70,464–N.S. (Contract No. 100042-1), Resolution No. 70,465–N.S. (Contract No. 108800-1), Resolution No. 70,466–N.S. (Contract No. 31900132), Resolution No. 70,467–N.S. (Contract No. 32200130), Resolution No. 70,468–N.S. (Contract No. 32000094), Resolution No. 70,469–N.S. (Contract No. 32000240), Resolution No. 70,470–N.S. (Contract No. 088999-1), Resolution No. 70,471–N.S. (Contract No. 052129-1), Resolution No. 70,472–N.S. (Contract No. 32200146), and Resolution No. 70,473–N.S. (Contract No. 3200111).

### 11. **Revision of the Tool Lending Specialist Classification to Reflect an Accurate Scope of Duties with a Four Percent (4%) Salary Increase**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the revision of the Tool Lending Specialist job specification to accurately reflect the scope of duties and to increase the current salary schedule by four percent (4%) effective March 16, 2021 or the employee's start date, if more recent.

**Financial Implications:** See report

Contact: Tess Mayer, Library, (510) 981-6100

**Action:** Adopted Resolution No. 70,474–N.S.

### 12. **Contract No. 32100168 Amendment: Robert Half International/Protiviti for Professional Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100168 to increase spending authority with Robert Half International/Protiviti for professional services in support of the cyber-resilience projects in the Fiscal Year (FY) 2023 using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X to increase the contract by \$312,000 for a total amount not to exceed \$552,432 through June 30, 2023.

**Financial Implications:** General Fund - \$312,000

Contact: Michael Sinor, Information Technology, (510) 981-6500

**Action:** Adopted Resolution No. 70,475–N.S.

## Consent Calendar

- 13. Contract No. 7167M Amendment: Superior, LLC for AS400 Software Maintenance and Support**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 7167M with Superior, LLC for software maintenance and support of the City's FUND\$ system on the AS400 platform, increasing the contract amount by \$154,927 for a total not-to-exceed amount of \$2,549,483 from July 1, 2006 through June 30, 2023.  
**Financial Implications:** IT Cost Allocation Fund - \$154,927  
Contact: Michael Sinor, Information Technology, (510) 981-6500  
**Action:** Adopted Resolution No. 70,476–N.S.
- 14. Protiviti Government Services: Using General Services Administration (GSA) Vehicle for Professional Services Purchase Orders**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$350,000 through September 30, 2023.  
**Financial Implications:** Various Funds - \$350,000  
Contact: Michael Sinor, Information Technology, (510) 981-6500  
**Action:** Adopted Resolution No. 70,477–N.S.
- 15. Contract No. 047162-1 Amendment: ESI Group for the IBM Hardware and Software Lease**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 047162-1 with ESI Group for leasing, maintenance, and technical support for International Business Machines (IBM) hardware lease and software maintenance and support, increasing the current contract by \$140,000, for a total not to exceed \$2,294,769 from June 2, 2003 through June 30, 2023  
**Financial Implications:** IT Cost Allocation - \$140,000  
Contact: Michael Sinor, Information Technology, (510) 981-6500  
**Action:** Adopted Resolution No. 70,478–N.S.
- 16. Donation: New Sign at Berkeley Waterfront - from Caltrans**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving a donation of a new sign from Caltrans to be placed at the entrance to the Berkeley Waterfront with a value up to \$250,000.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,479–N.S.

## Consent Calendar

- 17. Contract: AE3 Partners, Inc. for Architectural Services for the African American Holistic Resource Center**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a not-to-exceed \$900,000 contract with AE3 Partners, Inc. for architectural services for the African American Holistic Resource Center (AAHRC) for a contract period of August 1, 2022 through July 31, 2025.  
**Financial Implications:** Measure IT Phase 2 Funds - \$900,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,480–N.S.
- 18. Extension of Exclusive Negotiating Agreement with Innovation Properties Group for 199 Seawall Drive**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an Amended and Restated Exclusive Negotiating Agreement (ENA) with Innovation Properties Group (IPG), extending the existing ENA for 9 months with two 3-month options to work toward a long-term lease of City property at 199 Seawall Drive and short-term lease to activate a portion of the adjacent parking lot.  
**Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,481–N.S.
- 19. Approval of Funds for Electric Vehicle Charging Stations at Tuolumne Camp**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to allocate up to \$350,000 to add electric vehicle charging stations at Tuolumne Camp.  
**Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,482–N.S.
- 20. Accept Grant Funding from the California Highway Patrol (CHP) Cannabis Tax Fund Grant Program to Reduce Impaired Driving in the City of Berkeley**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager, or designee, to accept the “Cannabis Tax Fund Grant (CTFGP)” and enter into the resultant grant agreement and any amendments to fund impaired driving detection/investigation training for officers, community educational programs and supplemental impaired driving enforcement. The tentative grant allocation is for \$112,337 for the period of July 1, 2022 through June 30, 2023.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** Adopted Resolution No. 70,483–N.S.

## Consent Calendar

- 21. Contract No. 32000078 Amendment DC Electric Group, Inc. for On-Call Electrical Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000078 with DC Electric Group, Inc. for on-call electrical services, increasing the current contract by \$100,000 for a total not to exceed amount of \$175,000 and extending the contract through June 30, 2025.  
**Financial Implications:** Various Funds - \$100,000  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,484–N.S.
- 22. Contract No. 098713-1 (9488D) Amendment: Berry Brothers Towing for On-Call Towing Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 098713-1 with Berry Brothers Towing to provide towing services for the City’s Fleet equipment and vehicles, increasing the contract amount by \$75,000 for a new not to exceed amount of \$255,000 and extending the contract end date to June 30, 2025.  
**Financial Implications:** Equipment Maintenance Fund - \$75,000  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,485–N.S.
- 23. Contract No. 32000128 Amendment: Wood Environment & Infrastructure Solutions, Inc. for On-Call Environmental Consulting Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000128 with Wood Environment & Infrastructure Solutions, Inc. to increase the contract for on-call environmental consulting services by \$400,000 for a new not to exceed amount of \$700,000 and extend the contract term through November 30, 2025.  
**Financial Implications:** Various Funds - \$400,000  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,486–N.S.

## Consent Calendar

24. **Contract No. 32100072 Amendment: CycloMedia Technology, Inc. for Geographic Information System Infrastructure Data**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100072 with CycloMedia Technology Inc. for Geographic Information System Infrastructure asset data acquisition and ongoing data access to increase the contract amount by \$100,000 for an amount not to exceed \$287,401, adopt the use policy, and extend the contract term through December 30, 2025.  
**Financial Implications:** Various Funds - \$100,000  
Contact: Liam Garland, Public Works, (510) 981-6300, Michael Sinor, Information Technology, (510) 981-6500  
**Action:** Adopted Resolution No. 70,487–N.S.
25. **Grant Application: Highway Safety Improvement Program Cycle 11**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application to the California Highway Safety Improvement Program (HSIP) Cycle 11 for the following project: Protected Left-Turn Signals at multiple signalized intersections for up to \$6 million, and accept the grant if awarded, and execute any resultant agreements and amendments.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,488–N.S.
26. **Approval of Additional Disaster and Fire Safety Commission Meeting**  
**From: Disaster and Fire Safety Commission**  
**Recommendation:** Adopt a Resolution approving the request from the Disaster and Fire Safety Commission to hold one additional meeting in calendar year 2022.  
**Financial Implications:** Staff time  
Contact: Keith May, Commission Secretary, (510) 981-3473  
**Action:** Adopted Resolution No. 70,489–N.S.

## Council Consent Items

27. **Authorize Three Additional Meetings in 2022 for the Homeless Services Panel of Experts**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Authorize three additional meetings for the Homeless Services Panel of Experts for the calendar year, 2022.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Approved recommendation.

## Council Consent Items

28. **Resolution Supporting the Living Wage Act of 2022**  
**From: Councilmember Robinson (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution supporting the Living Wage Act of 2022 to increase the California state-wide minimum wage to \$18 on a gradual timeline.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170  
**Action:** Adopted Resolution No. 70,490–N.S.

## Action Calendar – Old Business

29. **Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers** *(Continued from May 12, 2020. Item contains revised and supplemental materials)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.  
**Financial Implications:** None  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** Item continued to September 13, 2022. Item includes revised material in Supplemental Communications Packet #1 from Councilmember Harrison.
30. **Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report** *(Continued from June 21, 2022) (Item contains supplemental and revised material)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and Equipment.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** Moved to Consent Calendar to approve the recommendation and accept the report of the Police Accountability Board in Supplemental Communications Packet #2 approving the revised Policy 709 and determining that none of the other associated equipment policies require revision at this time.

## Action Calendar – Old Business

31. **Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)** *(Continued from July 12, 2022)*  
**From: 4 x 4 Joint Committee on Housing City Council/Rent Board**  
**Recommendation:**  
1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 8, 2022 General Municipal Election.  
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.  
**Financial Implications:** See report  
Contact: Matt Brown, Rent Stabilization Board, (510) 981-7368  
**Action:** Referred to the Agenda & Rules Committee for future scheduling.
32. **Restoring and Improving Access to City of Berkeley Website and Archival Materials** *(Continued from July 12, 2022)*  
**From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Direct the City Manager to:  
1. Restore at previous URLs all PDF documents previously hosted on the City of Berkeley website.  
2. Create a publicly accessible archival copy of the City's previous website, CityofBerkeley.info, that can be accessed without logins and via internet search engines. Include a prominent disclaimer noting the date the website, page, or document was archived, with links redirecting to the active website or other responsive resource.  
3. On the new website, update Commission pages to include a minimum of 2 years of historic agendas and other materials and update City Council and Council Committee pages to include at least 3 years of complete materials.  
4. By July 15, 2022 develop and make available to all City staff and to the public training at beginner to expert levels on use of the City's Records Online search function and create more extensive and less technical self-help resources covering basic and expert use.  
5. In recognition of increased public traffic, update the Records Online homepage to explain how the portal works and link to more robust self-help resources and alternative search functions.  
6. Coordinate with agency staff to include all relevant records (agendas, minutes, etc.) from Rent Board and Housing Authority in Records Online Portal.  
7. Update any remaining 404 pages to explain that the City's website has been moved/updated, and provide links to helpful pages, search functions and/or pathways to access responsive materials. As quickly as possible, consider implementing redirects with wildcards to direct as many old links to relevant new website pages in lieu of the standard 404 page. E.g. cityofberkeley.info/planning\* to the Planning Department site map/homepage, or Department Specific 404 page explaining new navigation.  
Refer to the City Manager the following additional improvements to Records Online:

## Action Calendar – Old Business

1. Within Records Online, provide unique archival/search categories for each City Commission, Board, Committee and Rent Board, and consider other useful categories, to assist users in narrowing results and identifying responsive materials.
2. Allow Records Online search results to be sorted by date and by other searchable factors. Consider means to integrate records online into default site search bar.
3. Explore and report back to Council options for improving the scope of Records Online, improving search options and sorting, and making all materials – or materials from January 1, 2000 (or an earlier recommended date) forward, searchable using internet search engines.

**Financial Implications:** Staff time

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

**Action:** M/S/Failed (Robinson/Harrison) to suspend the rules and extend the meeting to 11:45 p.m.

**Vote:** Ayes – Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Taplin, Wengraf, Droste.

**Action:** Referred to the Agenda & Rules Committee for future scheduling.

## Information Reports

33. **Sanctuary City Contracting Compliance Report for FY 2021**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Received and filed.
34. **LPO NOD: 2733 Buena Vista Way/#LMSAP2022-0004**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.
35. **LPO NOD: 2200-block of Piedmont Avenue/#LMSAP2019-0009**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.
36. **LPO NOD: 8 Greenwood Common/#LMSAP2022-0002**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.
37. **LPO NOD: 2113 Kittredge Street/#LMIN2022-0001**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.



## Information Reports

38. **2022 Commission on Aging Work Plan**  
**From: Commission on Aging**  
Contact: Richard Castrillon, Commission Secretary, (510) 981-5190  
**Action:** Received and filed.
39. **City Auditor Fiscal Year 2023 Audit Plan**  
**From: Auditor**  
Contact: Jenny Wong, Auditor, (510) 981-6750  
**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda – 0 speakers.**

## Adjournment

Adjourned at 11:00 p.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on July 26, 2022.

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Mark Numainville, City Clerk

## Communications

### Commendations of the Berkeley Police Department

1. Katherine Lee, Interim Director of Police Accountability

### Berkeley Marina Area Specific Plan (BMASP) + Cesar Chavez Park

2. Susan Black
3. Helen Canin
4. Maud Engel
5. Carol Denney
6. Summer Brenner
7. Gael Alcock
8. Margaret Fouda
9. Donald Stang and Helen Wickes
10. Wini Williams
11. Paul Litsky
12. Edward Vine
13. Jamie Brown
14. Bobbi Sloan
15. Diane Mintz
16. Llyana Landes
17. Sally Nelson
18. Micky Duxbury

19. Bob Herman
20. T. Anne Richards
21. Terry Toczynski
22. Alan K
23. Jane White
24. Antonio Guzman
25. Kevin James
26. Linda Kroll and Dennis Creek
27. Tanja Schlosser
28. Kathryn Ruiz
29. Save CC (Cesar Chavez Park)
30. Tom Reilly
31. Michele Ritterman
32. Lex Morris
33. Sharran Zeleke
34. Darah Daniels
35. Carl Dellar
36. Diana Bohn
37. Marcy Darnovsky
38. Ilya Ganelin
39. Susan Tomasello
40. Charles Wilson
41. Rachel Bradley
42. Kate Greswold
43. Ernest Isaccs
44. Ginny Garrett
45. Carlos Hill
46. Tamara Birdsall
47. Robert Blomberg (2)
48. Barbara Rydlander
49. dougdohrer@
50. City Manager's Office (14)

**IKE Kiosks**

51. Elsa Tranter
52. Rebecca Dahlberg
53. Judith Brown
54. Judi Doyle
55. Lisa Titus
56. Vicki Sommer
57. Isabel Samaras
58. Heather Hernandez (2)
59. Betsy Bigelow-Teller
60. Karen Eisenstadt
61. Mimi Moungovan
62. Paul Jacobs

63. Nancy Lichtenstein
64. Pat Hill
65. Cece Littlepage
66. Lisa Tsering
67. Roya Arasteh
68. Carol Vertel
69. Lissa Miner
70. Joan Hart
71. Diana Damonte
72. Karen Nierlich
73. Carol Bledsoe
74. Janet Coleman
75. Maulin Chokshi
76. Mayilyn Siegel
77. Soula Culver
78. Miranda Ewell
79. Morton Cohn
80. Sally Hughes
81. Judy Dale
82. Charles Siegel
83. Josephine Gallup
84. Karen Eisenstadt
85. Bryce Nesbitt
86. David Durbin
87. Susan Taylor
88. Todd Andrew

**People's Park**

89. Summer Brenner
90. Shella Benevides, on behalf of Resources for Community Development

**Hopkins Street Corridor**

91. Stephen Alpert
92. Rachel Bradley
93. Carol Benioff
94. Ann May
95. Sally Adams

**Biking and Concrete Blobs**

96. Maris Arnold

**High Rises Destroying Our City of Berkeley**

97. Carole Gill

**1201-1205 San Pablo Avenue**

98. Yvette Bozzini (2)

**Berkeley Federation of Teachers School Board Endorsements**

99. Matty Meyer

**Train Noise**

100. Maria Kolakowska

101. Councilmember Kesarwani

**Street Project Confusion at Prince and Dana**

102. Dorothy Hale

**Low Income Housing**

103. Virginia Browning

104. Councilmember Harrison

**Pedestrian Safety at the Intersection of Addison and Martin Luther King**

105. Charles Siegel, on behalf of Walk Bike Berkeley

**Crime in Berkeley**

106. Dan Auten

**Vacancy Tax**

107. Diana Bohn

**Berkeley Restaurant Inspections**

108. David Lerman

**Rodeway Inn Residents Trashing Neighborhood**

109. Dolores Cortez

**Pentagon Budget**

110. Jack Kurzweil

**Small Building Owners Paying for Large Developments**

111. Dan Auten

**Harriet Tubman Tenants Issues**

112. M. Mendonca

**Tenant Opportunity to Purchase Act**

113. Paul Gumpel

114. Diana Bohn

115. Janice Schroeder

116. Ariana Thompson-Lastad

117. Patricia Hall

118. 21 similarly-worded form letters

## Supplemental Communications and Reports 1

### **Item #29: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers**

119. Revised material, submitted by Councilmember Harrison

### **Item #31: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

120. Revised material, submitted by the City Attorney's Office

121. Margery Lackman

122. Dand and Karen Williams-Null

123. Norma Harrison

124. Julieta Pisani McCarthy

125. Sharon Ptashek

126. Cris Benton

127. Jonathan Beck

128. Shua Chai

129. Suzanna Reiss-Koncar

130. Sasha Futran (2)

131. Michele Muennig

132. Sara Hartley

133. Erica Cleary

134. Marion Hunt

135. Susan Fritz

136. Jean Mudge

137. Lilana Spindler

138. Rosina Keren

139. Toni Mester

### **Item #32: Restoring and Improving Access to City of Berkeley Website and Archival Materials**

140. David Lerman

141. Anne M.

## Supplemental Communications and Reports 2

### **Item #17 Contract: AE3 Partners, Inc. for Architectural Services for the African American Holistic Resource Center**

142. Eric Friedman

### **Item #30: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**

143. Supplemental material, submitted by the Police Accountability Board

### **Item #31: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

144. Lilana Spindler

145. Keith Nickolaus

146. Lisa Handwerker
147. Tobey M. Wiebe
148. Judy MacLean
149. Marguerite Talley
150. Sam Greenberg, on behalf of East Bay for Everyone, Telegraph for People, and Cal Berkeley Democrats
151. Sandra Smith
152. Lauren Schiller
153. Laura Webb
154. Chris Gilbert
155. Erica Cleary
156. Alison Simon
157. Chris Chen
158. Martha Kariv
159. Debbie Woods
160. Bryce Nesbitt
161. Daniel Frydman (2)
162. Rie Takahashi
163. Janice Schroeder
164. Elana Auerbach
165. Negeene Mosaed
166. Diana Bohn
167. Terri Saul
168. Anne Smith
169. May Kandarian
170. Julia Cato
171. Kate Harrison
172. Rachel Bradley
173. G Mathias Kondolf
174. Jeanne Clinton

### **Supplemental Communications and Reports 3**

#### **Item #17 Contract: AE3 Partners, Inc. for Architectural Services for the African American Holistic Resource Center**

175. Toni Mester

#### **Item #31: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

176. Paola Laverde
177. Julio Cato (2)
178. Sandy Hrdlicka
179. Suzanne Joi
180. Kathleen Lee Verani
181. Vanessa Marrero
182. Charlie Benton
183. James Furuichi

184. Jesus Mejia
185. Claudia Benton
186. Scott Curtin
187. Martine Glaros
188. Ayden Winter
189. Jo Ann Driscoll
190. Margery Lackman
191. Vivian Yu
192. Roger Hallsten
193. Ana Perches Perez
194. Ocea Savage
195. Alison Lingo
196. Chana Kronfeld
197. Anne Smith
198. Dobee Snowber
199. Vivian Yu
200. Andy DeGiovanni
201. Yvonne Weiss
202. Arthur Corelli
203. Berkeley Tenants Union
204. Karen Gosling
205. Carole Pertofsky
206. Sarah Baughn
207. Mary Richerson
208. Ira Serkes
209. Yvonne Burgress
210. Andrea Mullarkely, on behalf of SEIU 1021
211. James Corr
212. Julieta Pisani McCarthy
213. Caroline Woods-Mejia
214. Beth Auclair
215. Mary West
216. Sandra Fini
217. Michael Frantz
218. Dana Gerstein
219. H. DeMarco
220. Devyani Jain and Tanu Sankalia
221. Deborah Machta
222. Dana Perls
223. Jacqueline Zeigler
224. Erin Chalmers
225. Ellen Kramer
226. Fentress Hill
227. Keith Nickolaus
228. Crystal Brunzell
229. Steven Lipson

**MINUTES  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL**

**Wednesday, August 3, 2022  
9:00 AM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81806496183>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **818 0649 6183**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

*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, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. 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:** 9:07 a.m.

**Present:** Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin

**Absent:** Droste

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 5 speakers.

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

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

- 1. Additional Allocation of Measure P Funding to “Step Up Housing” Project From: Councilmember Bartlett (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)**

**Recommendation:** Adopt a Resolution allocating an additional \$114,660 per year for 10 years, from Measure P transfer tax receipts to support the increased costs for the lease and operation of a new permanent supportive housing project for the unhoused at the Step-Up Housing Project at 1367 University Avenue. In addition, refer to the next meeting of the Budget and Finance Policy Committee to confirm the availability of requested funding.

**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

**Action:** 1) Referred to the Budget & Finance Committee to consider future General Fund needs for this project and confirm availability of funds for the operating budget.

2) Adopted Resolution No. 70,491–N.S. with an amended first Resolved clause as written below.

*NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following be approved for the StepUp Housing at 1367 University Ave:*

- A reservation of approximately an additional \$114,660 year in ongoing funds annually for 10 years for the leasing and operation of the proposed project, with funding adjusted annually based on the Consumer Price Index for Oakland-Hayward-Berkeley, CA.*
- Funding may be from Measure P and/or the General Fund*
- In the event BOSS is unable to perform its function as the service provider, an alternative qualified service provider may operate the project with the review and approval of the City Manager, or her designee.*
- Further, the City’s commitment is contingent upon the funding of the balance of the project.*
- Owner agrees to grant the City option to buy property after one year, at a cost not to exceed \$15,000,000 should Boss choose not to exercise its option.*

## Action Calendar

2. **Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements** (*Continued from July 26, 2022*) (*Item contains revised material*)

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution determining public interest and necessity for issuing a general obligation bond in the amount of either \$600 million or \$650 million for affordable housing, climate change resiliency, wildfire protection, and other public infrastructure improvements, submitting to the Berkeley electorate on the November 8, 2022 ballot a measure to authorize a general obligation bond in that amount, and finding that the proposed measure is not a project under the California Environmental Quality Act.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

**Action:** 26 speakers. M/S/C (Arreguin/Kesarwani) to:

1. Adopt Resolution No. 70,492–N.S. as submitted by the Mayor in Supplemental Communications Packet #2, and as further amended below, determining public interest and necessity for issuing a general obligation bond in the amount of \$650 million for affordable housing, climate change resiliency, wildfire protection, and other public infrastructure improvements, submitting to the Berkeley electorate on the November 8, 2022 ballot a measure to authorize a general obligation bond in that amount, and finding that the proposed measure is not a project under the California Environmental Quality Act.

- Amended to add language in section B.2. of the third resolved clause regarding funds for traffic safety.
- Amended the ballot question to read as written below.

*Shall the measure to create affordable housing; repair streets and sidewalks; underground utilities; and enhance buildings, infrastructure, and safety, authorizing the issuance of \$650 million in general obligation bonds, subject to independent oversight and audits, be adopted?*

*Financial Implications*

*Median annual cost over the projected 48-year period bonds are outstanding is approximately \$40.91 for every \$100,000 or \$265 for the average assessed home value of \$647,000; raising approximately \$25,000,000/year.*

- Amended to add clarification of the “mean” cost in the Tax Rate Statement and make other corresponding changes to the Tax Rate Statement text.

2. Designate Mayor Arreguin and Councilmembers Hahn, Wengraf, and Kesarwani to file ballot measure arguments on behalf of the City Council on this measure.

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

Recess 12:06 p.m. – 12:22 p.m.

## Action Calendar

**3. Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units** *(Continued from July 26, 2022) (Item contains revised material)*  
**From: City Manager**

**Recommendation:**

1. Adopt a Resolution submitting a ballot measure to tax vacant residential units to a vote of the electors at the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

**Action:** 37 speakers. M/S/C (Arreguin/Harrison) to:

1. Adopt Resolution No. 70,493–N.S. as revised in the agenda packet materials from Vice-Mayor Harrison and further amended at the meeting in Sections 7.54.060, 7.54.050, 7.54.070, 7.54.040 paragraphs F and I, and amending the ballot question to read as noted below.

*Shall the measure to tax property owners who keep residential units vacant more than 182 days per year, \$3,000 for each nonexempt condominium, duplex, single family dwelling, or townhouse vacant unit in the first year, increasing to \$6,000 for each subsequent year, and \$6,000 for all other residential units vacant in the first year, increasing to \$12,000 for each subsequent year, with exceptions, from January 1, 2024 to December 31, 2034, generating between \$3,900,000 and \$5,900,000 annually, be adopted?*

2. Designate Vice-Mayor Harrison and Councilmember Robinson to file ballot measure arguments on behalf of the City Council on this measure.

**Vote:** Ayes - Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Wengraf; Abstain – Kesarwani, Taplin; Absent – Droste.

Recess 2:27 p.m. – 2:43 p.m.

## Action Calendar

4. **Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)** *(Item contains revised material)*

**From:** 4 x 4 Joint Committee on Housing City Council/Rent Board

**Recommendation:**

1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

Contact: Matt Brown, Rent Stabilization Board, (510) 981-7368

Recess 4:46 p.m. – 4:52 p.m.

**Action:** 44 speakers. M/S/C (Harrison/Bartlett) to include #3 from the Rent Board proposal regarding suspension of rent control in the ballot measure.

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

Councilmember Hahn absent 2:27 p.m. – 5:09 p.m.

**Action:** M/S/Failed (Harrison/Bartlett) to include #1 from the Rent Board proposal regarding newly constructed units in the ballot measure.

**Vote:** Ayes – Bartlett, Harrison, Robinson, Arreguin; Noes – Wengraf; Abstain – Kesarwani, Taplin; Absent – Hahn, Droste.

**Action:** M/S/Carried (Taplin/Kesarwani) to take no action on Agenda Item 4.

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

## Adjournment

**Action:** M/S/C (Arreguin/Wengraf) to adjourn the meeting.

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

Adjourned at 5:09 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on August 3, 2022.

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Mark Numainville, City Clerk

## Communications

### **Item #3. Placing a General Tax Measure on the November 8, 200 Ballot to Tax Vacant Residential Units**

1. Barbara Gilbert
2. Lynnda Ohama
3. Harvey Sharp
4. Jim Furuichi
5. Adriel Hampton
6. Carole Marasovic

### **Item #4. Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

7. Elaine Bloom
8. Michael O’Heaney

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

### **Item #2: Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements**

9. Supplemental material, submitted by councilmember Taplin
10. Revised material, submitted by Finance
11. Supplemental material, submitted by Mayor Arreguin

### **Item #3: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units**

12. Barbara Gilbert
13. Berkeley Tenants Union
14. Walter Wood
15. Rie Takahashi
16. Toni Mester
17. Michael Brown
18. Sydney Ji
19. Karin Wertheim
20. May Kandarian

### **Item #4: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

21. Sanders Political Law
22. Barbara Gilbert
23. Gail Martin
24. Berkeley Tenants Union
25. Toni Mester
26. Francie Maguire
27. Erica Cleary

### **Supplemental Communications and Reports 3**

#### **Item #2: Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements**

- 28. Geoff Lomax (3)
- 29. Henry Oyekanmi
- 30. Tom Lent
- 31. Eric Friedman
- 32. Isabelle Gaston
- 33. Derehia DuVal
- 34. Thomas Luce
- 35. Josh Buswell-Charkow
- 36. Barbara Gilbert

#### **Item #3: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units**

- 37. Warren Pottebaum
- 38. Jack Kurzweil, on behalf of the Wellstone Democratic Renewal Club
- 39. Cecilia Lunaparra, on behalf of the Cal Berkeley Democrats
- 40. Chimey Lee
- 41. Igor Tregub, on behalf of the Alameda County Democratic Party
- 42. Barbara Gilbert (2)

#### **Item #4: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

- 43. Jo Ann Driscoll
- 44. Keith Nickolaus
- 45. Bryce Nesbitt
- 46. Scott Curtin (2)
- 47. Daniel Frydman
- 48. Dawn Thomas
- 49. Sarah Valor
- 50. Cheryl Newbrough
- 51. Erin Chambers
- 52. Shua Chai
- 53. Keith Nickolaus
- 54. Barbara Gilbert (2)
- 55. Councilmember Harrison



Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: LaTanya Bellow, Deputy City Manager  
 Subject: Contract: Municipal Resource Group for Addressing Impacts Resulting from Great Resignation

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with Municipal Resource Group (MRG) for professional services needed to respond to the impacts within the City as a result of the Great Resignation<sup>1</sup>. Total contract direct costs will not exceed \$87,675.

FISCAL IMPACTS OF RECOMMENDATION

The anticipated expenditure for the work provided under this contract is \$87,675, as demonstrated in the table below. Funding for a portion of the work anticipated to be performed under this contract is available in the City Manager's Office FY 2023 budget in the General Fund (Fund 011). The additional funding in the amount of \$67,675 will be recommended for appropriation through the first amendment to the appropriations ordinance in the General Fund (Fund 011).

<b>Deliverable</b>	<b>Cost</b>
Kickoff meeting	\$2,500
Best practices review	\$5,000
Conduct meetings (onsite)	\$40,000
Facilitate strategy session	\$8,000
Develop draft recommendations	\$7,500
Review draft recommendations	\$2,500
Present draft recommendations to Council	\$4,000
Prepare final recommendations	\$1,500
Travel and expenses	\$12,500
5% Contingency	\$4,175

<sup>1</sup> The "Great Resignation" is an ongoing economic trend whereby many employees are voluntarily leaving (i.e., resigning) their places of employment.

<b>Total</b>	<b>\$87,675</b>
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Projected contract costs total \$83,500. Due to potential variability in some of the costs, the not-to-exceed contract cost includes a five percent contingency, resulting in a total recommended not-to-exceed cost of \$87,675.

**CURRENT SITUATION AND ITS EFFECTS**

The work under this contract would directly support our City’s Strategic Plan goal to attract and retain a talented and diverse City government workforce. The COVID-19 pandemic continues to have myriad impacts on our community and the world—including the phenomenon known as the Great Resignation. The Great Resignation is a term used to describe a recently developed and ongoing trend of employees voluntarily leaving their places of employment. Traditional means of recruiting, retaining, and engaging employees are proving insufficient to address this trend. Jurisdictions around the country, including the City of Berkeley, need to understand this trend and associated changes, identify and tailor methods of recruiting, retaining and engaging employees, and to plan for future workforce development. Employers that are not acknowledging this trend and quickly adapting may be at danger of losing excellent employees and being unable to retain or compete for top talent.

**BACKGROUND**

On September 4, 2018, the City of Berkeley engaged into a contract with Municipal Resource Group (MRG) for a Human Resources Departmental Assessment. The contract was subsequently extended through June 2021. During the course of assessment, MRG gained knowledge and background and contextual understanding of the City organization and workforce. For the purposes of continuity and consistency, it is in the City’s best interest to utilize MRG for the next phase of Human Resources adaptations and improvements. MRG should be able to quickly build upon its past work in the City and develop recommendations for how to adapt Human Resources methods and practices to best address the Great Resignation.

There is a need for this work to begin immediately. The City organization is already experiencing some impacts from the Great Resignation, as evidenced in high vacancy rates citywide.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

Through remote work and relying heavily on technology, the City will minimize purchase of consumable items, such as paper and toner, and by minimizing travel related to this work, will be able keep the City’s carbon footprint to a minimum.

**RATIONALE FOR RECOMMENDATION**

Allowing the City Manager to enter into a contract with MRG for addressing impacts resulting from the Great Resignation has numerous advantages:



- Based upon past work references and experience, staff has found MRG to be a good fit for the City organization.
- Having recent experience with the City organization, particularly the Human Resources department, MRG will be able to quickly leverage that knowledge to provide actionable recommendations.
- Actionable recommendations will give the City the ability to pivot and adapt to address the impacts of the Great Resignation and improve recruitment and retention.
- Addressing the impacts of the Great Resignation now will put the City slightly “ahead of the curve” among its peers and other local jurisdictions, increasing its competitiveness as an “employer of choice”.
- Using this trend as an opportunity for long range planning, MRG’s work and recommendations will help the City prepare for future workforce development.

ALTERNATIVE ACTIONS CONSIDERED

The City may choose to pursue no action. A lack of action or postponing action will likely result in continued workforce impacts from the Great Resignation.

CONTACT PERSON

LaTanya Bellow, Deputy City Manager, City Manager’s Office, 510-981-7012

Attachments:

1: Resolution

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

CONTRACT: MUNICIPAL RESOURCE GROUP FOR PROFESSIONAL SERVICES TO  
RESPOND TO THE IMPACTS OF THE GREAT RESIGNATION

WHEREAS, the City of Berkeley contracted with Municipal Resource Group to conduct a Human Resources department assessment; and

WHEREAS, Municipal Resource Group has recent and relevant experience, knowledge and background with and of the City organization; and

WHEREAS, the City organization is experiencing workforce impacts from the Great Resignation and seeks recommendations for the Human Resources department to best address those impacts; and

WHEREAS, for the purposes of continuity and consistency it is in the best interest of the City to utilize Municipal Resource Group for the next phase of Human Resources department adaptations and improvements.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a professional services contract, including any amendments, with Municipal Resource Group to respond to the impacts of the Great Resignation, for direct costs of \$87,675, funded by the General Fund.



Office of the City Manager

CONSENT CALENDAR  
SEPTEMBER 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Peter Radu, Assistant to the City Manager  
 Subject: Contract No. 32100053 Amendment: Orsolya Kuti, DVM to Provide On-site Veterinary Services for Berkeley Animal Care Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 32100053 with Orsolya Kuti for on-site veterinary services for Berkeley Animal Care Services, increasing the contract amount by \$8,000 for a new total not to exceed amount of \$228,000, and extending the contract term to September 14, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Berkeley Animal Care Services regularly contracts with a Doctor of Veterinary Medicine (DVM) to provide veterinary services two days per week onsite at the Dona Spring Animal Shelter. The amended contract will be extended through September 14, 2023. \$188,000 will come from the Berkeley Animal Care Services General Fund budget code 011-21-203-000-0000-000-424-612410. In April 2021, the Friends of Berkeley Animal Care Services donated \$4,800 to be used for on-site veterinary care and agreed to donate additional funds as needed in \$5,000 increments for an amount not to exceed \$40,000. The donation funds for the contract will be appropriated as they are received by the City.

Annual funds for the contract are subject to Council approval of the future budgets and the Annual Appropriations Ordinances.

CURRENT SITUATION AND ITS EFFECTS

In September 1, 2020, the City of Berkeley entered into a three-year contract ending August 31, 2023 with Orsolya Kuti, DVM to provide on-site veterinary care at the Dona Spring Animal Shelter. The current contract specifies the hourly rate of pay as \$75.00 per hour. In March of 2023, the California Animal Welfare Organization released a survey indicating that the average rate of pay for veterinarians in animal shelter is \$84.79 per hour, which indicated that the hourly rate of pay for the contracted veterinarian is below the current market rate of pay.

### BACKGROUND

BACS is a full-service municipal animal care and control agency, enforcing local and state laws throughout the City of Berkeley (COB) and the City of Albany. BACS is also contracted to shelter animals for the cities of Emeryville and Piedmont. BACS is an open-door facility accepting approximately 1,700 stray and homeless animals annually. BACS has a constant influx of animals that need to receive affordable veterinary care, treatment and spay/neuter services. The BACS shelter is open to the public seven days a week to receive stray, surrendered and confiscated animals. Additionally, field services are provided seven days week during which Animal Control Officers impound stray, surrendered and confiscated animals. Many animals arrive at the shelter sick or injured and in need of immediate veterinary care. On-site veterinary services include, but are not limited to: examining and diagnosing shelter animals, treating sick or injured animals, performing spay/neuter surgeries, performing other routine surgeries. In order to adhere to the BACS Euthanasia Policy and to maintain the current high live release rate of 90%, sick or injured animals must obtain necessary treatment so that they have a much better chance of rescue or adoption.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

### RATIONALE FOR RECOMMENDATION

Orsolya Kuti is a local veterinarian who has practiced veterinary medicine since 2014 and has specialized in animal shelter medicine since 2017. Dr. Kuti's experience and expertise in shelter medicine require an hourly rate of pay consistent with the industry standard.

### ALTERNATIVE ACTIONS CONSIDERED

The alternative to engaging in a contract amendment with with Dr. Kuti is to continue using Dr. Kuti on a per diem basis. The limit of spending for per diem veterinarian is \$5,000 within a Fiscal Year. The need for on-site veterinary services is 16 hours per week and the cost of veterinary services needed would exceed the limit of permitted spending for per diem vendors in sixty (60) days.

### CONTACT PERSON

Amelia Funghi, Animal Services Manager, (510) 981-6603

Attachments:

1: Resolution

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

CONTRACT NO. 32100053 AMENDMENT: ORSOLYA KUTI, DVM TO PROVIDE ON-SITE VETERINARY SERVICES FOR BERKELEY ANIMAL CARE SERVICES

WHEREAS, BACS has a constant influx of animals that need to receive immediate and affordable veterinary care and treatment; and

WHEREAS, sick or injured animals that obtain necessary procedures and/or treatment/s have a much better chance of rescue or adoption; and

WHEREAS, it is necessary to provide veterinary care and oversight on the premises for 16 hours per week; and

WHEREAS, Dr. Orsolya Kuti is a highly qualified veterinarian with extensive experience and expertise shelter medicine; and

WHEREAS, Friends of Berkeley Animal Care Services will donate an amount not to exceed \$40,000 in FY 2023; and

WHEREAS, the contract will be funded as a General Fund allocation and will be subject to the City's annual appropriation process.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32100053 with Orsolya Kuti for on-site veterinary services for Berkeley Animal Care Services (BACS), increasing the contract amount by \$8,000 for a new total not to exceed amount of \$228,000, and extending the contract term to September 14, 2023.





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

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 September 13, 2022

**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.

Total estimated cost of items included in this report is **\$440,000**.

<u>PROJECT</u>	<u>Fund</u>	<u>Source</u>	<u>Amount</u>
Aquatic Park Trail Sculpture Public Art Project	148	Cultural Trust	\$350,000
Covid-19 Resiliency-Youth Ambassador Program.	350	Bio-Terrorism Grant	\$90,000
<b>Total:</b>			<b>\$440,000</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

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on September 13, 2022

CONSENT CALENDAR  
September 13, 2022

upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

BACKGROUND

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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.

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 13, 2022
  - a. Aquatic Park Trail Sculpture Public Art Project
  - b. COVID-19 Resiliency-Youth Ambassador Program

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



SPECIFICATI ON 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
23-11541-C	Aquatic Park Trail Sculpture Public Art Project	9/14/2022	11/1/2022	<p>This opportunity is for an artist to create a series of permanent, sculptural artworks at various locations along Aquatic Park Trail and Bolivar Drive.</p> <p>Aquatic Park Trail is a 2.3-mile pedestrian and bicycle path that loops around the park's lagoon.</p> <p>Bolivar Drive between Addison Street to Dreamland Playground in Aquatic Park is undergoing a renovation in conjunction with the development at 600 Addison Street.</p>	\$350,000	148-21-208-252-0000-000-446-612990-	City Managers Office/Office of Economic Development/Civic Arts	Zoe Taleporos 981-7538
<b>Dept TOTAL</b>					\$350,000			
23-11542-C	COVID-19 Resiliency-Youth Ambassador Program.	9/12/2022	10/13/2022	Single contract with community based organization or individual to increase equitable outreach and support related to the COVID-19 pandemic through the Youth COVID Ambassador program.	\$90,000	350-51-501-503-2075-000-451-612990	HHCS/ Office of the Director/Public Health Officer Unit/COVID Response Team	Katharine Sullivan 510-981
<b>Dept TOTAL</b>					\$90,000			
<b>TOTAL</b>					<b>\$440,000.00</b>			





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Request for Proposal for Project Homekey

RECOMMENDATION

Adopt a Resolution authorizing City Manager to:

1. Release a Request for Proposals (RFP) for a Homekey Round 3 Project; and
2. Consider a reservation of up to \$8.5M in General Funds collected pursuant to Measure P, and/or other funding source, to support a future Homekey project.

FISCAL IMPACTS OF RECOMMENDATION

The RFP may lead to the selection of a Homekey project which would require a local match of City funds, estimated at approximately \$8.5M in order to be feasible. The City could allocate current and future years of Measure P funding already earmarked for permanent supportive housing for unhoused residents, or other City sources that may be available to support the acquisition, rehabilitation, and/or supportive services for a future Homekey project. Staff will return to City Council with a detailed recommendation for a specific project and funding required to submit an application to the State for Homekey funding.

CURRENT SITUATION AND ITS EFFECTS

In anticipation of the State of California Housing and Community Development (the "State") releasing a Notice of Funding Availability (NOFA) for Homekey Round 3 funds later this year, staff plan to release a Request for Proposals ("RFP"), to select projects that meet the Homekey Program requirements and the City goals. The State Homekey Program provides government entities funding to purchase and rehabilitate housing, including hotels, motels, vacant apartment buildings, and other buildings and convert them into interim or permanent, long-term housing. Under the Homekey Program, local entities partner with the State to offer this housing to people experiencing homelessness or who are at risk of becoming homeless and who are impacted by the COVID-19 pandemic.

In order to increase the chance of having a successful project in Berkeley, staff recommend:

1. Considering a local funding commitment of up to \$8.5M, or up to \$100,000 per unit from General Funds collected pursuant to Measure P or another local source. This will leverage the maximum state funding.
2. Expediting the RFP process timeline, by forgoing a Commission meeting if needed to ensure an early application submission. This will increase the chance of receiving state funds, which are awarded on a rolling basis.

If and when the State releases its Homekey Round 3 NOFA (anticipated in Fall 2022), the City will issue an RFP inviting organizations to submit a proposal for a specific property and be a joint applicant with the City for the State Homekey application. The City's Homekey RFP will solicit proposals for a specific property and staff expect that bidders will request funds from the City.

In addition to General Fund, the City could also consider using State and Local Fiscal Recovery Funds (SLFRF), if any are available, so long as any required environmental review fits within the State's application timeline.

Issuing an RFP for a Homekey project is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support services for our most vulnerable community members.

### BACKGROUND

In July 2020, the State of California Department of Housing and Community Development (the "State") established its Homekey Program<sup>1</sup> and released a first NOFA for the program. It released its second NOFA in September 2021, and is expected to issue a third NOFA in Fall 2022.

Partnering with a qualified affordable housing developer to identify a Homekey project is an opportunity for the City to make an immediate impact on creating long-term, permanent supportive housing for Berkeley; leveraging limited City funds with State funds created specifically for this purpose. Per the Homekey requirements, residents will have extremely low incomes (ELI, defined as up to 30% of the Area Median Income) and have experienced homelessness or be at risk of homelessness. To ensure long-term affordability of these units, the City will record a 55-year regulatory agreement on property. Since the purpose of the State Homekey program is to mitigate the spread of COVID-19 among the homeless, the preference is to serve those who are experiencing homelessness. If COVID-19 is no longer a prevalent illness in the future, the requirement to serve households impacted by COVID-19 may be eliminated.

If Council approves, the City will partner with a developer and submit a joint application for one Homekey Project. Per the second Homekey NOFA issued in September 2021, the State required applicants to demonstrate a 5-year commitment of operating funds;

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<sup>1</sup> For more information, see: <https://www.hcd.ca.gov/grants-funding/active-funding/Homekey.shtml>

two years of which could be requested as part of the Homekey application from the State General Fund. The State also required a 1:1 match for acquisition/construction costs over \$200,000 per unit for projects serving chronically homeless households. The State's matching funds would provide up to an additional \$100,000 per unit. Assuming the match requirements stay the same, the total amount of funds available for chronic homeless units would be \$300,000 per unit. The RFP will include criteria pertaining to an applicant's ability to secure non-City sources for these match funds. Staff recommends that the City also be prepared to commit local funds to help meet the match requirements of the State Homekey program, if needed.

While the City cannot, at this time, state the amount of funding it would commit to a project, the RFP will list any City funds available for acquisition, improvements, and/or services. After the RFP process, staff will submit a proposal to City Council for consideration of a Homekey project along with a request for City funds, and authorization to submit an application for State Homekey funding.

In 2021, the City released an RFP for Homekey Round 2, from which the City received a proposal from Bay Area Community Services (BACS) and Memar Properties for the Golden Bear Inn. The Golden Bear is a 44-room hotel located at 1620 San Pablo Avenue with a separate restaurant. A joint application was submitted to the State and the project received \$16M of Homekey funding in addition to \$8.5M from the City (a combination of Measure P and Permanent Local Housing Allocation funds). The hotel has already been renovated by the former owner, and the remaining improvements will include making rooms accessible and adding a new modular building with a community room and service office. The project will serve chronically homeless households, with services provided by BACS. The conversion of the hotel to housing is expected to be complete by early 2023.

Staff recommend using General Funds collected pursuant to Measure P to support a future Homekey Round 3 project.

General Funds collected pursuant to Measure P are available for a permanent supportive housing project such as Homekey. City Council allocated \$2.5M in Measure P funds for permanent supportive housing in June 2020. Of this amount, Council subsequently set aside approximately \$1M per year for the Step-Up Housing Program, leaving \$1.5M available each year for a permanent supportive housing project. Staff recommend allocating four to five years, depending on availability (Fiscal Years 2022 through 2027) of Measure P funds for a Homekey project. However, depending on the cost and timing of a future acquisition, staff will also consider alternative possible funding sources should they become available and/or be more appropriate to the project, and return to Council with a more specific recommendation.

In the first two Homekey NOFAs, the State accepted applications and approved funding on a rolling basis until the funds were exhausted. To maximize its chance for a

successful application, staff recommends expediting its RFP approval process. If time permits, staff will bring a recommendation for a Homekey project and funding to whichever Commission or Commissions have oversight over the proposed funding source prior to City Council review and approval.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable direct environmental sustainability or climate impacts associated with the adoption of this recommendation. A future Homekey project would involve reusing or re-purposing an existing hotel, motel, other residential or non-residential structure to permanent supportive housing. The work would entail rehabilitating the housing units to be more energy efficient, to the extent possible. If federal funds are used, staff would coordinate an environmental review, which includes recommendations for mitigating environmental impacts if needed.

RATIONALE FOR RECOMMENDATION

The State Homekey Program provides funding to convert existing buildings into permanent supportive housing. The City has the opportunity to leverage limited City funds with the State funds created for this purpose. By issuing this City Homekey RFP, the City can identify a viable project and developer partner to submit a joint application for Homekey funding if and when the State releases its Homekey NOFA.

ALTERNATIVE ACTIONS CONSIDERED

The City could forego this funding opportunity, which would not be consistent with the City's Strategic Plan goal to provide housing opportunities. Theoretically, the City could act on its own to identify, purchase, rehabilitate and operate housing under Homekey, since funds are available to public entities. However, the City has not developed, owned or operated residential properties in the past and does not have the capacity to do so.

Therefore, staff recommend the approach outlined above.

CONTACT PERSON

Jenny Wyant, Senior Community Development Project Coordinator, HHCS, 981-5228

Attachments:

1: Resolution

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

ISSUING A REQUEST FOR PROPOSALS FOR A HOMEKEY PROJECT TO CREATE  
LONG-TERM, PERMANENT SUPPORTIVE HOUSING

WHEREAS, the City of Berkeley (“City”) wishes to partner with a qualified housing developer to create permanent supportive housing for residents who are experiencing homelessness or at risk of homelessness; and

WHEREAS, in July 2020, the State of California Housing and Community Development (“State”) created the State Homekey Program and issued its first Notice of Funding Availability (NOFA) to fund the conversion of existing residential buildings, such as hotels, motels, other residential buildings and non-residential structures, to permanent supportive housing for residents who are homeless or at risk of being homeless and have been impacted by COVID-19; and

WHEREAS, in anticipation of the State issuing a third Homekey NOFA later this year, the City will issue a Request for Proposals (“RFP”) when the State releases Homekey Round 3 NOFA, to select applications for a specific property that meets Homekey requirements; and

WHEREAS, through the RFP the City will select a developer or development team with a specific property and be a joint applicant with the City if and when the State issues a third Homekey Program NOFA; and

WHEREAS, the State Homekey Program may require a match of local and private funds to maximize the amount of State Homekey funds awarded to a project; and

WHEREAS, City staff have identified potential sources of City that may be used to fulfill the match requirement.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to issue a Request for Proposal (RFP) for a Homekey project in the City of Berkeley to create long-term, permanent supportive housing for residents who are homeless or are at risk of being homeless; and

BE IT FURTHER RESOLVED that City Manager is hereby authorized to consider a funding request of up to \$8.5 million from the project selected, and to return to Council with a funding recommendation.







Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Contract: Tiana Sanchez International LLC for HHCS Equity Consultant

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Tiana Sanchez International, LLC. (Contractor) to provide equity consulting services for the Department of Health, Housing and Community Services (HHCS) from October 1, 2021 to May 30, 2023 in an amount not to exceed \$120,000.

FISCAL IMPACTS OF RECOMMENDATION

The term of this contract is from October 1, 2022 to May 30, 2023 in the amount of \$120,000. Funding for the HHCS Equity Consulting project is available in the FY23 budget through a California Department of Public Health grant, the California Equitable Recovery Initiative, (CERI) ERMA Code 336-51-501-501-2075-000-451-612990.

CURRENT SITUATION AND ITS EFFECTS

The department's equity work is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity. The City of Berkeley issued an RFP to obtain consulting services to develop an equity framework to be adopted by HHCS, which will be the foundation for the creation of a Strategic Plan for Health Equity. The project has three deliverables: 1) determine how equity is approached and defined throughout the department; 2) recommend or develop an equity framework that will be adopted across the department; and 3) using this equity framework, facilitate development of a departmental strategic plan that is anchored in the adopted equity framework.

The City conducted RFP Specification No. 22-11529-C with proposals due no later than July 6, 2022. The City received two proposals. The selection committee was comprised of the HHCS Department Director, Deputy Director, and a program manager. An interview was conducted with the most qualified organization.

BACKGROUND

The City of Berkeley is a thriving community with considerable wealth, high levels of education attainment, and a rich culture that all contribute to a healthy community. However, Berkeley is not a city where all people are living long and healthy lives and

achieving the highest possible level of health. In Berkeley, African American/Black and other people of color are more likely to die prematurely and experience a wide variety of adverse health conditions throughout their lives.

As reported in the 2018 City of Berkeley Health Status Report, higher incidence of disease is linked to neighborhoods that have been historically under-resourced and overexposed to unhealthy conditions. These neighborhoods have more people living in poverty and more people of color than surrounding neighborhoods. Like other jurisdictions, these historic and ongoing health inequities have been exacerbated by the impacts of the COVID-19 pandemic. Communities of color, specifically African American/Black and Hispanic/Latinx residents, have a higher COVID-19 positivity rate, hospitalizations, and deaths compared to White residents.

Since 2018, extensive work has been done by HHCS to analyze and identify solutions to overcome the underlying issues that perpetuate these health inequities. HHCS programs serve individuals who are most impacted in Berkeley and continue to make progress toward solving health inequities that have existed and been exacerbated by the COVID-19 pandemic.

In addition to these community programs, the divisions of HHCS have been conducting their own internal equity work. Solving these inequities involves a conscious effort to look at Department-wide systems and structures to define, codify, and systematize this work into a HHCS Strategic Plan for Health Equity. This Plan will include an adopted equity framework to guide Department-wide and Division-specific projects and systems, which will allow HHCS to achieve its overarching goal to create a City where all community members can achieve their highest level of health.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the action requested in this report.

#### RATIONALE FOR RECOMMENDATION

The City conducted a competitive bid process and Tiana Sanchez International, LLC successfully met the bid requirements and ranked highest among all bidders given their applicable experience working on similar projects with other jurisdictions in California.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Katherine "Katie" Hawn, Senior Management Analyst, HHCS, (510) 981-5411

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

CONTRACT: TIANA SANCHEZ INTERNATIONAL LLC FOR HEALTH HOUSING AND  
COMMUNITY SERVICES EQUITY CONSULTING

WHEREAS, the City of Berkeley has issued an RFP to obtain consulting services for HHCS to create or recommend an equity framework which will then be used as the foundation to create a Strategic Plan for Health Equity; and

WHEREAS, the City conducted RFP Specification No. 22-11529-C with proposals due no later than July 6, 2022; and

WHEREAS, the City received two proposals in response to this RFP; and

WHEREAS, one finalist was invited to meet with the selection committee for a more in-depth review of their proposal and describe their past consulting work with other jurisdictions in California, resulting in the selection of Tiana Sanchez International LLC as the best qualified vendor.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Tiana Sanchez International LLC to provide consulting services to produce the deliverables to support the recommendation or creation of an equity framework for HHCS to support the development of a Strategic Plan for Health Equity from October 1, 2022 to May 30, 2023 in an amount not to exceed \$120,000.





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Contract No. 31900043 Amendment: Kings View Professional Services for  
 Mental Health Reporting Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900043 with Kings View Professional Services to provide mental health financial reporting services through June 30, 2024 in an amount not to exceed \$220,628.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the additional scope of work in the amount of \$57,100 will be provided from Mental Health Realignment-Administration Account (ERMA GL 158-51-503-520-0000-000-451-612990).

CURRENT SITUATION AND ITS EFFECTS

Kings View Professional Services has provided reliable reporting services to the Mental Health Division for more than three years. In addition to processing Medi-Cal Administrative Activities (MAA) quarterly claims, they have produced annual cost reports; including collaborating with Alameda County to submit the completed reports to the necessary agencies. The production of these reports directly supports the operation of the City's Mental Health programs. The additional funding requested in this report will allow Kings View to complete this work for the next two fiscal years.

BACKGROUND

Specialized reporting for MAA quarterly claims is necessary to be in compliance with local, state, and federal agencies regarding mandatory reporting requirements. The California Department of Healthcare Services, the Centers for Medicaid and Medicare, and other agencies associated with the oversight of financial reporting by Counties and Cities prescribe specific forms and documentation for all submissions. In addition, Alameda County requires cost reports for each fiscal year, including total units of service by mode and service function code and identified by funding source.

In order to remain in compliance with these and other agencies, the City's Mental Health Division must produce specialized financial reports. Utilizing a contract with vendor Kings View Professional Services, an expert firm in this field, ensures precision due to their particular familiarity with this type of reporting. Retaining specialized financial expertise helps the City maximize revenues for service provided and minimize any risk of recaptured funds.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

Kings View Professional Services has demonstrated specialized expertise and performance in mental health financial reporting requirements. Their services ensure that the City remains in compliance with funder requirements and sustains these vital funding streams.

#### ALTERNATIVE ACTIONS CONSIDERED

As an alternative action, Council could instead direct staff to circulate a formal RFP to competitively solicit a different vendor, or to not fund this service altogether. Since King View is already familiar with City programs and has performed well under the existing contract these approaches are not recommended.

#### CONTACT PERSON

Conor Murphy, Assistant Management Analyst, HHCS, 510-981-7611  
Jeff Buell, Manager of Mental Health Services, HHCS, 510-981-7682

Attachments:

1: Resolution

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

CONTRACT NO. 31900043 AMENDMENT: KINGS VIEW PROFESSIONAL SERVICES  
FOR MENTAL HEALTH FINANCIAL REPORTING SERVICES

WHEREAS, on December 1, 2018, the City of Berkeley entered into Contract No. 31900043 with Kings View Corporation for mental health reporting services in an amount not to exceed \$29,507 for the period December 1, 2018 to November 30, 2019; and

WHEREAS, this contract was previously amended on May 1, 2019, to increase the total contract amount by \$16,132 for a total amount of \$45,639 and to extend the expiration date to June 30, 2020; and

WHEREAS, on June 16, 2020 by Resolution No. 69,450-N.S., City Council approved amending Contract No. 31900043 through June 30, 2022 for a total amount of \$106,428; and

WHEREAS, Kings View Professional Services has specific expertise in mental health compliance and financial reporting requirements, and are very familiar with the unique needs of the City; and

WHEREAS, funds are available to perform this work in the current year budget in the Mental Health Realignment-Administration Account, numbered 158-51-503-520-0000-000-451-612990.

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 amendment to the contract with Kings View Professional Services for Mental Health reporting services for a total not to exceed \$220,628, through June 30, 2024. A record signature copy of said contract to be on file in the City Clerk Department.







Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Dr. Lisa Warhuus, Director, Health, Housing & Community Services  
 Subject: Accept Future of Public Health Funds from the State of California

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to submit grant agreements to the State of California, to accept the grants, and to execute any resultant revenue agreements and amendments for the Future of Public Health program for an amount of \$912,213 for the Fiscal Year 2023.

FISCAL IMPACTS OF RECOMMENDATION

The City's award for FY2023 is \$912,213, which will need to be expended by June 30, 2024. Funds will be expended from ERMA account HHOFPH2301 (302-51-501-501-0000-000-451- various) and revenue will be received in 302-51-501-501-0000-000-451-432110-. HHCS staff will request to add these funds to the FY2023 budget in AAO#1.

CURRENT SITUATION AND ITS EFFECTS

The State's Budget Act of 2022 created a new funding stream called the Future of Public Health, intended to support and grow California's public health infrastructure. The funds are in the budget baseline and are planned to be an ongoing source of funding. As a local public health jurisdiction, the City is entitled to a base award of \$350,000 and additional funds awarded by formula. At least 70% of funds must be spent on permanent City staff costs and training, and up to 30% can be used for equipment, supplies and other administrative costs.

The funding comes with certain requirements, including the submission of a public health improvement plan, the use of evaluation and Results Based Accountability to measure success, and staff participation in specified regional public health groups.

The City's public health activities are a Strategic Plan Priority Project, advancing our goals to champion and demonstrate social and racial equity and to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

## BACKGROUND

The vast majority of the City's health funding grants support strictly defined health activities and services and come with extensive reporting requirements. In contrast, the Future of Public Health funds can be used relatively flexibly to support the City's infrastructure to plan, coordinate and deliver programs to address specific local needs, most notably reducing public health disparities.

The City of Berkeley is a thriving community with considerable wealth, high levels of education attainment, and a rich culture that all contribute to a healthy community. However, Berkeley is not a city where all people are living long and healthy lives and achieving the highest possible level of health. In Berkeley, African American/Black and other people of color are more likely to die prematurely and experience a wide variety of adverse health conditions throughout their lives.

As reported in the 2018 City of Berkeley Health Status Report, higher incidence of disease is linked to neighborhoods that have been historically under-resourced and overexposed to unhealthy conditions. These neighborhoods have more people living in poverty and more people of color than surrounding neighborhoods. Like other jurisdictions, these historic and ongoing health inequities have been exacerbated by the impacts of the COVID-19 pandemic. Communities of color, specifically African American/Black and Hispanic/Latinx residents, have a higher COVID-19 positivity rate, hospitalizations, and deaths compared to White residents.

Since 2018, extensive work has been done by HHCS to analyze and identify solutions to overcome the underlying issues that perpetuate these health inequities. HHCS programs serve individuals who are most impacted in Berkeley and continue to make progress toward solving health inequities that have existed and been exacerbated by the COVID-19 pandemic.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts associated directly with accepting public health funding.

## RATIONALE FOR RECOMMENDATION

Accepting these funds will allow the City to grow its infrastructure for public health.

## ALTERNATIVE ACTIONS CONSIDERED

None.

## CONTACT PERSON

Amy Davidson, Deputy Director, HHCS, (510) 981-5406

Attachments:

1: Resolution

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

ACCEPTING STATE OF CALIFORNIA FUTURE OF PUBLIC HEALTH FUNDS

WHEREAS, the City of Berkeley has been a public health jurisdiction for more than one hundred years; and

WHEREAS, in Berkeley communities of color, specifically African American/Black and Hispanic/Latinx residents continue to experience disparate health outcomes, which have been exacerbated by the COVID-19 pandemic; and

WHEREAS, in recognition of public health needs throughout California the state budget established funds for the Future of Public Health program; and

WHEREAS, as a public health jurisdiction the City is eligible to receive an allocation of Future of Public Health funds.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments for the Future of Public Health program for an amount of \$912,213 in Fiscal Year 2023. Funds will be expended from ERMA account HHOFPH2301 (302-51-501-501-0000-000-451- various) and revenue will be received in 302-51-501-501-0000-000-451-432110-. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Donation of Painting Services from MB Jessee Painting, Inc.

RECOMMENDATION

Adopt a Resolution accepting the donation of painting services and materials from MB Jessee Painting, Inc., estimated to be a value of \$8,994, to paint interior areas of 1900 6<sup>th</sup> Street building in accordance with Administrative Regulation 3.19, Donations to the City from Individuals of Outside Organizations.

FISCAL IMPACTS OF RECOMMENDATION

This donation will decrease the cost of interior painting of the facility.

CURRENT SITUATION AND ITS EFFECTS

The West Berkeley Service Center (WBSC), located at 1900 6<sup>th</sup> Street, Berkeley, CA 94710 will be the new site of Public Health Division's Maternal, Child, and Adolescent Health Services. MB Jessee Painting, Inc. has offered pro bono work to paint the interior of the building. A project estimate provided by MB Jessee Painting, Inc places the total value of services at an estimated \$8,994.26 to complete the interior painting of the: 1) entry and reception area, 2) parking entrance and bathroom hallways, and 3) the Dining Room area. This donation of services will provide a welcoming and warm environment where low-income families and community members can seek services and connect as a community.

This painting service donation is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities and champion and demonstrate social and racial equity.

The donor has requested that they complete the first phase of the painting project prior to public health programs moving in to the facility and community accessing the site. Touch up work will also be provided once full renovations at the facility are complete.

The methodology used to determine the value of the donation of services required to complete the project was based on the standard estimation practices conducted by MB Jessee Painting, Inc.

The project is anticipated to begin September 26, 2022.

#### BACKGROUND

The West Berkeley Service Center, located at the 1900 6<sup>th</sup> Street, Berkeley, CA is an aging facility with many structural and cosmetic needs. The Public Health Division is planning to move its Maternal, Child, Adolescent Health Programs, including WIC, Immunization Program, School Linked Services, and Family Support Services into this facility in late summer/ early fall 2022. Funding has been identified for facility improvements for the roof repairs and the electrical upgrade needed to operate community facing services in the building, but cosmetic improvements such as interior and exterior painting would add greatly to a welcoming and clean environment.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The donor will be using the Kelly Moore Acrylic-Plex interior product line, which is a water-based, 100% acrylic, and a low Volatile Organic Compound (VOC) paint. This product will be used in the 1) entry and reception area, 2) parking entrance and bathroom hallways, and 3) the Dining Room area of the WBSC.

#### RATIONALE FOR RECOMMENDATION

Painting the interior of the WBSC would provide a clean, warm, and welcoming environment for the community and clients that the Public Health Division serves.

#### ALTERNATIVE ACTIONS CONSIDERED

The City can decline the painting donation and seek other funding to support this work or eliminating painting the interior entirely.

#### CONTACT PERSON

Janice Chin, Manager, Public Health Division, HHCS, 510-981-5121

#### Attachments:

- 1: Resolution
- 2: Administrative Regulation 3.19

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

AUTHORIZING THE ACCEPTANCE OF A DONATION OF PAINTING SERVICES FOR THE WEST BERKELEY SERVICE CENTER FROM MB JESSEE PAINTING, INC.

WHEREAS, MB Jessee Painting has named City of Berkeley Public Health Division as a recipient of a gift of services; and

WHEREAS, the West Berkeley Services Center is expected to serve clients, their families, and community members through a community-centered, family friendly environment, and

WHEREAS, the City of Berkeley is committed to providing state-of-the-art, well-maintained infrastructure, amenities, and facilities and champion and demonstrate social and racial equity

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the council accepts a donation of painting services, estimated to be a value of \$8,994.26 to the City of Berkeley Public Health Division from MB Jessee Painting, Inc. to paint the West Berkeley Service Center interior.

<b>A.R. NUMBER:</b>	<b>3.19</b>
ORIGINAL DATE:	5/2/2011
POSTING DATE:	5/9/2011
PAGE	1 OF 2 PAGES

**CITY OF BERKELEY  
ADMINISTRATIVE REGULATIONS**

**SUBJECT: DONATIONS TO THE CITY FROM INDIVIDUALS OR OUTSIDE ORGANIZATIONS**

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**PURPOSE**

The purpose of this administrative regulation is to set forth a policy on how donations made to the city by individuals or outside organizations are officially approved.

**POLICY**

The following types of donations made to the City by individuals or outside organizations must be approved by the City Council before they can be accepted:

1. Any monetary donation of \$1,000 or more.
2. Non-monetary donations of goods, materials, supplies, and equipment with an estimated value of \$1,000 or more.

**PROCEDURE**

Prior to a donation being received by the City, the department receiving the donation must prepare a consent calendar report requesting City Council approval for the donation. When a donation is received, without advance notice, the department immediately deposits the donation into the treasury. A consent calendar report requesting Council approval is submitted for the next available agenda.

The following information must be included in the report:

Monetary Donations

1. The name of the individuals or organizations making the donation
2. The amount of the donation
3. The purpose and use for the donation
4. Any special conditions from the donor
5. The budget code and name of the fund where the donation will be deposited and expended from
6. The timing of when the donation will be officially appropriated into the budget

Non-Monetary Donations

1. The name of the individuals or organizations making the donation
2. A description of the donation
3. The purpose of the donation
4. The methodology used to determine the donation is valued at \$1,000 or more.

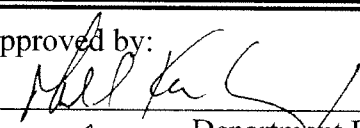
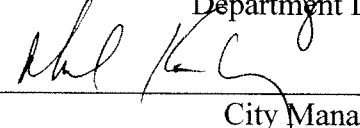


5. The timing of when the donation will be received by the City

Once the City Council has approved a monetary donation, the department deposits the donation into the City Treasury. A budget modification to appropriate the donation, with a copy of the Council report and resolution approving the donation, is sent to the Budget Office. This process also applies to donations already deposited into the City Treasury.

Non-monetary donations of physical goods must be officially added to the City's inventory control before they may be used by the operating department receiving the donation.

It is the responsibility for the receiving department to maintain any records regarding the donation for a period of at least three (3) fiscal years following the fiscal year in which the donation was received.

<p><b>RESPONSIBLE DEPARTMENT:</b> City Manager's Office</p> <p><b>TO BE REVISED:</b> Every 2 years</p>	<p>Approved by:</p> <p> _____ Department Director</p> <p> _____ City Manager</p>
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Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Donald Ellison, Interim Director, Human Resources

Subject: Contract No. 8392 Amendment: Innovative Claim Solutions (ICS) for claims administration of the City's Workers' Compensation Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to extend Contract No. 8392 with Innovative Claims Solutions (ICS) to provide third-party claims administrative services, Medicare, Medicaid, and SCHIP Extension Act (MMSEA) Section 111 Mandatory Reporting to the Centers for Medicare & Medicaid Services (CMS), for an additional term of three years from July 1, 2022 through June 30, 2025 at a decreased annual rate of \$570,000 for a total contract amount of \$7,393,611 for year 2023.

FISCAL IMPACTS OF RECOMMENDATION

The contract amendment with Innovative Claim Solutions will add \$570,000 to the original contract through the end of Fiscal Year 2023. Funding for the proposed contract amendment is available in the Fiscal Year 2023 Workers' Compensation Self-Insurance fund.

As a result of the proposal, Innovative Claims Solutions (ICS) has agreed to lower their total fees with a cap increase of just 3% annually. These annual fees include both the administrative and the MMSEA fees, per contract agreement. The proposed annual fees are as follows:

FY 2022-2023 Program Year: \$570,000  
FY 2023-2024 Program Year: \$587,100  
FY 2024-2025 Program Year: \$604,713

Current total annual fees are \$619,819. The decrease in annual fees will net the City of Berkeley an additional annual savings total of \$49,819 for Fiscal Year 2023.

Original Contract Amount (7/1/2016 – 6/30/2021)	\$6,823,611
Current Contract Amount (FY 7/1/2021 – 6/30/2022)	\$619,819
<b>Proposed Amount (FY 7/1/2022 – 6/30/2023)</b>	<b>\$570,000</b>
<b>Savings (decrease in fees)</b>	<b>\$49,819</b>
<b>Total New Contract Amount</b>	<b>\$7,393,611</b>

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley is permissibly Self-Insured by the State of California, Department of Industrial Relations, to provide statutorily required workers’ compensation benefits to injured employees.

On April 26, 2016, the City Council adopted Resolution No. 67,436, authorizing the City Manager to execute and implement a contract including amendment for workers’ compensation third-party administration services with ICS. This contract amendment was approved from July 1, 2016 – June 30, 2021. The increase for this contractual period was \$3,247,413 for a total not to exceed \$6,823,611.

The current contract with ICS is set to expire on June 30, 2022. As such, a contract amendment is needed to continue claims administrative and management of the City’s self-funded workers’ compensation program. The Human Resources Department is planning to issue a Request for Proposal (RFP) for workers’ compensation third-party administrative services. It has been several years since the City of Berkeley has solicited an RFP for these services. As such, during the RFP process it is imperative that the operation of critical claim management services is maintained until a third-party administrator is selected. Additionally, retaining claim management services with ICS until the RFP selection process is completed ensures the City remains in compliance with all applicable workers’ compensation laws and regulations.

BACKGROUND

Innovative Claim Solutions, has been providing claims management services for over 20 years. The third-party claim management services for a workers’ compensation program consist of responsibility for claims management including, but not limited to, approval of claims based upon whether an injury arose out of the course and scope of employment; denial of claims that did not arise out of the course and scope of employment; or delay of claim decisions in order to obtain additional information or evidence before a determination can be on a claim. The third-party administrator procures services and pays bills incurred by claims for the provision of benefits to injured employees. These

expenses include, but are not limited to, medical; legal; temporary and permanent disability payments; and future medical needs of injured employees.

A contract amendment with ICS will maintain continuous service delivery including several performance standards that require ICS to evaluate old claims for closure and close new claims as soon as feasible.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

Innovative Claim Solutions has provided superior quality claim management services throughout the terms of the contract. ICS consistently applies professionalism, expertise, and superior customer service in their claim management practices.

#### ALTERNATIVE ACTIONS CONSIDERED

Issue a Request for Proposal to seek bids from firms including ICS to provide third party administrative services for the City's workers' compensation program.

#### CONTACT PERSON

Donald Ellison, Interim Director of Human Resources, 510-981-6807

Attachment:

1: Resolution

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

CONTRACT NO. 8392 AMENDMENT: INNOVATIVE CLAIM SOLUTIONS

WHEREAS, the City of Berkeley is certified by the State of California Department of Industrial Relations under Labor Code Sections 3700 and 3705 to self-insure for providing statutorily required workers' compensation benefits to its employees; and

WHEREAS, on April 26, 2016, the Berkeley City Council adopted Resolution No. 67,436 that authorized the City Manager to amend the contract with ICS for third-party administrative services for the City's workers' compensation program by extending the term through June 30, 2021; and

WHEREAS, on July 27, 2021, the Berkeley City Council adopted Resolution No. 69,977-N.S., for July 1, 2021 through June 30, 2022;

WHEREAS, amending the existing contract with ICS to provide both administration of the City's workers' compensation program and Medicare, Medicaid and SCHIP Extension Act (MMSEA) Section 111 mandatory reporting to the Centers for Medicare & Medicaid Services (CMS) on behalf of the City to maintain continuous service delivery; and

WHEREAS, the City has found that the services performed by ICS have been satisfactory during the term of the contract and both parties desire to extend the term of the contract for one (1) additional year.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 8392 with Innovative Claim Solutions for third-party administrative services for both the City's workers' compensation program and MMSEA Reporting to the CMS, extending the period through June 30, 2025 and increase the original contract amount by an additional \$570,000 with a 3% annual cap increase for each term, total contract amount of \$7,393,611 FY 2022-2023. All expenses are to be paid by the Workers' Compensation Self-Insurance Fund (676-00-000-000-0000-000-102127). A record signature copy of said contract and any amendments are to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: LaTanya Bellow, Acting Director, Information Technology  
Subject: AHEAD, Inc: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to increase spending authority with AHEAD, Inc. ("AHEAD") for the purchase of Varonis software licenses and professional services, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) increasing the amount by \$71,481 for a total amount not-to-exceed \$236,305, and the period beginning September 29, 2022 through September 28, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the Varonis software add-on and professional services in the amount of \$71,481.00 is available in the Department of Information Technology's FY 2023 Cost Allocation

\$50,304	FY 2023: Cyber Security Budget Code: 680-35-363-384-6005-000-472-613130- (IT Cost Allocation, IT Department)
\$21,177	FY 2023: Cyber Security Professional Services Budget Code: 680-35-363-382-0000-000-472-612990- (IT Cost Allocation, IT Department, Professional Services)

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**\$71,481 Total FY 2023: Good and Services**

### CURRENT SITUATION AND ITS EFFECTS

The purpose of the Data Safety Program is to protect the City of Berkeley's information and access to information, using an enterprise standard across all city systems. Varonis is a crucial component in this security effort. The Data Safety Program is designed to support the Digital Strategic Plan and the City's Strategic Plan goal of advancing our City's strategic goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

The City initially used Varonis to complete a data risk technical assessment, and subsequently purchased Varonis for its on-premise and Microsoft Office 365 resources. The add-on licenses and professional services are being purchased under the attached resolution support the City's Data Safety Program under the SLP vehicle.

The City of Berkeley participates in a cooperative purchasing agreement established by the California Department of General Services (DGS)' called the Software License Program (SLP). Established in January 1994, the SLP negotiates major software discounts with publishers and passes those discounts onto the State. The State establishes contracts with resellers based on these negotiations, which local agencies within the State of California can utilize. The City of Berkeley has engaged AHEAD as a reseller for the Varonis software under SLP contract number SLP-19-70-0151s. Additional software, and other goods and services related to the City's Data Safety Program, are also available on this SLP contract with AHEAD.

### BACKGROUND

The procurement and implementation of Varonis in 2021 provided City of Berkeley (COB) visibility into how the City is handling and protecting the data we touch on a daily basis. The City of Berkeley now seeks to add automated remediation to matters we are discovering.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

A universal, secure, and reliable set of safeguards allows for increased collaboration between City staff from anywhere at any time without the need for paper copies printed-off and taken into the field or to home offices. It also provides protection to the information on existing internal and Cloud-based infrastructure that supports the City's online services, reducing greenhouse gas emissions used to travel between City facilities.

### RATIONALE FOR RECOMMENDATION

The IT department has selected two new modules within Varonis to offer full visibility to alerts for all department heads and empower them and their designated staff to review and manage access controls for their staff. This procurement of software and professional services will enable all the departments and the IT department to proactively respond to alerts and lower the operational risks at a significantly lower cost in human resources.



The Varonis modules that we currently have provide visibility into in the way sensitive data (such as privacy data) is being handled on a daily basis. The additional modules and professional services covered within this staff report will (a) clean up and prepare existing permissions so that (b) the automatic remediation enabled by these modules will be most effective. These new modules also (c) offer City department heads the ability to administer who has access to their data in keeping with their role within the Data Safety Program.

Without these additional modules, the full potential of the Varonis will not be realized. In fact, remediation will remain manual and tedious.

#### ALTERNATIVE ACTIONS CONSIDERED

The IT department considered using and leveraging/extending existing technology platforms. However, these tools do not offer the capability to automate remediation, and provide the self-service portal needed for department heads and their staff.

From a cost comparison, the 3-year total cost of ownership (TCO) for Varonis and the initial set up professional services is less than similar enterprise license from existing tools.

The IT department also estimated the level of effort (LOE) and resource requirements for manual remediation, and existing platforms will be significantly more expensive (in staff hours) than the procurement and implementation cost of these additional modules for Varonis.

#### CONTACT PERSON

LaTanya Bellow, Acting Director, Information Technology, 510-981-7012

Attachments:

1: Resolution

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

AHEAD: USING THE CALIFORNIA DEPARTMENT OF GENERAL SERVICES' (DGS) SOFTWARE LICENSING PROGRAM (SLP) FOR SOFTWARE LICENSE PURCHASES

WHEREAS, the purpose of the Data Safety Program is to protect the City of Berkeley's information and access to information, using an enterprise standard across all city systems, and is designed to support the Digital Strategic Plan and the City's Strategic Plan goal of advancing our City's strategic goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities; and

WHEREAS, the City of Berkeley participates in a cooperative purchasing agreement established by the California Department of General Services (DGS)' called the Software License Program (SLP) that negotiates software discounts that are passed down to local agencies through a cooperative contract and software reseller; and

WHEREAS, the City of Berkeley has engaged AHEAD as a reseller for the Varonis software under SLP contract number SLP-19-70-0151s, and has the opportunity to purchase additional software, and other goods related to the City's Data Safety Program; and

WHEREAS, funding for purchases with AHEAD are funded by the IT Cost Allocation Fund (Fund 680), and citywide purchases will be made as needed by other available funding.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to increase spending authority with AHEAD for the purchase of professional services and software, and other goods related to the City's Data Safety Program, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) increasing the amount by \$71,481 for an amount not-to-exceed \$236,305, and the period beginning September 29, 2022 through September 28, 2023.



Office of City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront

Subject: Lease Agreement: 80 (North Building), 82/84 & 90 Bolivar Drive in Aquatic Park with Waterside Workshops

RECOMMENDATION:

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Waterside Workshops to use the 80 (North Building), 82/84 & 90 Bolivar Drive in Aquatic Park for a lease term anticipated to begin November 1, 2022 and ending November 1, 2031.

FISCAL IMPACTS OF THE RECOMMENDATION

Waterside Workshops will pay an annual rent of \$1,800, escalating by \$150 per year. The total lease revenue is \$24,750. In addition, they will be responsible for completing capital improvements and maintenance to the building over the 10-year period of their lease, which are valued at \$166,200. The list of capital improvements and maintenance requirements are described in Exhibit "C" of the lease. Lease revenue will be deposited in Budget Code 450-5801-363.10-04.

CURRENT SITUATION AND ITS EFFECTS

Waterside Workshops succeeded Tinker's Workshop and Berkeley Crew to begin leasing the Aquatic Park buildings in 2006 through 2009. Over time, they entered into 3 separate leases for the 4 buildings: a lease for the north storage building at 80 Bolivar; a lease for the main building (which they share with BORP, the Bay Area Outreach and Recreation Program) and the Street Level Cycles building at 82/84 Bolivar; and a lease for the building at 90 Bolivar, formerly known as the Rod & Gun Club.

The City's leases with Waterside Workshops for the properties at 80 (North Building), 82/84 Bolivar have expired, and are now in holdover status (month-to-month). The lease for 90 Bolivar will expire in 2024.

This action would merge the three leases into one and extend the expiration to 2031, with an option to extend to 2036. The premises shall continue to be used for public bicycle

rentals and sales, community bicycle repair space, boat building space, storage area, and a small café.

In exchange for a 10-year term and favorable rent of \$1800/year, escalating by \$150/year, Waterside Workshops agrees to perform all improvements cited in the City's recently commissioned Condition Assessment report, appended to the lease as Exhibit "D". The value of these improvements is estimated to be \$166,200.

### BACKGROUND

Waterside Workshops is a non-profit organization whose mission is to engage youth and the community through hands-on learning in bicycle mechanics, wooden boatbuilding, and outdoor education. They work to provide at-risk youth ages 8 to 24 with a safe place to feel heard, gain confidence, develop work skills, and access the tools and resources needed to lead healthy, sustainable lives.

Since 2001, Waterside has operated their programs at 82/84 Bolivar Drive in Aquatic Park (Main Building B) through a lease agreement with the City. In 2006, they expanded into the North Building at 80 Bolivar Drive as a sub-tenant to Berkeley Crew in exchange for performing needed improvements to the building. The Bay Area Outreach and Recreation Program (BORP) has also occupied 80 Bolivar Drive in Main Building A since 2006. BORP and Waterside have shared docks, gardens and other common spaces and have done so for many years.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Waterside Workshops is a non-profit youth development and vocational education program for East Bay youth. Through their bicycle repair and café programs, they encourage sustainable and healthy lifestyles. This helps promote three City of Berkeley Climate Action goals: Chapter 3 focuses on sustainable transportation, including bicycling, Chapter 4 includes the promotion of youth development and job training for a green economy, and Chapter 5 includes goals for the expansion of recycling and reducing waste.

### RATIONALE FOR RECOMMENDATION

The proposed lease offers the following benefits to the City:

- Waterside Workshops has been a good steward for the buildings and Aquatic Park for the past 20 years.
- The proposed use will continue to provide community-serving activities, including public bicycle repair sessions, and a small café; in addition to youth training opportunities.
- Bicycle activities will increase opportunities for the public to explore Aquatic Park, and to connect via I-80 pedestrian bridge to the Bay Trail and the Berkeley Waterfront.

Lease Agreement: Waterside Workshops for the properties at  
80 (North Building), 82/84 & 90 Bolivar Drive, Aquatic Park

CONSENT CALENDAR  
September 13, 2022

- These activities are expected to continue to attract people and families to Aquatic Park.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6711

Christina Erickson, Deputy Director, Parks, Recreation & Waterfront, 981-6703

Mollica Sokhom, Assistant Management Analyst, 981-6437

Attachments:

1: Ordinance

Exhibit A: Lease Agreement

ORDINANCE NO. -N.S.

LEASE AGREEMENT WITH WATERSIDE WORKSHOPS TO USE CITY  
PROPERTIES LOCATED AT 80, 82/84, & 90 BOLIVAR DRIVE IN AQUATIC PARK

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

Section 1. The City Manager, or his designee, is hereby authorized to execute a lease agreement with Waterside Workshops for the property location at 80 (North Building), 82/84 and 90 Bolivar Drive in Aquatic Park with a lease term beginning on November 1, 2022, ending November 1, 2031. The estimated revenue is \$24,750. The lease shall be substantially in the form attached hereto as Exhibit "A".

Section 2. All revenue from said lease shall be deposited in the Park Tax Fund in a specific revenue account (Budget Code 450-5801-363.10-04) and used to maintain public facilities in Aquatic Park.

Section 3. Copies of this bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen calendar 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.

Exhibit A: Lease Agreement

**CITY OF BERKELEY**  
**IMPROVED PROPERTY LEASE**

Between

THE CITY OF BERKELEY, A CHARTER CITY  
ORGANIZED AND EXISTING UNDER THE LAWS  
OF THE STATE OF CALIFORNIA

as Landlord,

and

WATERSIDE WORKSHOPS

as Tenant.

For the Properties at  
80 (North Building), 82, 84 & 90 Bolivar Drive  
Berkeley, CA

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**PROPERTY LEASE**

**BASIC LEASE INFORMATION**

- 1. Landlord: City of Berkeley, a California municipal corporation  
2180 Milvia Street  
Berkeley, CA 94704  
Attention: Director, Parks, Recreation & Waterfront  
Telephone: (510) 981-6437  
Email: parks@cityofberkeley.info
- 2. Tenant: Waterside Workshops
- 3. Tenant Trade Name: Waterside Workshops
- 4. Effective Date: November 1, 2022
- 5. Premises: Four buildings (as depicted in Exhibit “A”) located at the northeast side of Aquatic Park Approx. ½ an acre, including 4 buildings that together are approx. 5,265 square feet, plus outdoor space between the buildings. Public dock and garden area shared with BORP.
- 6. Permitted Uses: The premises shall be used for public bicycle rentals and sales, community bicycle repair space, boat building space, storage area, and a small café.
- 7. Initial Term: Ten (10) year(s), commencing as of November 1, 2022 (“**Commencement Date**”).
- 8. Option Period: Five (5) years.
- 9. Base Rent: \$1,800 per year with \$150 increase annually
- 10. Improvements Tenant will invest approx. \$166,200 in capital improvements. This includes ADA bathroom renovations, dry rot repairs, window and door repairs and replacements, painting, siding repairs, and ADA repairs and improvements throughout the premises.
- 11. Maintenance Tenant will invest approx. \$50,000 in ongoing maintenance, including landscaping, graffiti abatement, pest control, and maintenance of plumbing, electrical and building systems.
- 12. Services Landlord pays for water and sewer. Tenant pays for all other utilities including electricity, gas, garbage, and telephone. Tenant pays electrical services associated with Dreamland bathrooms.

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD’S INITIALS

TENANT’S INITIALS

LEASE

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord or City") and WATERSIDE WORKSHOPS, a non-profit organization doing business at 80, 82, 84 & 90 Bolivar Drive, in Berkeley, CA ("Tenant").

WITNESSETH:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the term and subject to the terms, covenants, agreements and conditions set forth below, to each and all of which Landlord and Tenant hereby mutually agree.

**1. DEFINITIONS**

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

A. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.

B. "Building" shall mean a building on the Premises as shown on Exhibit A.

C. "Lease Year" shall mean each twelve-month period during the term of the Lease commencing upon the effective date of the Lease.

D. "Aquatic Park" shall mean the Aquatic Park as defined in Chapter 6.04 of the Berkeley Municipal Code ("B.M.C.") (attached hereto as Exhibit "B"), as amended or succeeded, and any buildings and other improvements constructed or to be constructed therein. Without limiting the provisions of Section 36 of this Lease, Tenant acknowledges it is not relying on any representations or warranties made by Landlord, Landlord's agents or anyone else in regard to the size or configuration of Aquatic Park or in regard to the nature, location, or appearance of any buildings, improvements, or unimproved property therein.

E. "Main Lagoon" or "Aquatic Park Lake" shall mean that body of water lying between West Bolivar Drive on the west, Addison Street on the north, the Southern Pacific railroad tracks on the east, and the service road on the south.

F. "Premises" are depicted in Exhibit A and shall mean the following portions of 80, 82, 84, and 90 Bolivar Drive:

1. At 80 Bolivar Drive, the North Building as described on Exhibit "A", bounded to the north by the lagoon and bounded to the east by the pathway. The areas to the south and west of the building are shared spaces with BORP, the tenant at Main Building A at 82 Bolivar Drive.

2. At 82 Bolivar Drive, the southern portion of the main building, called Main Building B and depicted in Exhibit "A". This also includes shared use of the common area, public dock, and the garden area shown on Exhibit "A".

3. At 84 Bolivar Drive, the building, bounded to the south by the southern edge of the

building, to the east by the pathway, to the west by the lagoon. This also includes the outdoor area between 82 and 84 Bolivar Drive, which is bounded by the buildings to the north and south, lagoon to the west, and the pathway to the east.

4. At 90 Bolivar Drive, the exterior area of five feet around the perimeter of the building, provided the Premises are setback a minimum of eight feet from any structures or objects including but not limited to the pathways. Where the setback requirements cannot be met, the boundary line of the Premises will be the building itself. On the east side of the building, the property boundary is up to the street. The Premises include the unimproved foundation to the West of the building. The Premises does not include any portion of the lagoon, or any docks or other appurtenances that expend into the lagoon. It does not include exclusive use of any of the surrounding Aquatic Park land beyond that mentioned above.

G. "Facilities Condition Assessments" shall mean the comprehensive review and report of maintenance and repair needs of City-owned buildings conducted by Kitchell Capital Expenditure Managers, Inc., during 2013 and 2014 (dated 2/20/2015). The section of the report pertaining to Building (pages 45) is attached hereto as Exhibit "D", which lists the recommended capital improvements by building system class along with the estimated cost to repair or replace each specified building element or system (Table: CIP Cost Summary, page 45). This list of recommended capital improvements informs the List of Required Improvements set forth in Exhibit "C".

I. "Public Dock" shall mean the public boat launching dock serving the Main Lagoon and located adjacent to the parking area of the Premises (as depicted in the aerial view of the Premises appearing in Exhibit "A").

## 2. TERM

A. Initial Term and Term of Renewal. The initial term is for a period of approximately ten years. Tenant has the option, under certain terms and conditions as described below, to renew this lease for an additional five-year term. This Lease shall take effect once duly approved by the Berkeley City Council and executed by both Landlord and Tenant ("the Effective Date"). The Initial Lease Term will expire at midnight October 30, 2032 ("the Termination Date").

B. Procedure for Renewal. If Tenant wishes to renew the Lease beyond the Initial Lease Term, Tenant must provide written notice of such intent to Landlord at least one hundred and twenty (120) days prior to the expiration of the Initial Term. If Landlord, in its sole discretion, determines that Tenant has complied with all terms and conditions of the Lease, at least sixty (60) days prior to expiration of the Lease, Landlord shall provide written notice to Tenant of any additional improvements that will be required to be completed by Tenant or increase in rent for a single five-year renewal term and shall provide notice of its determination to grant renewal of the lease upon condition that Tenant agrees to the additional improvements and increase in rent, if any, at least thirty (30) days prior to the expiration of the Initial Term.

## 3. RENT

A. Rent. Tenant shall pay to Landlord as a minimum rental for its use and occupancy of the Premises an annual rent of **ONE THOUSAND AND EIGHT HUNDRED DOLLARS**

**(\$1800.00)** for the first year of the Lease. For purposes of determining Rent, the first year of the Lease is the period up to October 31, 2023 and will be pro-rated for a partial year. In each subsequent Lease Year during the Term, the Rent shall increase by **ONE HUNDRED AND FIFTY DOLLARS (\$150.00)** per year.

B. Percentage of Gross Income from Special Events.

1. In the event that Tenant operates a concession or a revenue-generating special event on the Premises or on the Main Lagoon, then Tenant agrees to pay Landlord, in addition to any fees levied by the City, an amount equal to FIVE PERCENT (5%) of the gross income realized by each such concession or special event during the term of the Lease. A special event is defined as any event in which the participants (groups or individuals) pay an entry fee to the Tenant. Tenant shall make this payment to the Landlord within thirty (30) calendar days from the last day of each special event, together with a financial statement of the gross income from said event. Tenant shall keep true and accurate books and records of each special event. Said books and records shall be retained for at least two (2) years after occurrence of the events to which they relate. Landlord, and/or its designee, shall have the right at reasonable periods and at all reasonable times, and upon at least five (5) days' advance notice to Tenant to inspect such books and records. Income from special events does not include any grants or donations Tenant receives.

2. If any special event is likely to preclude some or all users of Aquatic Park from exercising a different use, and/or is a regatta, race, or pageant in Aquatic Park and/or on the Main Lagoon, Tenant shall first obtain a permit from the City, as required by Resolution No. 58,644-N.S. and Section 6.04.060 of the Berkeley Municipal Code. The fees for such permits shall be set by the City Council. Water use permits (by definition, for an event lasting no more than two weeks), may be issued by the Parks Recreation and Waterfront Department. Tenant understands that this Lease does not guarantee that the City, in its regulatory capacity, will grant any particular request for a permit. Tenant understands that the City may grant or deny such permit in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion.

C. Manner of Payment. All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing.

D. Delinquency and Late Charges; Interest.

1. Tenant hereby acknowledges that its late payment of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and overtime wages. Accordingly, any payment of rent or other sum due hereunder that remains due and unpaid for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge of ten percent (10%) of the delinquent amount. The parties agree that such charge represents a fair and

reasonable estimate of the costs Landlord shall incur by reason of Tenant's late payment. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any rent then due. Acceptance of such delinquency charges by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount. The delinquency charge is in addition to all other remedies that Landlord may have under this Lease or at law.

2. Any amount due to Landlord, if not paid when due, shall bear interest from the date due until paid at the rate of the twelve percent (12%) per annum. Interest shall not be payable on delinquency or late charges nor on any amounts upon which such charges are paid by Tenant, to the extent such interest would cause the total interest to exceed that legally permitted. Payment of interest shall not excuse nor cure any default hereunder by Tenant.

E. Accord and Satisfaction. Landlord's acceptance of a lesser amount of rent or other sum due hereunder shall not be deemed to be other than on account of the earliest rent or payment due and shall be applied by Landlord as provided in subsection D. 1. No endorsement or statement on any check or letter accompanying any such check or payment shall be deemed an accord and satisfaction, and Landlord may accept such check or payment and pursue any other remedy available under this Lease or at law. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required hereunder (if required) and without invalidation of any notice required pursuant to California Code of Civil Procedure Section 1161, et seq., or any successor statute.

#### 4. PROPERTY AND OTHER TAXES

A. Possessory Interest Taxes. The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Property or the Premises by reason of its use or occupancy thereof or otherwise.

B. City of Berkeley Assessments. Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Property and/or the Premises by the City. Tenant acknowledges that City has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. The City reserves the right to create additional districts and to terminate any such district(s). Tenant shall be billed for each such assessment in the same manner as other property owners and lessees in the City.

C. Personal Property and Other Taxes. In addition to all other sums to be paid by Tenant hereunder, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the term of the Lease on Tenant's equipment, furniture, fixtures, merchandise, and other

personal property located in the Premises, and shall pay, or shall reimburse Landlord for, any and all assessments (including, without limitation, all assessments for public improvements, services or benefits, irrespective of when commenced or completed), excises, levies, business taxes, Lease, permit, inspection and other authorization fees, transit fees, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, or imposed by any public authority: (i) upon or measured by rental payable hereunder, including without limitation, any gross income tax or excise tax levied by the City of Berkeley, Alameda County, the State of California, the Federal Government or any other government body with respect to the receipt of such rental; (ii) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the or any portion thereof; (iii) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, merchandise, and other personal property located at or in the Premises or by the cost or value of any improvements made by Tenant to the Premises, regardless of whether title to such improvements shall be in Tenant or Landlord; or (iv) upon this Lease or any document to which Tenant is a party creating or transferring an interest in the Premises.

D. Tenant's Right to Contest. Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien, and that Landlord shall not be required to join in any proceeding or contest brought by Tenant.

## **5. USE OF PREMISES AND THE AQUATIC PARK MAIN LAGOON**

A. The Premises shall be used for public bicycle rentals and sales, community bicycle repair space, public boat rentals, boat building space, storage area, and a small café.

B. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and the standards promulgated by Landlord.

C. Tenant understands that motorboats may be used on the Main Lagoon at Aquatic Park only from May 1<sup>st</sup> through September of each Lease Year on a schedule to be approved by the City of Berkeley's Director of Parks, Recreation, and Waterfront. For safety and instructional purposes while using the Main Lagoon, Tenant may use three motorboats, power by four-stroke outboard motors, provided the speed of said boats does not exceed 11 MPH, except in case of emergencies. At all times, Tenant agrees to provide adequate personnel to ensure the safe and efficient management of its use of the Premises and the Main Lagoon. Tenant must comply with all applicable regulations governing the use of the Main Lagoon and Aquatic Park. Tenant may not use motorboats on any portion of the Main Lagoon from October 1<sup>st</sup> through April 30<sup>th</sup>, due to the fact that environmental studies show use during those months would impact migratory birds. Any such use of the Main Lagoon during this period is subject to approval of the City Council and other affected regulatory agency.

D. At all times, Tenant agrees to provide adequate personnel to ensure the safe and efficient management of its use of the Premises and the Main Lagoon. Tenant must comply with all applicable regulations governing the use of the Main Lagoon and Aquatic Park. Tenant

acknowledges that the City may alter the permitted scope of usage of the Main Lagoon and Aquatic Park in its sole discretion, and the City's regulations shall take precedence over any agreements between Lagoon users.

E. Prior to entering and using the Main Lagoon, Tenant shall have complied with Section 15 - Insurance, of this Lease. In addition, Tenant, and any of its participants or guests of guests of its participants entering and using the Main Lagoon shall sign a waiver and release form to be provided by the Tenant that holds the City of Berkeley harmless in case of any accidents or loss of any type. Such release shall include, but not be limited to, the following:

“Participant releases and forever discharges the City of Berkeley, its divisions, subsidiaries, affiliates, officers, agents, employees, and the heirs, executors or assigns of any of the foregoing, from any and all claims, demands, and causes of action of every kind, known or unknown, whether based in tort, contract, breach of warranty, strict liability, negligence or any other legal theory of recovery, and whether for general, special, compensatory or punitive damages, arising out of or in any way related to use of the Main Lagoon at Aquatic Park.”

In the event Tenant fails to obtain a signed waiver and release form from any member or guest of its participants who uses the Main Lagoon or is in any way connected to the use of the Main Lagoon, Tenant at all times will still be bound by Section 14 of this Agreement.

F. Tenant will comply with all applicable safety standards in effect at any given time, and take all necessary steps to ensure that its participants and guests of its participants are properly supervised and trained to prevent injury to themselves and others. Tenant will provide adequate supervision and training of its participants and guests of in their use of the Premises and/or Main Lagoon.

G. Landlord shall have no responsibility for Tenant's equipment, vehicles or personal property that may be lost, stolen, or damaged.

H. With the exception of Tenant's equipment stored within the Premises, no items will be allowed to be stored in the exterior Premises without written approval by Landlord. In no circumstances shall items not related to the Tenant's programs be allowed to be stored on the Premises, either inside or outside.

I. Tenant agrees to require its participants and guests of participants who use the Premises and/or Main Lagoon to respect other Aquatic Park lessees, licensees and visitors and to abide by standards of behavior common to the sport of rowing, bike riding, and general park use.

J. Business may be conducted with the public on the Premises during park hours, provided that Tenant shall have obtained all required permits and provided Tenant shall comply with all rules applicable to Aquatic Park.

K. Tenant agrees to cooperate with the City in promoting community participation in Tenant's programs and activities held on the Premises.



L. Tenant shall not, without the written consent of Landlord:

1. place, construct or maintain in, on, or about the Premises or within Aquatic Park any advertisement media, including without limitation, searchlights, flashing lights, loudspeakers, or other similar media or device;
2. place or permit the use in or on the Premises of any video games, pinball machines or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks or other coin operated devices (excepting pay telephones).
3. warehouse or stock on the Premises any goods, wares or merchandise other than that which is directly related to the Tenant's use of the Premises;
4. store, display or sell goods or merchandise on the Premises or place or permit portable signs or other devices to be stored or to remain on the Premises;
5. use or permit any portion of the Premises to be used as living or sleeping quarters; and
6. sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of Aquatic Park.

M. Tenant shall not do or permit to be done in, on, or about the Premises anything which is prohibited by or may conflict with any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, which is prohibited by the standard forms of special form or commercial general liability insurance or which may cause a cancellation of any insurance policy covering Aquatic Park or the Premises or any of its contents, or (except with the prior written consent of Landlord) which may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon Aquatic Park or the Premises, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Premises or the Aquatic Park which increases the existing rate of such insurance upon Aquatic Park or the Premises or any of its contents, Tenant shall pay the amount of any such increase promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of Aquatic Park, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Premises to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Premises or commit or suffer to be committed any waste in or upon the Premises.

N. No auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale shall be conducted on the Premises nor shall any sign or advertisement regarding such activity be posted in or about the Premises.

O. Tenant shall not use or permit the Premises to be used in any manner or permit anything to be brought into or kept therein which would (i) violate the certificate of occupancy

for the Premises; (ii) make it impossible or extraordinarily difficult to obtain special form coverage, commercial general liability or other insurance required to be furnished by Tenant under this Lease; (iii) cause structural injury to any part of the Premises or the Building; (iv) impair or interfere with the proper operation and maintenance of the Premises and/or Aquatic Park; or (v) violate any of Tenant's other obligations under this Lease.

P. If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

Q. Nothing shall be done in or about the Premises by Tenant or anyone having a contractual relationship with Tenant that will result in substantial interference, by themselves or third parties, with normal operation and use of Aquatic Park or the means of ingress and egress thereto ("Substantial Interference"). Tenant shall use every effort to eliminate Substantial Interference, including legal action. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to take action and require Tenant to undertake and eliminate such Substantial Interference and (ii) to commence any legal action to eliminate such Substantial Interference. Any agreement entered into by Tenant with regard to use of the Premises shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this provision and authorizing Landlord to enforce the terms of such provision if Tenant fails to do so.

R. Tenant acknowledges that West Bolivar Drive is closed to vehicular traffic and that Landlord has installed a gate to prohibit such traffic. Landlord agrees that Tenant and its Affiliates may use West Bolivar Drive to access the Premises, provided that Tenant and its Affiliates shall close the gate after each entry and exit.

S. Tenant agrees to submit to the Landlord, by June 1<sup>st</sup> of each Lease Year, an annual report that describes the Tenant's community activities in the prior year, including:

1. List tenant's community activities in the previous year, with the number of participants volunteering and the total hours at each day of community activity.
2. List number of participants, number of participants from Berkeley, number of participants who are under 18 or other member subgroups the organization believes is appropriate to mention.
3. Tenant shall identify the fee structure utilized during the previous year, including dues for Berkeley residents, non-Berkeley residents, and different sub-groups if applicable.
4. Approximate level of usage, such as number of people per day, number of person-hours per day, or comparable information. If there is variation from one time of year to another, then this information shall be reported by season.
5. Tenant shall discuss any Aquatic Park lagoon use scheduling or issues with other park users. If there are no issues, a statement to that effect is required.

T. Tenant agrees to post on the Premises references to the Organization's website for

information concerning the Organization's programs and goals, events, and contacts to discuss and facilitate participation.

**6. USE OF AQUATIC PARK PROPERTY**

A. The parties acknowledge that Tenant has, as a member of the general public, the non-exclusive right, in common with others duly authorized by Landlord, and subject to all generally applicable laws and regulations, to use Aquatic Park, including the Main Lagoon.

B. Tenant agrees that except as otherwise provided in this Lease, it is not a covenant or condition of this Lease or of any other agreement with Tenant that Landlord undertake or cause to be undertaken any development or redevelopment of the Premises or Aquatic Park, and Landlord shall incur no liability whatsoever to Tenant for failure to undertake such development or redevelopment.

C. Landlord at all times shall have the right and privilege of making such changes in and to Aquatic Park (other than to the Premises) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle Landlord to unreasonably effect changes that would materially and adversely affect access to or visibility of the Premises, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning Aquatic Park, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same.

D. Landlord at all times shall have the sole and exclusive management and control of Aquatic Park, including without limitation, the right to lease, license or permit the use of space within Aquatic Park to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, and promotional activities and entertainment.

E. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other Premises of Tenant's participants, employees or others, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees. Tenant is solely responsible for the security of the Premises, and for the safety of its participants and guests using the Premises and/or the Main Lagoon pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for Aquatic Park or any portion thereof, Landlord does not represent, guarantee or assume responsibility that Tenant or any person or entity will be secure from losses or injury caused by the acts of third parties and does not assume responsibility for any such illegal acts. Tenant hereby waives any present or future claims Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of

Tenant or any other person or entity.

F. Tenant will use its best efforts to maintain effective relations with other users of Aquatic Park and with neighbors. Tenant shall park vehicles only in legal and/or designated parking areas and only for the legal period of time; shall deposit all trash in legal containers; shall not deposit food or material of any kind on adjacent Premises; and shall respect the sensitive environment of Aquatic Park. Landlord has the right at any time to revise the traffic flow on Bolivar Drive, provided Tenant continues to have vehicular access to the Premises.

G. Tenant shall not interfere with the free and unobstructed access by the public to Aquatic Park. Tenant shall not preclude other users of Aquatic Park from exercising a different use without first obtaining any and all appropriate permits. Tenant shall be obligated to permit such access to Aquatic Park as required for consistency with applicable laws of the State of California, and/or City's plans adopted from time to time; however, this sentence is not intended to, and shall not be construed to, confer any right of action upon any third party.

H. Landlord reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across, in or on the Premises in locations that will not unreasonably interfere with Tenant's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or to the Building, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by Landlord at its expense, if not so repaired by the party installing and maintaining the line. Landlord shall hold harmless and indemnify Tenant from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Tenant or its sub-lessees or sub-tenants.

## 7. SERVICES

A. Landlord shall provide and maintain water and sewer service to the Premises. Tenant shall maintain the water and sewer lines within the Building. Landlord shall pay the costs of the water and sewer service. Tenant shall pay for and be responsible for all other utilities and services, including electric, gas, garbage and telephone, and all fees and periodic charges related thereto. Tenant agrees to pay electrical services associated with Dreamland bathrooms, as they share a meter with 90 Bolivar Drive.

B. Landlord makes no representation or warranty that the supply of any utility or service to the Premises and/or the Building will not be interrupted, delayed or reduced.

C. Landlord shall not be liable for damages to either person or property; nor shall Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity gas, or telecommunications

service serving the Premises or Aquatic Park; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

**8. OBLIGATION OF TENANT TO REMOVE PERSONAL PROPERTY**

Upon the expiration of this Agreement, Tenant is obligated to remove any personal property placed in the Premises by the Tenant. If any personal property does remain on the Premises upon the expiration of the Agreement it will be considered abandoned personal property, which will be removed, by the City and the Tenant will be responsible for all costs associated with removing the personal property from the Premises.

**9. ALTERATIONS AND IMPROVEMENTS**

A. Tenant acknowledges that Landlord owns the Premises. Tenant accepts the Premises from Landlord in its "as is" condition, the conditions that exist as of the Effective Date of this Lease. Tenant acknowledges that Landlord makes no representation or warranty concerning (i) the physical condition of the Premises; (ii) the Premises suitability for Tenant's proposed use; or (iii) the presence of any Hazardous Substance in or about the Premises, except as otherwise expressly set forth in this Lease. Landlord has encouraged Tenant to make its own physical inspection of all aspects of the Premises and to conduct its own investigation as to the suitability of the Property and the Premises for Tenant's use.

B. Upon the execution of this Lease, Landlord approves and requires the improvements to the Premises listed on Exhibit "C" that shall be completed by Tenant. Tenant shall complete the improvements within the timeframe as stated in Exhibit "C" (Tenant's Work). Tenant shall not make any alterations, additions or improvements to the Premises (i) costing in excess of \$5,000 for any single instance or \$15,000 in the aggregate for any twelve (12) consecutive months or (ii) affecting the Building structure or utility systems, or attach any fixture or item of equipment thereto without Landlord's prior written consent except for the Fence and the improvements listed in Exhibit "C". All such alterations, additions, or improvements shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and approved by Landlord (collectively the "Plans and Specifications"). If the cost thereof exceeds \$5,000 for any single instance, or if such Tenant's Work involves the Building structure or utility systems, any contractor or person selected by Tenant must be a licensed contractor. Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances, including but not limited to asbestos and fiberglass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's Work shall require a building permit or other permits from the City of Berkeley, Bay Conservation and Development Commission ("BCDC") and/or any other governmental agency, Tenant shall not perform any of Tenant's Work until Tenant has obtained all requisite permits. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent such requirements are applicable to Tenant's work.

C. Except as otherwise expressly provided in this Lease, Tenant shall not repair,

replace or modify any utility system located within the Building without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Building(s), facilities of Landlord or any other facilities arising out of Tenant's construction activities or Tenant's negligence or willful misconduct; provided, however, such provision is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof.

D. This Lease specifically prohibits Tenant, or any other party, from expanding uses or structures allowed on the Premises beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new Use Permit allowing expansion, or any future expansion of the uses in existing buildings, or additions to existing buildings or docks, or construction of any new buildings or docks, or moving existing buildings onto the Premises, are all subject to the prior written approval of the Landlord (with the exception of the Exhibit "C" Improvements) and all improvements (including Exhibit "C" Improvements) are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.

E. If Tenant proposes to make or construct any alterations, improvements, additions or fixtures (other than Exhibit "C" Improvements) that affect any portion of the Premises or any structures located on the Premises that are allowed under an existing use permit, Tenant shall first provide the Landlord with thirty (30) days prior written notice. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits.

F. Except for Exhibit "C" Improvements, Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Premises without first providing thirty (30) days written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits. Except as may be specifically approved in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed \$50,000, including any applicable Exhibit "C" Improvements. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant in, at, upon or about the Premises and which may be secured by any mechanic's, material men's or other lien against the Premises or Landlord's interest therein.

All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the Property of Landlord and shall remain with the Property at the termination of this Lease, except that Landlord can elect within thirty (30) days of the termination of the Lease to require Tenant, at its cost, to remove any equipment that Tenant has affixed to the Premises.

G. 1. Tenant hereby agrees in accordance with the schedule set forth in Exhibit "C" to undertake and complete all of the recommended capital improvements.

2. Tenant understands the Premises were inspected by the City's Certified Access Specialist CAsp. The Lessee acknowledges receipt of their findings and many of these are

incorporated into planned improvements in Exhibit C. City makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to comply with the ADA or similar legislation, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense. City shall have no responsibility to make any repairs or modifications to the premises in order to comply with accessibility standards, except as set forth in other provisions of this Lease.

3. The parties acknowledge and agree that one of the principles underlying the terms and conditions of this Lease is Tenant's agreement to perform specified capital improvements on the Premises in exchange for abated rent and a 10-year term of occupancy. The parties have thoroughly inspected the Building and Premises and have entered into this Lease on the assumption that the capital improvements set forth in Exhibit C represents a reasonable estimate of the improvements necessary to preserve, enhance and improve the condition of the Building through the term of this Lease. However, the parties also acknowledge and agree that certain events (for example, latent or unanticipated defects or damage to the Premises, accessibility requirements, etc.) may give rise to substantial, unavoidable expenses that materially and adversely affect Tenant's ability to perform its obligations under this Lease. In such event, upon Tenant's written notice to Landlord, Landlord shall temporarily defer declaring default pursuant to Section 19 of this Lease, and the parties, in good faith, shall employ their best efforts to negotiate amendments to the Lease that recognize Tenant's financial hardship while preserving to the extent possible the original terms and intent of the Lease. In the event the parties are unable to reach agreement on such amendments, either party may terminate this lease upon 30 days' written notice to the other. Upon such termination, Tenant shall vacate the Premises in accordance with Section 2.B. and shall be relieved of all other obligations under this Lease.

H. 1. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty to Landlord, shall forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

2. Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on Tenant's Work covered by this subsection H showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section

1776 of the California Labor Code. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after Landlord gives Tenant written notice specifying in what respects Tenant must comply, Tenant shall forfeit, as a penalty to Landlord, for each worker Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated. Tenant shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section. For purposes of the prevailing wage requirements of this subsection, Tenant shall be deemed to be a "contractor" as that term is used in Sections 1720 et seq., of the California Labor Code. Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq., of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this subsection H.

**10. LIENS**

Tenant shall keep the Premises, the Building, and Aquatic Park free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Premises any notices (including, without limitation, notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper for protection of Landlord and the Premises. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Premises to allow Landlord to post such notices.

**11. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS**

A. Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the Building on the Premises, and all leasehold improvements, fixtures, furniture, and other improvements located on the Premises in good-quality order, repair and condition. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Building, Public Dock, or other area in the Premises, whether required by deterioration or by operations of Tenant or otherwise. This obligation includes any repairs to the roof or building structure.

B. To the extent applicable, Tenant hereby waives the provisions of Civil Code Sections 1941 and 1942, and any other provision of law now or hereafter in effect, with regard to the habitability of the Property and the Premises.

C. "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Building, equipment, furniture, fixtures, outdoor



lighting, signage, and appurtenances necessary to keep and maintain the Building in efficient and attractive condition, given the nature and age of the Building, at any time during the term of this Lease.

D. Tenant shall provide its own janitorial service for the Premises, and all of Tenant's rubbish shall be removed by Tenant to such location(s) on the Premises or within Aquatic Park as may be designated by Landlord for pick-up and disposal by the Landlord.

E. Tenant shall maintain or cause to be maintained, at Tenant's expense, the Public Dock adjacent to the Premises.

F. In the event of a dispute that Landlord and Tenant cannot informally resolve, Tenant's only remedy against Landlord shall be the right to terminate this Lease, effective thirty (30) days from the delivery of written notice to Landlord.

G. Nothing in this Section 11 shall be deemed to affect or impair Landlord's rights under Section 9 of this Lease. Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Building or to improve the Premises, or any part thereof. Other than as set forth in the Facilities Condition Assessments, Landlord has made no representations respecting the condition of the Building, the Premises, or Aquatic Park, except as specifically set forth in this Lease.

## **12. ENVIRONMENTAL**

A. Tenant shall follow all environmental rules and regulations as they apply to City agencies. Specifically, Tenant shall minimize waste and recycle and compost. Tenant must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of the City's Recycling Supervisor. To that end, Tenant shall:

1. Assign someone to be in charge of its recycling programs, and to communicate needs and questions to the City's Zero Waste Division.
2. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles, and cans)
3. Place collection containers for paper at convenient locations.
4. Educate employees and program participants about recycling procedures.
5. Recycle batteries and office equipment (contact the City's Zero Waste Division for information about vendors).
6. Tenant shall recycle construction waste from tenant improvements.
7. Tenant shall conserve energy.

## **13. DAMAGE OR DESTRUCTION**

A. In the event the Premises are damaged by fire, flood, earthquake, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Section 13) Tenant shall forthwith repair the same, at its sole expense. In this event, Tenant shall be solely responsible for the loss, repair, and replacement of its equipment and leasehold improvements.

B. Anything in subsection A to the contrary notwithstanding, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Premises or the Buildings following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the replacement cost of the Premises or Buildings, as the case may be. If the responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

C. Tenant hereby waives the provisions of California Civil Code Sections 1932 and 1933 and any other statutes now or hereafter in effect which relate to termination of a lease when leased Premises is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

#### **14. INDEMNIFICATION**

A. To the fullest extent permitted by law, Tenant shall (1) immediately defend and (2) indemnify Landlord, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the Lease. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Tenant's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

B. The duty to defend is a separate and distinct obligation from the Tenant's duty to indemnify. The Tenant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Tenant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Tenant from its separate and distinct obligation to defend Landlord. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Tenant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Tenant may submit a claim to the Landlord for reimbursement of reasonable attorneys' fees and defense costs.

C. The review, acceptance or approval of any of Tenant's work or work product by any indemnified party shall not affect, relieve or reduce the Tenant's indemnification or defense

obligations. This Section survives the termination of this Lease. The provisions of this Section are not limited by and do not affect the provisions of this Lease relating to insurance.

D. Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Tenant or any of the Tenant's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Tenant or its subcontractors, the Tenant shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

## 15. INSURANCE

A. Tenant, at its sole expense, shall procure and maintain the following insurance:

1. Commercial general liability insurance insuring Tenant against any liability arising out of its use, occupancy, repair or maintenance of the Premises, the Building, Aquatic Park or the Main Lagoon, with a combined single limit of not less than \$2,000,000 for injury to or death of one or more persons in any one accident or occurrence and Property damage in any one accident or occurrence. Such comprehensive general liability insurance shall include fire liability coverage and public liability and Property damage insurance, including personal injury, broad form Property damage, blanket contractual, and other coverage as may be reasonably required by Landlord. Landlord shall have the right, from time to time, to require Tenant to increase the amount of its comprehensive general liability insurance coverage if, in Landlord's reasonable opinion, the amount of such coverage is not sufficient in light of the risks insured and Tenant's use of the Premises or Aquatic Park.

2. Special Form Property insurance for cost of damage to the Premises, including, without limitation, during any term of construction of Tenant's Work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious mischief and cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

B. All policies of insurance and all renewals thereof shall be approved as to form and sufficiency by Landlord's Risk Manager and shall be issued by good and responsible companies qualified to do and doing business in California and rated A+: XIII or better in the most recent version of Best's Insurance Guide. Each of the required insurance coverages except for workers compensation (i) shall name Landlord and each of its Affiliates as additional insureds and, with respect to casualty insurance, as their respective interests may appear and (ii) shall provide that it may not be canceled or altered by the insurer in such manner as to adversely affect the coverage unless sixty (60) days' prior notice is given by certified mail to Landlord at the address set forth in Section 35 below, or to such place as Landlord may from time to time designate in a notice to Tenant.

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Premises is delivered to Tenant and from time to time during the Term. If

Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such insurance coverage has been or will be renewed or extended shall be delivered to Landlord and if, despite such good faith efforts, such extension endorsement cannot be timely delivered, Tenant shall cause to be delivered to Landlord within said time other reasonable documentary evidence of renewal of coverage and shall continue exercising diligent efforts to deliver to Landlord the required extension endorsement. If such coverage is canceled or reduced, Tenant, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, shall deliver to Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company(ies). Upon Tenant's failure to so deliver such certificate, Landlord may, without further notice and at its option, (1) exercise Landlord's rights as provided in this Lease or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse Landlord for such expense.

D. If any of the insurance required in this Section 15 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

E. Each of Tenant's Property insurance policies insuring the Premises and Tenant's Property in the Premises shall include a waiver of the insurer's right of subrogation against Landlord, or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof.

F. Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's Property occurring during the Term to the extent to which Tenant is insured under a policy (ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in E. above. If, notwithstanding the recovery of insurance proceeds by Tenant for such loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

G. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; **provide for a waiver of any right of subrogation against Landlord to the extent permitted by law**; and be approved as to form and sufficiency by the Landlord's Risk Manager.

H. If a death, serious personal injury, or substantial Property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the Landlord may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Tenant's subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

I. Tenant shall forward all insurance documents to:

Parks, Recreation & Waterfront  
City of Berkeley  
2180 Milvia St., 3<sup>rd</sup> Floor  
Berkeley, CA 94704

## 16. COMPLIANCE WITH LAWS

A. Tenant, at its sole expense, shall promptly comply with all applicable laws, ordinances, rules, regulations, permits or requirements now or hereafter in effect (whether foreseen or unforeseen by Landlord or Tenant), with the requirements of any board of fire underwriters or similar body now or hereafter constituted; with any occupancy certificate issued by any public officer and with the provisions of all recorded documents affecting the Premises, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Premises or the Building. Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Premises (and, as applicable, the Building), or construct improvements in or to the Premises, regardless of cost and regardless of when during the term of the Lease the work is required.

B. Tenant acknowledges that conducting its operations at the Premises and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Premises, including but not limited to the Bay Conservation and Development Commission. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord, except for the Fence and items listed on Exhibit "C". All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible

for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate, and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers, and duties as a regulatory agency with certain police powers.

C. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City of Berkeley with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards, or commissions that have jurisdiction over the Premises. By Landlord's entering into this Lease, neither Landlord nor any of City Council, boards, commissions, agencies, departments, or Affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises or Aquatic Park. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises or Aquatic Park. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all laws.

## 17. ASSIGNMENT AND SUBLEASE

A. Any provision of this Lease to the contrary notwithstanding, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Premises or Tenant's interest in and to the Premises (collectively, an "Assignment") or sublet the Premises or any portion thereof or permit the Premises or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without first obtaining Landlord's written consent. Any assignment, encumbrance, or sublease without Landlord's written consent shall be voidable and, at Landlord's election, shall constitute a default. City has the sole discretion to determine whether to agree to any sublease or

assignment. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this subsection.

B. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Tenant, in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law. Possession of the Premises shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

C. Tenant expressly waives any rights that it might otherwise be deemed to possess pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

## **18. INSPECTION**

Landlord may enter the Premises at all reasonable times (with reasonable advance notice except in case of emergency) (i) to inspect the same; (ii) to exhibit the same to prospective purchasers, mortgagees or tenants; (iii) to conduct tests, inspections and surveys to determine whether Tenant is complying with all of its obligations hereunder; (iv) to post notices of nonresponsibility or other notices that may be permitted hereunder; (v) to post "to Lease" signs of reasonable size upon the Premises during the last ninety (90) days of the Term; and (vi) to make repairs required or permitted to be made by Landlord or repairs to any adjoining space or any utility systems or to make repairs, alterations or additions to any other portion of the Building or Aquatic Park; provided, however, that all such work shall be done as promptly and with as little interference to Tenant as reasonably possible. Tenant hereby waives all claims against Landlord for any injury or inconvenience to or interference with Tenant's business or any loss of occupancy or quiet enjoyment of the Premises resulting from Landlord's entry into the Premises or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency to obtain entry to the Premises. Tenant also shall provide Landlord with written notice of the name, address, telephone number, and Tenant's account number of the burglar alarm company (if any) utilized by Tenant for the Premises. Any entry to the Premises by any of said means or otherwise shall not under any circumstances be deemed a forcible or unlawful entry into or a detainer of the Premises or an eviction (actual or constructive) of Tenant from the Premises.

## **19. DEFAULT**

The occurrence of any one of the following shall constitute an event of default on the part of Tenant:

A. Failure to Use Premises. Failure to use the Premises as specified in Sections 5 and 6.

B. Nonpayment of Rent. Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a period of five (5) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.

C. Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for thirty (30) days after notice of such failure from Landlord or such longer period as is reasonably necessary to remedy such default, provided that Tenant has commenced to remedy the default within such thirty (30) day period and shall continuously and diligently pursue such remedy until such default is cured.

D. General Assignment. A general assignment by Tenant for the benefit of creditors.

E. Bankruptcy. The filing of a voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and to continue to perform the obligations of Tenant hereunder, such trustee or Tenant, in such time period as may be permitted by the bankruptcy court having jurisdiction, shall cure all defaults of Tenant hereunder outstanding as of the date of affirmance and shall provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations hereunder. Any transferee (by operation of law or otherwise) must provide Landlord with adequate assurance of its future performance under this Lease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Lease shall be governed by Section 365 of Title 11 of the United States Code applicable to shopping center leases.

F. Receivership. The employment of a receiver to take possession of all or substantially all of Tenant's assets in the Premises.

G. Insolvency. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Premises; the admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or if, within thirty (30) days after the commencement of any proceeding against Tenant seeking reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation, such proceeding shall not have been dismissed.

H. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts. Any release or discharge in, on, under, around, or from the Premises



and/or Aquatic Park by Tenant, its agents or employees of Hazardous Substances which has not been fully cleaned up within ten (10) days after such release or discharge. Any negative impacts to the natural habitat and environment of Aquatic Park and/or the Main Lagoon caused by Tenant that are documented by a qualified, independent source and for which reasonable remediation measures are not available, or the Tenant fails to cooperate with the Landlord in implementing in a timely manner reasonable measures intended to mitigate any negative impacts.

I. Illegal Drugs. Any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the premises.

J. Non-compliance with lease term. Failure to perform any of the obligations and improvements listed on Exhibit "C", such failure continuing for 30 days after notice from the landlord of said default.

## 20. REMEDIES UPON DEFAULT

A. Termination. In the event of the occurrence of any event of default, Landlord shall have the right immediately to terminate this Lease by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove Tenant, any other person or party occupying the same and all Premises located therein, by any lawful means and to reenter the Premises without prejudice to any of the remedies that Landlord may have under this Lease or under law or equity.

B. Continuation after Default. In the event of any default, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under subsection A above. In such case, Landlord may enforce all its rights and remedies under this Lease, including without limitation, the right to recover rent as it becomes due, and all of its rights and remedies under law. Acts of maintenance, preservation, efforts to relet the Premises for Tenant's account or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate this Lease or Tenant's right to possession.

C. Damages upon Termination. Should Landlord terminate this Lease pursuant to subsection A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent and other amounts which had been earned at the time of termination; plus (ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rent loss that Tenant proves reasonably could have been avoided; plus (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would likely result therefrom, including without limitation, the costs and expenses (including brokerage commissions and advertising costs) incurred by Landlord, with or without terminating the Lease, (1) in retaking possession of the Premises; (2)

in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this Lease and otherwise to prepare the Premises for reletting;(3) in removing all persons and personal property from the Premises and transporting and storing any of Tenant's personal property left at the Premises, although Landlord shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; plus (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

D. Computation of Rent for Purposes of Default. For purposes of computing unpaid rent which would have accrued and become payable pursuant to subsection C above, unpaid rent shall include the total rent for the balance of the term of the Lease.

E. Remedies Cumulative. All rights, privileges and elections or remedies of the parties are cumulative and not alternative to the extent permitted by law and except as otherwise specifically provided herein.

F. No Waiver. Landlord's waiver of any breach of a covenant or condition hereof, or Landlord's failure to declare any default immediately upon occurrence thereof or a delay in taking any action in connection therewith shall not waive such breach or such covenant or condition or any subsequent breach thereof. The subsequent acceptance of rent or other monies by Landlord shall not be deemed a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such default at the time of its acceptance of rent.

G. No Right of Redemption. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179 or any other present or future law in the event Tenant is evicted or Landlord takes possession of the Premises by reason of Tenant's default.

## 21. ENVIRONMENTAL OBLIGATIONS

A. Tenant shall not, without Landlord's prior written consent (which consent may be granted or denied in Landlord's sole discretion), install, bring into or release or discharge in, on, under, around, or from the Premises any (i) asbestos-containing materials, (ii) electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB's or (iii) materials which constitute hazardous, extremely hazardous or toxic materials under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 or any other applicable law or regulation concerning hazardous or toxic materials, (collectively "Hazardous Substances") and has not done so prior to the effective date of this Lease. Any Hazardous Substances which are used, stored,

treated, disposed of or released from the Premises by Tenant or its representatives, agents, employees or invitees, shall be used, stored, treated, released and disposed of in accordance with all applicable laws and regulations.

B. If Tenant knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, Tenant shall immediately notify the Berkeley Police Department and the Toxic Management Office and promptly give written notice of same to Landlord. If Tenant knows or has reasonable cause to believe that such substance is an imminent and material danger to public health or safety, Tenant shall take all actions necessary to alleviate such danger. Tenant shall provide to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof and concerning Hazardous Substances. Tenant shall not negotiate or enter into any settlement agreement, consent decree or other compromise in respect of Hazardous Substances affecting the Premises or the Premises without first giving Landlord prior written notice and full opportunity to appear, intervene or otherwise protect Landlord's rights and interests.

C. Without limitation of the provisions of Section 14 hereof, Tenant shall indemnify, defend and hold Landlord and its affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Substances on the Premises, or Aquatic Park by Tenant, its agents or invitees, including without limitation, all costs of monitoring, investigating, and remediation of the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees. This indemnification by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Landlord or required by any federal, state or local governmental agency or political subdivision because of Hazardous Substance present in the soil or groundwater in, on or under the Premises or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises or Aquatic Park, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises. Tenant's obligations under this Section 21.C. shall survive the expiration or termination of this Lease.

## **22. LANDLORD'S RIGHT TO CURE**

All covenants to be performed by Tenant shall be performed at Tenant's sole cost and expense and without abatement of rent. Without limiting Landlord's rights under any other provision of this Lease, if Tenant shall fail to pay any sum of money or shall fail to perform any other act and such failure shall have become an event of default under Section 19, Landlord,

without waiving or releasing Tenant from any of its obligations, may make (but shall not be obligated to make) any such payment or perform any such other act. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent and shall be payable to Landlord immediately upon Landlord's written demand.

**23. EMINENT DOMAIN**

A. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the dates that title vests in the condemning authority or such authority takes possession of the Premises. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other party within thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to terminate this Lease unless the portion of the Premises taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Premises. In the event of any such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards and interest that may be paid or made in connection with such taking. Tenant shall have no claim against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall belong to Tenant.

B. If any part of the Premises shall be so taken and this Lease shall not be terminated, then this Lease shall continue in full force and effect, except that the Rent shall be reduced in the same proportion that the rentable area of the Premises taken bears to the original rentable area of the Premises. Landlord, upon receipt of the award, shall make all necessary repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal Premises, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit and to restore the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an amount in excess of the amount received by Landlord as damages for the taking of such part of the Premises and/or Building; and Tenant, at its sole cost and expense, shall make all necessary repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal Premises, decorations, signs and contents.

C. As used herein, the "amount received by Landlord" shall mean that portion of the award received by Landlord as damages from the condemning authority which is free and clear of all prior claims or collections by Landlord and less reasonable attorneys' and appraisers' fees and expenses.

**24. SUBORDINATION**

A. This Lease shall be subject and subordinated to (i) all ground or underlying leases which have been or may hereafter be executed affecting the Premises, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting Aquatic Park, all

without the necessity of having further instruments executed on behalf of Tenant to effectuate such subordination.

B. Tenant agrees to execute and deliver upon demand such further instruments or documents as may reasonably be required by Landlord to evidence any such subordination of this Lease. Tenant hereby constitutes and appoints Landlord, as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instrument(s) on behalf of Tenant.

**25. NO MERGER**

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies or operate as an assignment to it of any or all such subleases or subtenancies.

**26. TRANSFER BY LANDLORD**

In the event the original Landlord or any successor owner of Aquatic Park shall sell or convey the Premises or the Building, or any portion thereof that includes the Premises, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

**27. ESTOPPEL CERTIFICATES**

From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee, or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance.

**28. HOLDING OVER**

If, after the expiration of the Term of the Lease, Tenant remains in possession of the Premises with Landlord's consent all provisions of this Lease shall remain in effect with the following exceptions: (1) Tenant shall become a tenant from month-to-month, such tenancy

terminable on thirty (30) days' notice given at any time by either party; and (2) the Rent shall increase to 120% of the amount of the rent when the Lease expired.

**29. CHANGES BY LANDLORD**

A. The description of the Premises and the location of any Premises utility system(s), including without limitation electrical, plumbing, shall be subject to such minor changes as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. No such changes shall invalidate or affect this Lease. Landlord shall effect such changes using reasonable efforts not to disturb Tenant's business. Tenant shall have no claim against Landlord for abatement of rent or loss of business as a result of any such disturbance.

B. Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking areas, stairs, landscaping, toilets, and other facilities and portions of Aquatic Park, and to change the name, number or designation by which the Building is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided, however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Premises.

**30. GOVERNING LAW**

This Lease shall be governed by the laws of the State of California.

**31. SECURITY DEPOSIT**

As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease, Tenant shall deposit with Landlord in an amount of **THREE HUNDRED DOLLARS (\$300)**, unless waived in whole or in part by Landlord. Such security shall be deposited on or before the Effective Date of this Lease.

If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this Lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this Lease, or a payment of liquidated damages or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this Lease, Landlord shall return the unused portion of the security deposit to

Tenant within sixty (60) days after the end of the term. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it.

**32. SIGNAGE**

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Premises or on the exterior of the Building (collectively "signage") shall be subject to Landlord's prior written approval. All such signage shall comply with the criteria outlined in Landlord's General Design Requirements (if any) and shall be subject to the following provisions:

A. Tenant, at its sole expense, shall submit to Landlord a written description of all proposed signage, including dimensions, color, proposed location and other pertinent information ("Signage Proposal"). Landlord shall review the Signage Proposal and shall notify Tenant in writing of its approval, or reason(s) for its disapproval, within thirty (30) business days after Landlord's receipt of the Signage Proposal. If disapproved, Tenant shall make all required modifications to the Signage Proposal and shall resubmit the same to Landlord within seven (7) days after its receipt of Landlord's disapproval.

B. Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans ("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same.

C. Upon Tenant's receipt of its sign permit from Landlord, Tenant shall construct and/or install all signage shown on the Sign Plans; in any event, however, Tenant shall complete such construction and/or installation not later than thirty (30) days after the sign permit is issued, unless otherwise agreed to by the City in writing.

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Premises or Building contrary to the terms of this Section 32. If Tenant fails to do so, Landlord may enter upon the Premises and remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Building caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants in Aquatic Park.

**33. NO PARTNERSHIP**

It is expressly understood and agreed that Landlord shall not be deemed in any way or for any purpose a partner, agent or principal of Tenant, in the conduct of its business or otherwise, or a joint venture or member of a joint enterprise with Tenant.

**34. NO WAIVER**

Landlord's waiver of Tenant's breach of any covenant or condition shall not be deemed a waiver of any subsequent breach of the same or any other covenant or condition, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord to insist upon Tenant's performance in strict accordance with the terms of this Lease.

**35. NOTICES**

All notices, demands, consents or approvals which may or are required to be given by either party shall be in writing and shall be deemed to have been received when delivered personally or on the earlier of the date of actual receipt or two (2) business days following deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

**To Tenant:** Waterside Workshops  
84 Bolivar Drive  
Berkeley, CA 94710

**To Landlord:** Parks, Recreation & Waterfront  
City of Berkeley  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

**With copies to:** City Manager City of Berkeley 2180 Milvia Street, 5th Floor Berkeley, CA 94704  
Parks Superintendent City of Berkeley 1325 Bancroft Way Berkeley, CA 94702

Notices to Landlord regarding Hazardous Substances required by Section 21 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Premises.

Tenant will appoint an agent to receive the service of all proceedings, demands, and notices hereunder the person in charge of or occupying the Premises at the time. If no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Premises

**36. COMPLETE AGREEMENT**

This Lease is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding involving this Lease. The language and all parts of this Lease shall be construed as a whole and in accordance with its fair meaning and not



restricted for or against either party. This Lease may be modified or amended only by a written instrument signed by both parties.

**37. REQUESTS FOR CONSENT; WAIVER OF CLAIM**

Tenant hereby waives any claim for damages against Landlord that it may have based upon any assertion that Landlord unreasonably has withheld or has delayed any consent or approval, and Tenant's sole remedy shall be an action for specific performance of such provision, injunction or declaratory judgment. In the event of a final determination in Tenant's favor, the requested consent or approval shall be deemed to have been granted.

**38. INTERPRETATION**

The use of masculine, feminine, or neuter genders shall include the other genders, and the singular shall include the plural and vice-versa. Headings are intended for convenience only and shall not be referred to in construing any provision. If there is more than one party as Tenant, the obligations imposed upon Tenant shall be joint and several. If any provision(s) of this Lease shall be found, to any extent, to be invalid or unenforceable the remainder of the Lease shall not be affected thereby.

**39. SUCCESSORS AND ASSIGNS**

This Lease shall be binding upon and shall inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and shall inure to the benefit of Tenant, its heirs, successors and (to the extent assignment may be permitted hereunder) assigns.

**40. AUTHORITY**

If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing corporation or partnership, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

**41. UNAVOIDABLE DELAYS**

A. In the event that Tenant or Landlord is delayed, directly or indirectly, from the performance of any act or thing required to be done or performed under the terms or conditions hereof by acts of the other party to this Lease, acts of God, fire, floods, inclement weather, unavoidable governmental action, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of materials, acts of war, riot and civil commotion, or by any other cause beyond the reasonable control of Tenant or Landlord, as the case may be, such failure shall not be deemed to be a breach of this Lease or a violation of any such covenants or conditions and the time within which Tenant or Landlord must perform any such act shall be extended by a period of time equal to the period of delay arising from any of such causes.

B. Notwithstanding any provision of this Section 41 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, or payment of any sum due to Landlord under this Lease.

**42. TIME OF THE ESSENCE**

Time is of the essence of each and every covenant and condition of this Lease.

**43. BROKERAGE**

Landlord and Tenant hereby represent and warrant, each to the other, that they have not disclosed this Lease or the subject matter hereof to, and have not otherwise dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of whatsoever kind or nature for a commission or similar fee or compensation with respect to the Premises or this Lease. Landlord and Tenant hereby indemnify each other against, and agree to hold each other harmless from, any liability or claim (and all expenses, including attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to the Premises or this Lease.

**44. CITY NON-DISCRIMINATION ORDINANCE**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("B.M.C."), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Lease, Tenant agrees as follows:

1. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

2. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

B. Tenant understands that this Lease is governed by City Council Resolution No. 58,664 – N.S. This resolution, as may be amended from time, stipulates that Tenant's membership policies may be reviewed by the City for compliance therewith at any time, and that unsatisfactory membership policies may result in non-renewal of this Lease or termination by the City.

**45. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf,

Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**46. CONFLICT OF INTEREST PROHIBITED**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a board, a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 *et seq.*) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this subsection shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**47. NUCLEAR FREE BERKELEY**

Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**48. OPPRESSIVE STATES**

A. In accordance with Resolution No. 59,853 – N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations

to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Lease, the Tibet Autonomous Region and the provinces of Adu, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this subsection shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to Section 19. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

#### **49. BERKELEY LIVING WAGE ORDINANCE (LWO)**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Tenant employs six (6) or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance. If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this subsection shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Section 19 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 19.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay all of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**50. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of Section 19 of this lease.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 20.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**51. BERKELEY SANCTUARY CITY ORDINANCE**

Tenant hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Tenant agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

a. "Data Broker" means either of the following: (1) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies; (2) the aggregation of data that was collected for another purpose from that for which it is ultimately used.

b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include: (1) The City's computer-network health and performance tools; (2) Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

## **52. AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial, performance and compliance records maintained in connection with the operations and services performed under this Lease, and with the payments made under this Lease. In the event of such audit, Tenant agrees to make all such financial, performance and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

## **53. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes lawfully assessed and due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

## **54. SURVIVAL**

The provisions of this Lease and obligations of Tenant, that by their nature, are to be performed after or are to survive termination of this Lease shall survive such termination.

## **55. EXHIBITS**

Exhibits A, B, C, and D and any other exhibit, addendum or schedule referenced in this Lease are made a part hereof by this reference.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease at Berkeley, California

effective as of the Effective Date.

LANDLORD:

CITY OF BERKELEY  
A municipal corporation

By: \_\_\_\_\_  
City Manager Date

Approved as to form: \_\_\_\_\_ Registered by: \_\_\_\_\_  
City Attorney Date City Auditor Date

Attest:  
\_\_\_\_\_  
City Clerk Date

TENANT:  
WATERSIDE WORKSHOPS  
A non-profit organization

By: \_\_\_\_\_  
Neil Larsen, Executive Director Date

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_  
Incorporated: Yes No  
Certified Woman Business Enterprise: Yes \_\_\_ No X  
Certified Minority Business Enterprise: Yes \_\_\_ No X  
**Certified Disadvantaged Business Enterprise: Yes No**  
**City Business License No. \_\_\_\_\_, or Exempt pursuant to B.M.C. Section \_\_\_\_\_**

**Exhibit "A"**



## Exhibit "B": Berkeley Aquatic Park

### Section 6.04.010 Definitions.

#### Chapter 6.04 BERKELEY AQUATIC PARK\*

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### Section 6.04.010 Definitions.

For the purpose of this chapter certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that a different meaning is intended.

- A. "Berkeley Aquatic Park" means that area owned or controlled by the City of Berkeley, bounded by the Eastshore Highway on the west, Third Street on the east, University Avenue on the north and Ashby Avenue on the south, which is used as an aquatic park.
- B. "Concessionaire" means the lessee of the boating and other facilities at the Berkeley Aquatic Park.
- C. "Lake" means the Berkeley Aquatic Park lake.
- D. "Motorboat" means any and all types of motor-driven craft. (Ord. 3650-NS §§ 1, 1.1, 1.2, 1.3, 1.4, 1958)

**Exhibit "C":  
Proposed Repair/Renovation Schedule 2023-2031**



Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Donation: Memorial Bench at the Cesar Chavez Park in memory of Walt and Trudee Rowson

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Cesar Chavez Park at the Berkeley Marina in memory of Walt and Trudee Rowson.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Parks Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2023.

CURRENT SITUATION AND ITS EFFECTS

Tracie Rowson, daughter of Walt and Trudee Rowson, wishes to donate a memorial bench in their memory to be placed in Cesar Chavez Park with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

The City's vendor for benches, Dumor, Inc., makes its priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations, including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

CONTACT PERSON

Alexandra Endress, Waterfront Manager, 510-981-6737

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

DONATION: MEMORIAL BENCH AT THE CESAR CHAVEZ PARK IN MEMORY OF A  
WALT AND TRUDEE ROWSON

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, Tracy Rowson, the daughter of Walt and Trudee Rowson wishes to donate a memorial bench in their memory to be placed at the Cesar Chavez Park with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Parks Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2023.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park in memory of Walt and Trudee Rowson is hereby accepted.





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Donation: Memorial Bench at the Cesar Chavez Park in memory of Don Rothenberg

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Cesar Chavez Park at the Berkeley Marina in memory of Don Rothenberg.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Parks Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2023.

CURRENT SITUATION AND ITS EFFECTS

The family of Don Rothenberg wishes to donate a memorial bench in his memory to be placed in Cesar Chavez Park with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

The City's vendor for benches, Dumor, Inc., makes its priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations, including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

CONTACT PERSON

Alexandra Endress, Waterfront Manager, 510-981-6737

Attachments:

1: Resolution



RESOLUTION NO. -N.S.

DONATION: MEMORIAL BENCH AT THE CESAR CHAVEZ PARK IN MEMORY OF  
DON ROTHENBERG

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, the family of Don Rothenberg wishes to donate a memorial bench in his memory to be placed at the Cesar Chavez Park with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Parks Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2023.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park in memory of Don Rothenberg is hereby accepted.





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Donation: Memorial Bench at the Indian Rock Park in memory of Dave Altman

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Indian Rock Park in memory of Dave Altman, a longtime Berkeley rock climber and a treasured member of the rock-climbing community.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Parks Fund donation revenue budget code 138-52-542-568-0000-000-000-481110 and will be appropriated in FY 2023.

CURRENT SITUATION AND ITS EFFECTS

On behalf of Berkeley Ironworks and the friends of Dave Altman, Lynn Barraza wishes to donate a memorial bench in their memory to be placed at Indian Rock Park with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

Donation: Memorial Bench at Indian Rock Park – Dave Altman

CONSENT CALENDAR

September 13, 2022

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

The City's vendor for benches, Dumor, Inc., makes its priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations, including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

CONTACT PERSON

Bruce Pratt, Parks Superintendent, 510-981-6632

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

DONATION: MEMORIAL BENCH AT THE INDIAN ROCK PARK IN MEMORY OF A  
DAVE ALTMAN

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, on behalf of Berkeley Ironworks and the friends of Dave Altman, Lynn Barraza wishes to donate a memorial bench in her memory to be placed at the Indian Rock Park with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Parks Fund donation revenue budget code 138-52-542-568-0000-000-000-481110 and will be appropriated in FY 2023.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at Indian Rock Park in memory of Dave Altman is hereby accepted.





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
Subject: Contract - Bellingham Inc. to replace and repair docks at the Berkeley Marina

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with Bellingham Inc. to replace and repair docks at the Berkeley Marina in an amount not-to-exceed \$550,000, which includes a contract amount of \$480,000 and 14.58% contingency in the amount of \$70,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the construction contract in the amount of \$550,000 is available in the FY23 Marina Fund budget.

Construction contract

Bellingham Marine.....	\$480,000
14.58% Contingency.....	\$70,000
<u>Total construction contract cost .....</u>	<u>\$550,000</u>

**Marina Fund**

Waterfront Docks

608-52-545-000-000-473-663110- PRWWF22008.....	\$550,000
<u>Total Marina Fund</u>	<u>\$550,000</u>

CURRENT SITUATION AND ITS EFFECTS

Docks at the Berkeley Marina (J to O) were installed in the early 1970's and need repair or replacement to retain structural integrity for the safety for our slipholders and their boats. The City requires the services of a qualified marina dock construction contractor.

BACKGROUND

On April 21, 2022 the City issued an Invitation For Bid (IFB) for Marina Finger Dock Construction (Spec No. 22-11515-C). The City received one bid from Bellingham Marina, which was deemed a responsive and responsible bidder.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The construction contract includes requirements to comply with the City's Environmentally Preferable Purchasing Policy. The project involves the repair and replacement of existing docks and therefore will not negatively affect natural habitat.

RATIONALE FOR RECOMMENDATION

The FY23 budget includes an allocation of Marina Fund to replace damaged and deteriorated docks at the Berkeley Marina. The City does not have the in-house labor or equipment resources to repair damaged docks.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Ali Endress, Waterfront Manager, 981-6737  
Sean Crothers, Waterfront Supervisor, 981-6744

Attachments:

1: Resolution



RESOLUTION NO. ##-###

CONTRACT: BELLINGHAM INC. TO REPLACE AND REPAIR DOCKS AT THE  
BERKELEY MARINA

WHEREAS, on April 21, 2022, the City issued an Invitation For Bid (IFB) for Marina Finger Dock Construction (Spec No. 22-11515-C). The City received one (1) bid from Bellingham Marina, which was deemed a responsive and responsible bidder; and

WHEREAS, funding for the construction contract in the amount of \$550,000 is available in the FY23 Marina Fund budget.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to execute a contract and any amendments with Bellingham Marine to replace and repair docks at the Berkeley Marina in the amount not-to-exceed \$550,000, which includes a contract amount of \$480,000 and a 14.58% contingency in the amount of \$70,000. A record signature copy of said contract will be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jennifer A. Louis, Interim Chief of Police  
 Subject: Revenue Grant: California Office of Traffic Safety (OTS) for the 2023  
 "Selective Traffic Enforcement Program (STEP) Grant"

RECOMMENDATION

Adopt a Resolution authorizing the Chief of Police to accept the "Selective Traffic Enforcement Program (STEP)" grant and enter into the resultant grant agreement and any amendments, with the California Office of Traffic Safety. This OTS grant is for \$180,000 for the period of October 1, 2022 through September 30, 2023, which is Federal Fiscal Year 2023.

FISCAL IMPACTS OF RECOMMENDATION

The total of this project will not exceed \$180,000. Grant revenues will be deposited into budget code 309-71-703-812-0000-000-000-431-110 to offset expenditures. Appropriation of the expenditures is being included in the First Amendment to the Appropriations Ordinance. This grant will fund overtime, benefits, equipment, training costs, and reduce additional General Fund expenditures.

CURRENT SITUATION AND ITS EFFECTS

Securing OTS grant funding is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

Currently the Traffic Bureau at the Berkeley Police Department is staffed by two motor officers, one traffic data analyst, one sergeant, and one lieutenant. Motor officers' responsibilities include injury-collision investigations and traffic enforcement; however, resources often deplete rapidly due to ancillary duties and personnel shortages in the Operations Division. OTS funding builds upon our current traffic safety efforts by allowing patrol and motor officers opportunities to address traffic safety issues-most significantly pedestrian and bicycle safety, distracted and impaired driving- in addition to and outside of their regularly scheduled duties. Additionally, the funds provide opportunities for leadership development and learning in traffic safety and DUI/impaired driving enforcement, and enhance the department's overall mission of public safety.

## BACKGROUND

Office of Traffic Safety (OTS) rankings place the City of Berkeley number one for the past seven years in pedestrian and bicycle related injury collisions when compared to fifty-nine other cities with comparable populations. Each year hundreds of people are injured in traffic collisions that occur in the City of Berkeley. Berkeley maintains a high ranking in total fatal and injury collisions, hit and run injury collisions, speed related collisions, nighttime collisions, and motorcycle involved collisions. With assistance from the 2023 Office of Traffic Safety Grant, the department will continue our efforts to reduce the number of community members injured in collisions whether they choose to walk, drive, bike or ride a motorcycle in our city.

In 2018, the City of Berkeley was number one (1/59) for injury collisions involving pedestrians; number one (1/59) for collisions involving bicyclists; number one (1/59) for injury collisions involving bicyclists; and number one (1/59) for collisions involving pedestrians, and fifth (5/59) for injuries and fatal collisions involving motorcyclists. Based on these statistics and OTS rankings, the City of Berkeley is one of the most dangerous cities in the State of California to be a pedestrian or bicyclist.

Between January 2016 and June 2022, there have been twenty-three fatal auto collisions in the City of Berkeley. Eighteen of those resulted in a pedestrian being killed, and five resulted in a bicyclist being killed.

The OTS Grant and the City Council's Vision Zero Program have shared ideologies. BPD's participation directly supports two of three of Vision Zero's tenets. BPD's efforts directly support Public Awareness Education and Traffic Enforcement. Public Awareness through our social media, departmental messaging, and direct contact with the public (in the field and at community meetings) and data-driven enforcement of primary collision factor offenses in areas where they have the highest probability of occurring.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City of Berkeley continues to have one of the highest bicycle and pedestrian usage rates in the County of Alameda and, as a result, there are a large number of bicyclists and pedestrians sharing the roadway with motorists. This grant will support the City of Berkeley's efforts to promote more sustainable forms of transportation, reducing greenhouse gas emissions-with the goal of reducing traffic injuries and fatalities related to all modes of transportation.

## RATIONALE FOR RECOMMENDATION

The Police Department requests this funding be approved to enhance our current mission of providing a safer environment for pedestrians, bicyclists, motorcyclists, and motorists on all City of Berkeley roadways and highways.

Revenue Grant: California Office of Traffic Safety Grant  
for the 2023 STEP Grant

CONSENT CALENDAR  
September 13, 2022

ALTERNATIVE ACTIONS CONSIDERED

The California Office of Traffic Safety currently provides the only known grant funding specific to traffic enforcement and related education. Not accepting this OTS grant would require additional overtime expenditures from General Fund resources or could result in a decrease in the overall safety of the citizens of Berkeley

CONTACT PERSON

Lieutenant Jen Tate, Police Traffic Bureau, (510) 981-5983

Attachments:

1: Resolution

Exhibit A: OTS Grant Agreement

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

REVENUE GRANT: SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT FROM THE OFFICE OF TRAFFIC SAFETY TO FUND STRATEGIES TO REDUCE THE NUMBER OF INJURIES AND DEATHS RELATED TO TRAFFIC COLLISIONS IN THE CITY OF BERKELEY

WHEREAS, the Police Department is committed to providing a safe and secure environment through law enforcement within the City of Berkeley; and

WHEREAS, the Office of Traffic Safety (OTS) has made grant funding available to the Police Department to assist them in their mission of increasing traffic safety; and

WHEREAS, this grant will provide funding to support efforts to reduce injury and fatal collisions involving pedestrians, bicyclists, motorcyclists, and motorists on all City of Berkeley roadways and highways; and

WHEREAS, grant revenues will be deposited into budget code 309-71-703-812-0000-000-000-431110, in the DUI Enforcement Education Program Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Chief of Police is authorized to accept the Selective Traffic Enforcement Program (STEP) Grant and enter into the resultant grant agreement and any amendments, with the Office of Traffic Safety (OTS) to fund increased levels of impaired or distracted driving enforcement, nighttime seatbelt enforcement, motorcycle safety enforcement, and educational programs regarding bicycle and pedestrian collisions in the amount of \$180,000 for the period of October 1, 2022 to September 30, 2023.

Exhibit

A: OTS Grant Agreement

<b>1. GRANT TITLE</b> Selective Traffic Enforcement Program (STEP)	
<b>2. NAME OF AGENCY</b> Berkeley	<b>3. Grant Period</b> From: 10/01/2022 To: 09/30/2023
<b>4. AGENCY UNIT TO ADMINISTER GRANT</b> Berkeley Police Department	
<b>5. GRANT DESCRIPTION</b> Best practice strategies will be conducted to reduce the number of persons killed and injured in crashes involving alcohol and other primary crash factors. The funded strategies may include impaired driving enforcement, enforcement operations focusing on primary crash factors, distracted driving, night-time seat belt enforcement, special enforcement operations encouraging motorcycle safety, enforcement and public awareness in areas with a high number of bicycle and pedestrian crashes, and educational programs. These strategies are designed to earn media attention thus enhancing the overall deterrent effect.	
<b>6. Federal Funds Allocated Under This Agreement Shall Not Exceed:      \$180,000.00</b>	
<b>7. TERMS AND CONDITIONS:</b> The parties agree to comply with the terms and conditions of the following which are by this reference made a part of the Agreement: <ul style="list-style-type: none"> <li>• Schedule A – Problem Statement, Goals and Objectives and Method of Procedure</li> <li>• Schedule B – Detailed Budget Estimate and Sub-Budget Estimate (if applicable)</li> <li>• Schedule B-1 – Budget Narrative and Sub-Budget Narrative (if applicable)</li> <li>• Exhibit A – Certifications and Assurances</li> <li>• Exhibit B* – OTS Grant Program Manual</li> <li>• Exhibit C – Grant Electronic Management System (GEMS) Access</li> </ul> <p>*Items shown with an asterisk (*), are hereby incorporated by reference and made a part of this agreement as if attached hereto.</p> <p>These documents can be viewed at the OTS home web page under Grants: <a href="http://www.ots.ca.gov">www.ots.ca.gov</a>.</p> <p>We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.</p> <p>IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.</p>	
<b>8. Approval Signatures</b>	
<b>A. GRANT DIRECTOR</b>  NAME: Jennifer Tate TITLE: Lieutenant EMAIL: jtate@cityofberkeley.info PHONE: (510) 981-5983 ADDRESS: 2100 Martin Luther King, Jr. Way Berkeley, CA 94704  <hr style="width: 80%; margin-left: 0;"/> <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 0;"> <span>(Signature)</span> <span>(Date)</span> </div>  <b>C. FISCAL OFFICIAL</b>  ADDRESS: Chuck Gunter Administrative & Fiscal Services Manager cgunter@cityofberkeley.info 510-981-5976 2100 Martin Luther King Jr. Way Berkeley, CA 94704  <hr style="width: 80%; margin-left: 0;"/> <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 0;"> <span>(Signature)</span> <span>(Date)</span> </div>	<b>B. AUTHORIZING OFFICIAL</b>  ADDRESS: Jennifer Louis Interim Chief of Police jlouis@cityofberkeley.info (510) 981-5700 2100 Martin Luther King, Jr. Way Berkeley, CA 94704  <hr style="width: 80%; margin-left: 0;"/> <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 0;"> <span>(Signature)</span> <span>(Date)</span> </div>  <b>D. AUTHORIZING OFFICIAL OF OFFICE OF TRAFFIC SAFETY</b>  ADDRESS: Barbara Rooney Director barbara.rooney@ots.ca.gov (916) 509-3030 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758  <hr style="width: 80%; margin-left: 0;"/> <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 0;"> <span>(Signature)</span> <span>(Date)</span> </div>

<p>E. ACCOUNTING OFFICER OF OFFICE OF TRAFFIC SAFETY</p> <p>NAME: Carolyn Vu                  ADDRESS: 2208 Kausen Drive, Suite 300                  Elk Grove, CA 95758</p>	<p><b>9. SAM INFORMATION</b></p> <p>SAM #: KC7DYL9EF25                  REGISTERED                  ADDRESS: 2180 Milvia St. 3rd Floor                  CITY: Berkeley                  ZIP+4: 94704-1122</p>
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10. PROJECTED EXPENDITURES						
FUND	CFDA	ITEM/APPROPRIATION	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
164AL-23	20.608	0521-0890-101	2022	22/22	BA/22	\$80,000.00
402PT-23	20.600	0521-0890-101	2022	22/22	BA/22	\$100,000.00
					<b>AGREEMENT TOTAL</b>	<b>\$180,000.00</b>
					AMOUNT ENCUMBERED BY THIS DOCUMENT	
					<b>\$180,000.00</b>	
					PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT	
					<b>\$ 0.00</b>	
OTS ACCOUNTING OFFICER'S SIGNATURE			DATE SIGNED		TOTAL AMOUNT ENCUMBERED TO DATE	
					<b>\$180,000.00</b>	
<p><i>I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.</i></p>						



## 1. PROBLEM STATEMENT

In California alone, there are more than 32 cities bigger than Berkeley. In Alameda County, Berkeley is ranked number four in population behind Oakland, Fremont, and Hayward. Yet, the City of Berkeley is famous around the globe.

According to the 2020 Census, Berkeley's population was 124,321. The population density was 10,752 per square mile. Nearly 48 percent of Berkeley residents use a motor vehicle to commute to work, just under 8 percent used a bicycle and 16 percent walked. Berkeley makes up only 8 percent of Alameda County's population but more than 37 percent of the county's population of people who walk and ride bikes to work.

In addition to residents, the city's population spikes during the day as people commute to Berkeley for travel, special events, work, and education. UC Berkeley had nearly 43,000 student population in 2019. Located less than ½ mile away from UC Berkeley, is Berkeley City College, with a student population of over 6,000. Berkeley High School, located just one block away has a student population of over 3,000. All of these schools are located near central Berkeley in the downtown business district.

Additionally, in 2018 Berkeley City Council voted to allow three scooter companies, each with 200-400 scooters to operate within the city. Berkeley joined a number of other cities in California and across the nation in an effort to implement regulations and maintain rider safety. According to a study published by the Center for Disease Control and Prevention and Public Health Departments of Austin, TX., published in April 2019, they found that for every 100,000 scooter rides, 20 people were injured. Half of all the reported injuries were to the head, and 15 percent showed evidence of traumatic brain injury.

The City of Berkeley continually strives to promote safety for all modes of transportation with the large number of bicyclists and pedestrians share the crowded roadway with motorists.

The Office of Traffic Safety (OTS) rankings place the City of Berkeley number one for the past several years in pedestrian and bicycle related injury crashes when compared to fifty-nine other cities with comparable populations. Each year hundreds of people are injured in traffic crashes that occur in the City of Berkeley. Berkeley has maintained a high ranking in total fatal and injury crashes, hit and run injury crashes, motorcycle involved crashes, nighttime crashes, and speed related crashes. The Berkeley Police Department will continue efforts to reduce the number of individuals injured in crashes whether they choose to walk, drive, bike or ride a motorcycle in the city.

In 2019, the City of Berkeley was ranked number one (1/59) for crashes involving bicyclists, motorcyclists, pedestrians, and pedestrians over 65 years old and. Based on these statistics and OTS rankings, the City of Berkeley is one of the most dangerous cities in the State of California to walk or ride a bicycle.

Between January 1, 2012 and January 1, 2022 there have been thirty-one fatal auto crashes in the City of Berkeley. Sixteen of those resulted in a pedestrian being killed, and five resulted in a bicyclist being killed. In 2021 alone Berkeley Police Investigated seven fatal crashes.

On May 11<sup>th</sup> 2021, at approximately 1:39 pm the driver of a 1988 Toyota Camry lost control of the vehicle after the brakes failed while driving westbound on Marin Ave (roadway with approx. 18% grade). The Toyota went airborne and collided with the rear driver side of an Audi SUV that was also driving westbound on Marin Ave before hitting a telephone pole, rolling over, and colliding with a tree on the opposite side of the street. The passenger in the Camry was pronounced dead at the scene and the driver later died as a result of his injuries. The 3-year-old in a child restraint device in the center rear seat of the Audi had a minor injury and the driver suffered a spine injury.

On June 14<sup>th</sup> 2021, at approximately 9:36 pm a 50-year-old man told witnesses that he wanted to kill himself and then laid down in the roadway on Telegraph Ave near Ashby Ave. A newer model Nissan sedan collided with the pedestrian in the roadway, and fled the scene. On June 26<sup>th</sup> the male passed away as a result of his

injuries. The involved vehicle and driver were never contacted even after a reward and numerous press releases.

On July 26<sup>th</sup> 2021, at approximately 9:56 pm a 54-year-old pedestrian was crossing Ashby Ave at the intersection with Newbury St. There were no painted crosswalks at the intersection in the direction the pedestrian was crossing. D-1 who was driving for a food delivery service at the time, collided with P-2 causing her to fall onto the road. Following the crash D-1 became afraid for her own safety and began to drive away when she collided with P-2 and P-3. P-2 and P-3 were both transported to the Alameda County Hospital where P-2 succumbed to her injuries.

On August 19<sup>th</sup> 2021, at approximately 2:46 pm a 59-year-old pedestrian was crossing San Pablo Ave at the intersection with Oregon St (in a marked crosswalk). D-1 was driving a Chrysler minivan northbound on San Pablo Ave and stated he never saw the pedestrian. Following the investigation at the scene D-1 was arrested for VC 23153(a). P-2 succumbed to his injuries five days later at the hospital.

On September 6<sup>th</sup> 2021, at approximately 12:35 am, BPD officers respond to a report of a male laying in the median of Adeline St north of the intersection with Ashby Ave. The subject was pronounced deceased but didn't initially appear to have injuries consistent with a crash. On September 14<sup>th</sup> the Alameda County Coroners office contacted BPD Fait team to advise that the cause of death was determined to be caused by a crash. Press releases were shared, but the driver nor vehicle were ever identified.

On November 3<sup>rd</sup> 2021, at approximately 7:43 pm the driver of a BMW M5 was driving westbound on University Ave west of West Frontage Rd. A witness reported the vehicle traveling at about 100 MPH. The vehicle struck a tree, telephone box, and the top of a fence before becoming airborne hitting a concrete pier piling and dock. The driver was pronounced deceased at the scene. He was reported to have a prior medical condition, and the investigation lead to that being the possible cause of this crash.

On November 17<sup>th</sup> 2021, at approximately 6:11 pm, BPD officers respond to the report of a male laying in the roadway of Ashby Ave west of the intersection of 6<sup>th</sup> St. The 65-year-old male had fatal injuries that appeared to be the result of an automobile crash. The investigation revealed no witnesses, or investigative leads.

In 2021, 547 persons were injured in auto crashes. 69 of those were pedestrians, 95 were bicyclists. In crashes involving a pedestrian, the motor vehicle operator was found at fault over eighty-six percent of the time. In crashes involving a bicyclist, the bicyclist was found at fault over sixty-three percent of the time. These factors are important in formulating Berkeley PD's enforcement strategy in these two critical areas.

In 2021, Berkeley Police made 123 misdemeanor DUI arrests, 9 felony DUI arrests, and 1 minor over .05% DUI arrests. Officers attended NHTSA Standardized Field Sobriety Testing (SFST), NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE), Drug Recognition Expert (DRE), and Drug Recognition Expert (DRE) DRE Recertification classes.

Over the past five years (2017-2021), BPD has investigated 51 injury crashes where alcohol or drugs were a factor (average of 10 per year). Continued proactive enforcement through DUI saturation patrols and DUI checkpoints will be effective aids for taking dangerously impaired drivers off the road, and also serving to educate the community as to the dangers of drug and alcohol impaired driving. Due to limited staffing levels, Berkeley PD had to cancel a few checkpoints over the last few years.

Unsafe speed (VC 22350) was the most prevalent primary crash factor in 2021. Berkeley Police Investigated 97 injury crashes, resulting in 124 people injured as a result of unsafe speed. According to OTS rankings for 2019 the City of Berkeley ranked in the top twelve (12/59) for speed related injury crashes. The majority of roadways in Berkeley have a 25 MPH speed limit. There are only three roadways with a higher speed limit. Those roadways have the greatest speed limit in the city at 35 MPH. Drivers travelling in the City of Berkeley at unsafe speeds continue to be an enforcement priority for the Berkeley Police Department.

According to OTS rankings for 2019 the City of Berkeley ranks thirteen (13/59) in Total Fatal and Injury crashes.

According to NHTSA, “Of the 37,133 people killed in motor vehicle crashes in 2017 47% were not wearing seatbelts.” Berkeley Police understands the importance of buckling up. In 2021 Berkeley Police Officers issued 59 citations for seatbelt violations. Many of these were issued by traffic enforcement officers during “Click it or ticket” campaigns.

A factor that is vastly under reported in injury crashes in the City of Berkeley is distracted driving due to cellular phone use. While it is often difficult to determine if this is the primary crash factor in many crashes, BPD Officers issued 429 citations for driving while using a cellphone device in a non-hands free manner in 2021.

Based on the NHTSA findings, drivers who text while behind the wheel have a twenty-three percent chance of causing a crash.

Two of the core methodologies that the Berkeley PD Traffic Unit employs, are the use of internal crash and SWITRS data to provide a data driven approach to focus our enforcement efforts. The data allows us to identify the top PCFs and the most dangerous roadways in the city for vehicles, pedestrians, and bicyclists, and to direct the majority of available resources to in an informed and impartial manner. Secondly, altering traffic violator behavior through vigorous traffic enforcement of top PCFs—by issuing citations, rather than warnings.

The Berkeley Police Department will maintain it's mission to reduce the overall number of injury crashes, bicycle and pedestrian related crashes, alcohol related crashes, speed related crashes, motorcycle related crashes, and crashes involving distracted driving.

Currently, the Traffic Bureau at the Berkeley Police Department is staffed by three motor officers, one traffic data analyst, one sergeant, and one lieutenant. Motor officer responsibilities include injury-crash investigations and traffic enforcement, however resources often deplete rapidly due to ancillary duties and personnel shortages in the Operations/Patrol Division. Grant operations build upon current traffic safety efforts by allowing patrol and motor officers opportunities to address traffic safety—most significantly pedestrian and bicycle safety, distracted and impaired driving— in addition to and outside of their regularly scheduled duties. Grant activity will provide opportunities for leadership development and learning in traffic safety and DUI/impaired driving enforcement, and enhance the department’s overall mission of public safety.

**2. PERFORMANCE MEASURES**

**A. Goals:**

1. Reduce the number of persons killed in traffic crashes.
2. Reduce the number of persons injured in traffic crashes.
3. Reduce the number of pedestrians killed in traffic crashes.
4. Reduce the number of pedestrians injured in traffic crashes.
5. Reduce the number of bicyclists killed in traffic crashes.
6. Reduce the number of bicyclists injured in traffic crashes.
7. Reduce the number of persons killed in alcohol-involved crashes.
8. Reduce the number of persons injured in alcohol-involved crashes.
9. Reduce the number of persons killed in drug-involved crashes.
10. Reduce the number of persons injured in drug-involved crashes.
11. Reduce the number of persons killed in alcohol/drug combo-involved crashes.
12. Reduce the number of persons injured in alcohol/drug combo-involved crashes.
13. Reduce the number of motorcyclists killed in traffic crashes.
14. Reduce the number of motorcyclists injured in traffic crashes.
15. Reduce hit & run fatal crashes.
16. Reduce hit & run injury crashes.
17. Reduce nighttime (2100 - 0259 hours) fatal crashes.
18. Reduce nighttime (2100 - 0259 hours) injury crashes.

**B. Objectives:**

1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at [pio@ots.ca.gov](mailto:pio@ots.ca.gov), and copied to

**Target Number**

1

your OTS Coordinator, for approval 14 days prior to the issuance date of the release.	
2. Participate and report data (as required) in the following campaigns; Quarter 1: National Walk to School Day, National Teen Driver Safety Week, NHTSA Winter Mobilization; Quarter 3: National Distracted Driving Awareness Month, National Motorcycle Safety Month, National Bicycle Safety Month, National Click it or Ticket Mobilization; Quarter 4: NHTSA Summer Mobilization, National Child Passenger Safety Week, and California's Pedestrian Safety Month.	10
3. Develop (by December 31) and/or maintain a "DUI BOLO" program to notify patrol and traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. Updated DUI BOLOs should be distributed to patrol and traffic officers monthly.	12
4. Send law enforcement personnel to the NHTSA Standardized Field Sobriety Testing (SFST) (minimum 16 hours) POST-certified training.	2
5. Send law enforcement personnel to the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) 16 hour POST-certified training.	2
6. Send law enforcement personnel to the Drug Recognition Expert (DRE) training.	2
7. Send law enforcement personnel to the DRE Recertification training.	2
8. Send law enforcement personnel to SFST Instructor training.	2
9. Send law enforcement personnel to DRE Instructor training.	1
10. Conduct DUI/DL Checkpoints. A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the Summer Mobilization. To enhance the overall deterrent effect and promote high visibility, it is recommended the grantee issue an advance press release and conduct social media activity for each checkpoint. For combination DUI/DL checkpoints, departments should issue press releases that mention DL's will be checked at the DUI/DL checkpoint. Signs for DUI/DL checkpoints should read "DUI/Driver's License Checkpoint Ahead." OTS does not fund or support independent DL checkpoints. Only on an exception basis and with OTS pre-approval will OTS fund checkpoints that begin prior to 1800 hours. When possible, DUI/DL Checkpoint screeners should be DRE- or ARIDE-trained.	3
11. Conduct DUI Saturation Patrol operation(s).	19
12. Conduct Traffic Enforcement operation(s), including but not limited to, primary crash factor violations.	13
13. Conduct highly publicized Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.	14
14. Conduct highly publicized Motorcycle Safety enforcement operation(s) in areas or during events with a high number of motorcycle incidents or crashes resulting from unsafe speed, DUI, following too closely, unsafe lane changes, improper turning, and other primary crash factor violations by motorcyclists and other drivers.	15
15. Conduct highly publicized pedestrian and/or bicycle enforcement operation(s) in areas or during events with a high number of pedestrian and/or bicycle crashes resulting from violations made by pedestrians, bicyclists, and drivers.	16
16. Conduct Traffic Safety educational presentation(s) with an effort to reach community members. Note: Presentation(s) may include topics such as distracted driving, DUI, speed, bicycle and pedestrian safety, seat belts and child passenger safety.	4
17. Participate in highly visible collaborative DUI Enforcement operations.	2
18. Participate in highly visible collaborative Traffic Enforcement operations.	2
19. Send law enforcement personnel to DUI Checkpoint Planning and Management training.	2
<b>3. METHOD OF PROCEDURE</b>	
<b>A. Phase 1 – Program Preparation (1<sup>st</sup> Quarter of Grant Year)</b>	
<ul style="list-style-type: none"> <li>• The department will develop operational plans to implement the "best practice" strategies outlined in the objectives section.</li> <li>• All training needed to implement the program should be conducted this quarter.</li> <li>• All grant related purchases needed to implement the program should be made this quarter.</li> </ul>	

- In order to develop/maintain the “DUI BOLOs,” research will be conducted to identify the “worst of the worst” repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. The Hot Sheets may include the driver’s name, last known address, DOB, description, current license status, and the number of times suspended or revoked for DUI. DUI BOLOs should be updated and distributed to traffic and patrol officers at least monthly.
- Implementation of the STEP grant activities will be accomplished by deploying personnel at high crash locations.
- Media Requirements Issue a press release approved by the OTS PIO announcing the kick-off of the grant by November 15, but no sooner than October 1. The kick-off release must be approved by the OTS PIO and only distributed after the grant is fully signed and executed. If you are unable to meet the November 15 deadline to issue a kick-off press release, communicate reasons to your OTS coordinator and OTS PIO.

## **B. Phase 2 – Program Operations (Throughout Grant Year)**

- The department will work to create media opportunities throughout the grant period to call attention to the innovative program strategies and outcomes.

### Media Requirements

The following requirements are for all grant-related activities:

- Send all media advisories, alerts, videos, graphics, artwork, posters, radio/PSA/video scripts, storyboards, digital and/or print educational materials for grant-related activities to the OTS PIO at [pio@ots.ca.gov](mailto:pio@ots.ca.gov) for approval and copy your OTS coordinator. Optimum lead time would be 7 days before the scheduled release but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- The OTS PIO is responsible for the approval of the design and content of materials. The agency understands OTS PIO approval is not authorizing approval of budget expenditure or cost. Any cost approvals must come from the Coordinator.
- Pre-approval is not required when using any OTS-supplied template for media advisories, press releases, social media graphics, videos or posts, or any other OTS-supplied educational material. However, copy the OTS PIO at [pio@ots.ca.gov](mailto:pio@ots.ca.gov) and your OTS coordinator when any material is distributed to the media and public, such as a press release, educational material, or link to social media post. The OTS-supplied kick-off press release templates and any kickoff press releases are an exception to this policy and require prior approval before distribution to the media and public.
- If an OTS-supplied template, educational material, social media graphic, post or video is substantially changed, the changes shall be sent to the OTS PIO at [pio@ots.ca.gov](mailto:pio@ots.ca.gov) for approval and copy to your OTS Coordinator. Optimum lead time would be 7 days prior to the scheduled release date, but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- Press releases, social media posts and alerts on platforms such as NextDoor and Nixle reporting immediate and time-sensitive grant activities (e.g. enforcement operations, day of event highlights or announcements, event invites) are exempt from the OTS PIO approval process. The OTS PIO and your Coordinator should still be notified when the grant-related activity is happening (e.g. car seat checks, bicycle rodeos, community presentations, DUI checkpoints, etc.).
- Enforcement activities such as warrant and probation sweeps, court stings, etc. that are embargoed or could impact operations by publicizing in advance are exempt from the PIO approval process. However, announcements and results of activities should still be copied to the OTS PIO at [pio@ots.ca.gov](mailto:pio@ots.ca.gov) and your Coordinator with embargoed date and time or with “INTERNAL ONLY: DO NOT RELEASE” message in subject line of email.
- Any earned or paid media campaigns for TV, radio, digital or social media that are part of a specific grant objective, using OTS grant funds, or designed and developed using contractual services by a subgrantee, requires prior approval. Please send to the OTS PIO at [pio@ots.ca.gov](mailto:pio@ots.ca.gov) for approval and copy your grant coordinator at least 3 business days prior to the scheduled release date.

- Social media posts highlighting state or national traffic safety campaigns (Distracted Driving Month, Motorcycle Safety Awareness Month, etc.), enforcement operations (DUI checkpoints, etc.), or any other grant-related activity such as Bicycle rodeos, presentations, or events, are highly encouraged but do not require prior approval.
- Submit a draft or rough-cut of all digital, printed, recorded or video material (brochures, posters, scripts, artwork, trailer graphics, digital graphics, social posts connected to an earned or paid media campaign grant objective) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval prior to the production or duplication.
- Use the following standard language in all press, media, and printed materials, space permitting: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Space permitting, include the OTS logo on all grant-funded print materials, graphics and paid or earned social media campaign grant objective; consult your OTS Coordinator for specifics, format-appropriate logos, or if space does not permit the use of the OTS logo.
- Email the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator at least 21 days in advance, or when first confirmed, a short description of any significant grant-related traffic safety event or program, particularly events that are highly publicized beforehand with anticipated media coverage so OTS has sufficient notice to arrange for attendance and/or participation in the event. If unable to attend, email the OTS PIO and coordinator brief highlights and/or results, including any media coverage (broadcast, digital, print) of event within 7 days following significant grant-related event or program. Media and program highlights are to be reflected in QPRs.
- Any press releases, work plans, scripts, storyboards, artwork, graphics, videos or any educational or informational materials that received PIO approval in a prior grant year needs to be resubmitted for approval in the current grant year.
- Contact the OTS PIO or your OTS Coordinator for consultation when changes from any of the above requirements might be warranted.

**C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)**

1. Prepare and submit invoice claims (due January 30, April 30, July 30, and October 30)
2. Prepare and submit Quarterly Performance Reports (QPR) (due January 30, April 30, July 30, and October 30)
  - Collect and report quarterly, appropriate data that supports the progress of goals and objectives.
  - Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
  - Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
  - Collect, analyze and report statistical data relating to the grant goals and objectives.

**4. METHOD OF EVALUATION**

Using the data compiled during the grant, the Grant Director will complete the “Final Evaluation” section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant’s accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

**5. ADMINISTRATIVE SUPPORT**

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT		
402PT-23	20.600	State and Community Highway Safety	\$100,000.00		
164AL-23	20.608	Minimum Penalties for Repeat Offenders for Driving While Intoxicated	\$80,000.00		
COST CATEGORY		FUND NUMBER	UNIT COST OR RATE	UNITS	TOTAL COST TO GRANT
<b>A. PERSONNEL COSTS</b>					
<u>Straight Time</u>					
					\$0.00
<u>Overtime</u>					
DUI/DL Checkpoints	164AL-23	\$13,536.00	3	\$40,608.00	
DUI Saturation Patrols	164AL-23	\$1,410.00	19	\$26,790.00	
Collaborative DUI Enforcement	164AL-23	\$1,410.00	2	\$2,820.00	
Benefits AL @ 9.91%	164AL-23	\$70,218.00	1	\$6,959.00	
Traffic Enforcement	402PT-23	\$1,410.00	13	\$18,330.00	
Distracted Driving	402PT-23	\$1,410.00	14	\$19,740.00	
Motorcycle Safety	402PT-23	\$1,410.00	15	\$21,150.00	
Pedestrian and Bicycle Enforcement	402PT-23	\$1,410.00	16	\$22,560.00	
Traffic Safety Education	402PT-23	\$846.00	4	\$3,384.00	
Collaborative Traffic Enforcement	402PT-23	\$1,410.00	2	\$2,820.00	
Benefit PT @ 9.91%	402PT-23	\$87,984.00	1	\$8,719.00	
Category Sub-Total				\$173,880.00	
<b>B. TRAVEL EXPENSES</b>					
In State Travel	402PT-23	\$3,297.00	1	\$3,297.00	
					\$0.00
Category Sub-Total				\$3,297.00	
<b>C. CONTRACTUAL SERVICES</b>					
					\$0.00
Category Sub-Total				\$0.00	
<b>D. EQUIPMENT</b>					
					\$0.00
Category Sub-Total				\$0.00	
<b>E. OTHER DIRECT COSTS</b>					
DUI Checkpoint Supplies	164AL-23	\$2,823.00	1	\$2,823.00	
Category Sub-Total				\$2,823.00	
<b>F. INDIRECT COSTS</b>					
					\$0.00
Category Sub-Total				\$0.00	
<b>GRANT TOTAL</b>					<b>\$180,000.00</b>

BUDGET NARRATIVE
<p><b>PERSONNEL COSTS</b></p> <p>DUI/DL Checkpoints - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.</p> <p>DUI Saturation Patrols - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.</p> <p>Collaborative DUI Enforcement - Overtime for grant funded Collaborative DUI Enforcement operations conducted by appropriate department personnel</p> <p>Benefits AL @ 9.91% - Total Benefits            1.45% Medicare            8.46% Worker's Comp</p> <p>Traffic Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.</p> <p>Distracted Driving - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.</p> <p>Motorcycle Safety - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.</p> <p>Pedestrian and Bicycle Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.</p> <p>Traffic Safety Education - Overtime for grant funded traffic safety presentations or campaigns conducted by appropriate department personnel.</p> <p>Collaborative Traffic Enforcement - Overtime for grant funded Collaborative Traffic Enforcement operations conducted by appropriate department personnel</p> <p>Benefit PT @ 9.91% - Total Benefits            1.45% Medicare            8.46% Worker's Comp</p>
<p><b>TRAVEL EXPENSES</b></p> <p>In State Travel - Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Local mileage for grant activities and meetings is included. Anticipated travel may include the OTS Law Enforcement Forum. All conferences, seminars or training not specifically identified in the Budget Narrative must be approved by OTS. All travel claimed must be at the agency approved rate. Per Diem may not be claimed for meals provided at conferences when registration fees are paid with OTS grant funds.</p>
<p><b>CONTRACTUAL SERVICES</b></p> <p>-</p>
<p><b>EQUIPMENT</b></p> <p>-</p>
<p><b>OTHER DIRECT COSTS</b></p> <p>DUI Checkpoint Supplies - On-scene supplies needed to conduct sobriety checkpoints. Costs may include 28" traffic cones, MUTCD compliant traffic signs, MUTCD compliant high visibility vests (maximum of 10), traffic counters (maximum of 2), generator, gas for generators, lighting, reflective banners, electronic flares, PAS Device/Calibration Supplies, heater, propane for heaters, fan, anti-fatigue mats, and canopies. Additional items may be purchased if approved by OTS. The cost of food and beverages will not be reimbursed. Each item must have a unit cost of less than \$5,000 (including tax and shipping).</p>
<p><b>INDIRECT COSTS</b></p> <p>-</p>
<p><b>STATEMENTS/DISCLAIMERS</b></p> <p>Program Income default statement:            There will be no program income generated from this grant.</p>



**Enforcement Grant Quota Disclaimer:**

Nothing in this "agreement" shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations in pursuance of the goals and objectives here under.

**Benefits Disclaimer:**

Benefits for personnel costs can only be applied to straight time or overtime hours charged to the grant.

**CHP Grant Program Disclaimer:**

The OTS grant funded activities must be separate from the CHP Cannabis Tax Fund Grant Program activities and maintained under separate accounting/tracking/other codes (example: the same DUI checkpoint may not be funded by both the CHP and the OTS).

**CERTIFICATIONS AND ASSURANCES FOR HIGHWAY SAFETY GRANTS**  
**(23 U.S.C. Chapter 4; Sec. 1906, Pub. L. 109-59, As Amended By Sec. 4011, Pub. L. 114-94)**

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies, and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

**GENERAL REQUIREMENTS**

- 23 U.S.C. Chapter 4 – Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300 – Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201 – Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

**NONDISCRIMINATION**

**(applies to all subrecipients as well as States)**

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.*), **and Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The Subgrantee-

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non- Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:
  - "During the performance of this contract/funding agreement, the contractor/funding recipient agrees—
    - a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
    - b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 2I and herein;
    - c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
    - d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
    - e. To insert this clause, including paragraphs (a) through (e), in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

### **THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)**

The Subgrantee will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about:
  1. The dangers of drug abuse in the workplace;
  2. The grantee's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation, and employee assistance programs;
  4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;
  5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –
  1. Abide by the terms of the statement;
  2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an

- employee or otherwise receiving actual notice of such conviction;
- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted –
  1. Taking appropriate personnel action against such an employee, up to and including termination;
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

**POLITICAL ACTIVITY (HATCH ACT)**

**(applies to all subrecipients as well as States)**

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

**CERTIFICATION REGARDING FEDERAL LOBBYING**

**(applies to all subrecipients as well as States)**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The signed certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**RESTRICTION ON STATE LOBBYING**

**(applies to all subrecipients as well as States)**

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

**CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

**(applies to all subrecipients as well as States)**

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

- (1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment

rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**BUY AMERICA ACT**

**(applies to all subrecipients as well as States)**

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

**PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE**

**(applies to all subrecipients as well as States)**

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

**POLICY ON SEAT BELT USE**

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at [www.trafficsafety.org](http://www.trafficsafety.org). The NHTSA website ([www.nhtsa.gov](http://www.nhtsa.gov)) also provides information on statistics, campaigns, and program evaluations and references.

**POLICY ON BANNING TEXT MESSAGING WHILE DRIVING**

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

**INSTRUCTIONS FOR ADDING OR UPDATING GEMS USERS**

1. Each agency is allowed a total of **FIVE (5) GEMS Users**.
2. GEMS Users listed on this form will be authorized to login to GEMS to complete and submit Quarterly Performance Reports (QPRs) and reimbursement claims.
3. Complete the form if adding, removing or editing a GEMS user(s).
4. The Grant Director must sign this form and return it with the Grant Agreement.

GRANT DETAILS	
Grant Number:	PT23088
Agency Name:	Berkeley Police Department
Grant Title:	Selective Traffic Enforcement Program (STEP)
Agreement Total:	\$180,000.00
Authorizing Official:	Jennifer Louis
Fiscal Official:	Chuck Gunter
Grant Director:	Jennifer Tate

**CURRENT GEMS USER(S)**

**1. Gina Chan**

Title: Assistant Management Analyst  
Phone: (510) 981-5971  
Email: gchan@cityofberkeley.info

Media Contact: No

**2. Stephanie Cole**

Title: Police Officer  
Phone: (510) 981-5897  
Email: scole@cityofberkeley.info

Media Contact: Yes

**3. Andrew Frankel**

Title: Sergeant  
Phone: (510) 981-5982  
Email: afrankel@cityofberkeley.info

Media Contact: Yes

**4. Chuck Gunter**

Title: Administrative & Fiscal Services Manager  
Phone: 510-981-5976  
Email: cgunter@cityofberkeley.info

Media Contact: No

**5. Jennifer Tate**

Title: Lieutenant  
Phone: (510) 981-5983  
Email: jtate@cityofberkeley.info

Media Contact: No



Complete the below information if adding, removing or editing a GEMS user(s)

<b>GEMS User 1</b>		Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Add/Change <input type="checkbox"/>	Remove Access <input type="checkbox"/>		
Name		Job Title	
Email address		Phone number	
<b>GEMS User 2</b>		Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Add/Change <input type="checkbox"/>	Remove Access <input type="checkbox"/>		
Name		Job Title	
Email address		Phone number	
<b>GEMS User 3</b>		Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Add/Change <input type="checkbox"/>	Remove Access <input type="checkbox"/>		
Name		Job Title	
Email address		Phone number	
<b>GEMS User 4</b>		Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Add/Change <input type="checkbox"/>	Remove Access <input type="checkbox"/>		
Name		Job Title	
Email address		Phone number	
<b>GEMS User 5</b>		Add as a media contact? Yes <input type="checkbox"/> No <input type="checkbox"/>	
Add/Change <input type="checkbox"/>	Remove Access <input type="checkbox"/>		
Name		Job Title	
Email address		Phone number	
Form completed by:		Date:	
As a signatory I hereby authorize the listed individual(s) to represent and have GEMS user access.			
Signature		Name	
		Grant Director	
Date		Title	





Office of the City Manager

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Department of Public Works  
Subject: 2022 Vision Zero Program Grant Applications

RECOMMENDATION

Adopt three Resolutions:

1. Certifying that the Berkeley Vision Zero Action Plan, the Berkeley Bicycle Plan, and the Berkeley Pedestrian Plan, collectively meet the Safe Streets and Roads for All grant program requirement for a Comprehensive Safety Action Plan.
2. Authorizing the City Manager to submit a grant application to the federal Safe Streets and Roads for All (SS4A), accept the grant awarded, and execute any resultant agreements and amendments.
3. Authorizing the City Manager to submit a grant application to the federal Reconnecting Communities Pilot Grant Program (RCP), accept the grant awarded, and execute any resultant agreements and amendments.

FISCAL IMPACTS OF RECOMMENDATION

If awarded, the SS4A and RCP grants would bring a total of up to \$6,480,000 of competitive grant revenue to the Federal Capital Grants Fund (Fund 305) for high-priority transportation projects, starting in FY 2023.

Safe Streets and Roads for All Grant Funding Request and Matching Funds

Vision Zero Pedestrian and Bicycle Crossing Safety Improvements	up to \$6,000,000
Required City Matching Funds (20% of total project cost)	up to \$2,000,000
<b>Total Project Cost</b>	<b>up to \$8,000,000</b>

Reconnecting Communities Pilot Grant Funding Request and Matching Funds

Ashby Avenue Vision Zero Safety Plan	up to \$480,000
Required City Matching Funds (20% of total project cost)	up to \$120,000
<b>Total Project Cost</b>	<b>up to \$600,000</b>

The total estimated cost of the projects is up to \$8.6 million. Both SS4A and RCP require local match of 20% of the total project cost. Funding for the required \$2,120,000 local match is available from the Alameda County Measure BB Bicycle and Pedestrian Program Fund (Fund 135) and the Measure BB Local Streets and Roads Fund (Fund 134), with planning and capital project design activities anticipated to begin in FY2023

and FY2024, and capital bidding and construction activities anticipated in FY2025, FY2026, and FY2027.

### CURRENT SITUATION AND ITS EFFECTS

In the two years since the Berkeley Vision Zero Action Plan<sup>1</sup> was adopted, the City has made substantial progress in implementing projects from both the 2017 Berkeley Bicycle Plan<sup>2</sup> and the 2021 Berkeley Pedestrian Plan<sup>3</sup> that are located on Vision Zero High Injury Streets. Since 2020, Public Works has completed the Sacramento Complete Streets Project, the Milvia Bikeway Project, and initiated planning, design, and public engagement for projects on Hopkins Street, Sacramento Street, Martin Luther King Junior Way, streets in the Southside neighborhood, among other locations in Berkeley. These projects are intended to improve traffic safety to achieve the Vision Zero goal of eliminating all severe injury and fatality traffic crashes in Berkeley by 2028.

Continuing with these efforts, staff is requesting approval from Council to submit the following traffic safety projects to compete for SS4A capital project design and construction funding and RCP capital project planning funding. These applications are due in September and October 2022, respectively.

### *Vision Zero Pedestrian and Bicycle Crossing Safety Improvements (SS4A funding)*

This project bundles intersection traffic safety improvements from the Berkeley Bicycle Plan and/or Berkeley Pedestrian Plan, selected because of their location on Vision Zero High Injury Streets within the Equity Priority Area identified in the Vision Zero Action Plan. Crossing treatments fall into one of two categories: rectangular rapid-flashing beacons with raised concrete street medians (RRFB + Median) or pedestrian hybrid beacons (PHB). Both treatments are intended to help people walking and biking to cross the street more safely. More information about the specific proposed improvements can be found in the Berkeley Bicycle Plan and Berkeley Pedestrian Plan.

- Bicycle Boulevard Intersection Crossings:
  - Channing Way/6<sup>th</sup> Street: RRFB+Median
  - Channing Way/Sacramento Street: PHB
  - Russell Street/Sacramento Street: PHB\*
  - California Street/Dwight Way: RRFB + Median
- Pedestrian Plan Intersection Crossings:
  - Sacramento Street/Derby Street: PHB\*\*
  - Sacramento Street/Harmon Street: PHB\*\*
  - Alcatraz Street/King Street: RRFB+Median\*\*
  - Alcatraz Street/California Street: RRFB+Median\*\*

\*Location also identified in Pedestrian Plan

\*\*Location also identified in Bicycle Plan

<sup>1</sup> <https://berkeleyca.gov/your-government/our-work/adopted-plans/vision-zero-action-plan>

<sup>2</sup> <https://berkeleyca.gov/your-government/our-work/adopted-plans/berkeley-bicycle-plan>

<sup>3</sup> <https://berkeleyca.gov/your-government/our-work/adopted-plans/pedestrian-plan-2020>

*Ashby Avenue Vision Zero Safety Plan (RCP funding)*

The Ashby Avenue Vision Zero Safety Plan will develop a conceptual plan for safety improvements along Ashby Avenue (State Route 13) from Telegraph Avenue to San Pablo Avenue, with the goal of eliminating severe injury and fatal traffic crashes, consistent with the 2020 Berkeley Vision Zero Action Plan. Ashby Avenue is a Vision Zero High Injury Street, and the project limits are predominantly within the Equity Priority Area identified in the Vision Zero Action Plan. Historically, Ashby Avenue has the highest concentration of severe and fatal crashes in Berkeley. The street divides the Lorin District and South Berkeley, historically black neighborhoods that have been subject to disinvestment and “redlining” discriminatory housing lending practices, from more affluent Central and North Berkeley areas. The Plan will refine recommendations for pedestrian and bicycle crossing safety treatments from the 2021 Berkeley Pedestrian Plan and 2017 Berkeley Bicycle Plan and develop additional conceptual design recommendations as needed as part of a comprehensive approach to traffic safety on Ashby Avenue. City of Berkeley will serve as the lead agency for this study with Caltrans as a joint applicant and project partner. The Plan is necessary in order to facilitate effective interagency coordination, to develop a comprehensive corridor traffic safety plan, and to support the robust local public engagement necessary to fully understand and address the safety concerns of the local community.

BACKGROUND

In 2020, the Berkeley City Council adopted the Vision Zero Action Plan, with the goal of eliminating all severe injury and fatality traffic crashes in Berkeley by the year 2028. The Vision Zero Action Plan identified High Injury Streets in Berkeley, a relatively small number of streets where the vast majority of severe injury and fatality crashes occur. This Plan also identified an Equity Priority Area, located predominantly in historically disinvested and “redlined” South and West Berkeley neighborhoods. The Vision Zero Action Plan prioritized the need to implement the projects identified in the 2017 Berkeley Bicycle Plan and 2021 Berkeley Pedestrian Plan that are located on High Injury Streets within the Equity Priority Area, as a way to reduce the disproportionate impact of severe injury and fatality traffic crashes on people walking and cycling in historically disinvested areas of Berkeley.

In 2021, the federal Bipartisan Infrastructure Law (BIL) established the new Safe Streets and Roads for All (SS4A) discretionary program with \$5 billion in appropriated funds over 5 years. The SS4A program funds regional, local, and Tribal initiatives through grants to prevent roadway deaths and serious injuries. The SS4A program supports the United States Department of Transportation’s goal of zero deaths and serious injuries on our nation’s roadways. SS4A requires that eligible applicants have a comprehensive safety action plan to eliminate severe injury and fatal crashes. Berkeley’s Vision Zero Action Plan, along with the Berkeley Bicycle Plan and Berkeley Pedestrian Plan, meets this eligibility requirement.

In 2021, the federal Infrastructure Investment and Jobs Act (IIJA) established a new \$1 billion discretionary grant program to reconnect communities divided by transportation

infrastructure. This federal Reconnecting Communities Pilot (RCP) grant program supports planning, capital construction, and technical assistance to restore community connectivity through the removal, retrofit, mitigation, or replacement of eligible transportation infrastructure that creates barriers in communities. Partnerships between States and local government agencies, as well as robust engagement with community organizations are encouraged as part of eligible capital project planning.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The projects included in these grant applications would increase the number of Berkeley residents and visitors who walk, bike, and take mass transit, which would decrease vehicle miles traveled and greenhouse gas emissions. This would help the City achieve the Berkeley Climate Action Plan greenhouse gas emission reduction target of 80% below the year 2000 level by 2050. The Climate Action Plan states that, in order to meet these targets, “Transportation modes such as public transit, walking and bicycling must become the primary means of fulfilling our mobility needs.”

RATIONALE FOR RECOMMENDATION

Capital planning, design, and construction grant funding will allow the City to address critical local and regional transportation infrastructure gaps for all modes of travel. The projects in these grant applications were identified and prioritized using criteria drawn directly from adopted City plans which have undergone extensive public review prior to Council adoption.

ALTERNATIVE ACTIONS CONSIDERED

The City could choose to forgo the opportunity to seek grant funding from the federal government for these projects. Alternative funding would need to be identified or the identified projects would not move forward toward implementation.

CONTACT PERSON

Farid Javandel, Deputy Director of Public Works, Transportation/Engineering, 981-7061  
Beth Thomas, Principal Planner, Public Works, 981-7068  
Eric Anderson, Senior Planner, Public Works, 981-7062

Attachments:

- 1: Resolution: Comprehensive Safety Action Plan Self-Certification  
Exhibit A: Comprehensive Safety Action Plan Self-Certification
- 2: Resolution: Safe Streets and Roads for All Grant Application
- 3: Resolution: Reconnecting Communities Pilot Program Grant Application

RESOLUTION NO. -N.S.

SAFE STREETS AND ROADS FOR ALL  
COMPREHENSIVE SAFETY ACTION PLAN SELF-CERTIFICATION

WHEREAS, the Safe Streets and Roads for All (SS4A) grant program requires that applicants have a Comprehensive Safety Action Plan that includes elements specified by the U.S. Department of Transportation; and

WHEREAS, applicants are required to self-certify that their Comprehensive Safety Action Plan meets these requirements; and

WHEREAS, in 2020, the Berkeley City Council adopted the Vision Zero Action Plan (Resolution No. 69,324-N.S.), with input from the Vision Zero Task Force and Vision Zero Advisory Committee, with the goal of eliminating all severe injury and fatality traffic crashes in Berkeley by the year 2028, in fulfillment of Comprehensive Safety Action Plan requirements; and

WHEREAS, the Vision Zero Action Plan describes how progress will be measured over time by utilizing data sources for severe injury and fatality traffic crashes, in fulfillment of Comprehensive Safety Action Plan requirements; and

WHEREAS, the Vision Zero Action Plan is posted publicly online on the City of Berkeley's website, in fulfillment of Comprehensive Safety Action Plan requirements; and

WHEREAS, the Vision Zero Action Plan analyzed the history and location of severe injury and fatality crashes in Berkeley, developed a map of High Injury Streets to document higher traffic safety risk locations, and used historical and current demographic and economic data to develop an Equity Priority Area to prioritize traffic safety improvements on High Injury Streets, in fulfillment of Comprehensive Safety Action Plan requirements; and

WHEREAS, the Vision Zero Action Plan development included an assessment of current policies, plans, guidelines, and standards to identify opportunities to improve how processes prioritize safety and discussed implementation through the adoption of revised or new policies, guidelines, and standards, in fulfillment of Comprehensive Safety Action Plan requirements; and

WHEREAS, the 2017 Berkeley Bicycle Plan (Resolution No. 67,945-N.S.), the 2021 Berkeley Pedestrian Plan (Resolution No. 69,711-N.S.) identify a comprehensive set of projects and strategies to address the safety problems for walking and biking documented in the Berkeley Vision Zero Action Plan, timelines for when these projects and strategies will be deployed, and an explanation of project prioritization criteria, in fulfillment of Comprehensive Safety Action Plan requirements.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley certifies that the 2017 Berkeley Bicycle Plan (Resolution No. 67,945-N.S.), the 2021 Berkeley Pedestrian Plan (Resolution No. 69,711-N.S.), and the 2020 Berkeley Vision Zero Action Plan (Resolution No. 69,324-N.S.) collectively fulfill the requirements for a Comprehensive Safety Action Plan as required to submit a grant application to the Safe Streets and Roads grant program.



## Self-Certification Eligibility Worksheet

This worksheet is not meant to replace the NOFO. Applicants should follow the instructions in the NOFO to correctly apply for a grant. See the SS4A website for more information: <https://www.transportation.gov/SS4A>

**Instructions:** This content is from Table 2 in the NOFO. The purpose of the worksheet is to determine whether or not an applicant's existing plan(s) is substantially similar to an Action Plan.

For each question below, answer "yes" or "no." If "yes," cite the specific page in your existing Action Plan or other plan(s) that corroborate your response, or cite and provide other supporting documentation separately.

An applicant is eligible to apply for an Action Plan Grant that funds supplemental action plan activities, or an Implementation Grant, only if the following two conditions are met:

- Answer "yes" to Questions **3** **7** **9**
- Answer "yes" to at least four of the six remaining Questions **1** **2** **4** **5** **6** **8**

If both conditions are *not met*, an applicant is still eligible to apply for an Action Plan Grant that funds creation of a new action plan.

Lead Applicant: City of Berkeley

UEI: KC7DYLV9EF25

**1 Are both of the following true?**

- Did a high-ranking official and/or governing body in the jurisdiction publicly commit to an eventual goal of zero roadway fatalities and serious injuries?
- Did the commitment include either setting a target date to reach zero, OR setting one or more targets to achieve significant declines in roadway fatalities and serious injuries by a specific date?

YES  NO

If yes, provide documentation:

Vision Zero Action Plan

**2 To develop the Action Plan, was a committee, task force, implementation group, or similar body established and charged with the plan's development, implementation, and monitoring?**

YES  NO

If yes, provide documentation:

Vision Zero Action Plan

**3 Does the Action Plan include all of the following?**

- Analysis of existing conditions and historical trends to baseline the level of crashes involving fatalities and serious injuries across a jurisdiction, locality, Tribe, or region;
- Analysis of the location where there are crashes, the severity, as well as contributing factors and crash types;
- Analysis of systemic and specific safety needs is also performed, as needed (e.g., high risk road features, specific safety needs of relevant road users; and,
- A geospatial identification (geographic or locational data using maps) of higher risk locations.

YES  NO

If yes, provide documentation:

Vision Zero Action Plan



## Self-Certification Eligibility Worksheet

**4 Did the Action Plan development include all of the following activities?**

- Engagement with the public and relevant stakeholders, including the private sector and community groups;
- Incorporation of information received from the engagement and collaboration into the plan; and
- Coordination that included inter- and intra-governmental cooperation and collaboration, as appropriate.

YES  NO

If yes, provide documentation:

Vision Zero Action Plan

**5 Did the Action Plan development include all of the following?**

- Considerations of equity using inclusive and representative processes;
- The identification of underserved communities through data; and
- Equity analysis, in collaboration with appropriate partners, focused on initial equity impact assessments of the proposed projects and strategies, and population characteristics.

YES  NO

If yes, provide documentation:

Vision Zero Action Plan

**6 Are both of the following true?**

- The plan development included an assessment of current policies, plans, guidelines, and/or standards to identify opportunities to improve how processes prioritize safety; and
- The plan discusses implementation through the adoption of revised or new policies, guidelines, and/or standards.

YES  NO

If yes, provide documentation:

Vision Zero Action Plan

**7 Does the plan identify a comprehensive set of projects and strategies to address the safety problems in the Action Plan, time ranges when projects and strategies will be deployed, and explain project prioritization criteria?**

YES  NO

If yes, provide documentation:

VZ, Bike, & Ped Plans

**8 Does the plan include all of the following?**

- A description of how progress will be measured over time that includes, at a minimum, outcome data.
- The plan is posted publicly online.

YES  NO

If yes, provide documentation:

Vision Zero Action Plan

**9 Was the plan finalized and/or last updated between 2017 and 2022?**

YES  NO

If yes, provide documentation:

Vision Zero Action Plan



RESOLUTION NO. -N.S.

GRANT APPLICATION: SAFE STREETS AND ROADS FOR ALL FOR  
VISION ZERO PEDESTRIAN AND BICYCLE CROSSING SAFETY IMPROVEMENTS

WHEREAS, people walking and cycling in Berkeley experience traffic safety issues when trying to cross the street at currently uncontrolled intersections; and

WHEREAS, these traffic safety concerns have been documented in the 2017 Berkeley Bicycle Plan (Resolution No. 67,945-N.S.) and the 2021 Berkeley Pedestrian Plan (Resolution No. 69,711-N.S.); and

WHEREAS, intersection traffic safety improvements from the Berkeley Bicycle Plan and Berkeley Pedestrian Plan were selected for this grant because of their location on Vision Zero High Injury Streets within the Equity Priority Area identified in the Berkeley Vision Zero Action Plan (Resolution No. 69,324-N.S.); and

WHEREAS, crossing treatments such as rectangular rapid-flashing beacons with raised concrete street medians (RRFB + Median) and pedestrian hybrid beacons (PHB) are intended to help people walking and biking to cross the street more safely, at locations as proposed in the 2017 Berkeley Bicycle Plan and 2021 Berkeley Pedestrian Plan; and

WHEREAS, Safe Streets and Roads For All grant funds can be used to make traffic safety improvements to currently uncontrolled pedestrian and bicycle intersection crossings; and

WHEREAS, if awarded, the grant funds will be placed in the Federal Capital Grants Fund (Fund 305) starting in FY 2023.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to submit a grant application to the Safe Streets and Roads for All grant program, for pedestrian and bicycle intersection crossing safety improvements for up to the amount of \$6,000,000; and accept the grant awarded, and execute any resultant agreements and amendments.

RESOLUTION NO. -N.S.

GRANT APPLICATION: RECONNECTING COMMUNITIES PILOT GRANT PROGRAM  
FOR ASHBY AVENUE VISION ZERO SAFETY PLAN

WHEREAS, Ashby Avenue (State Route 13) has the highest concentration of severe injury and fatal traffic crashes of any street in Berkeley, as described in the Berkeley Vision Zero Action Plan (Resolution No. 69,324-N.S.); and

WHEREAS, this crash history has made Ashby Avenue a barrier that is difficult to cross by any mode of transportation, dividing South Berkeley, a historically black neighborhood that has been subject to disinvestment and “redlining” discriminatory housing lending practices, from more affluent Central and North Berkeley areas; and

WHEREAS, these traffic safety concerns have been documented in the Berkeley Vision Zero Action Plan, which identifies Ashby Avenue as a High Injury Street located partially within the Equity Priority Area, and in the 2017 Berkeley Bicycle Plan (Resolution No. 67,945-N.S.) and the 2021 Berkeley Pedestrian Plan (Resolution No. 69,711-N.S.); and

WHEREAS, the Ashby Avenue Vision Zero Safety Plan will refine the traffic safety recommendations proposed in the 2017 Berkeley Bicycle Plan and the 2021 Berkeley Pedestrian Plan and develop additional conceptual design proposals as needed as part of a comprehensive approach to traffic safety on Ashby Avenue; and

WHEREAS, the Ashby Avenue Vision Zero Safety Plan is necessary in order to facilitate effective interagency coordination, to develop a comprehensive corridor traffic safety plan, and to support the robust local public engagement necessary to fully understand and address the safety concerns of the local community; and

WHEREAS, City of Berkeley will serve as the lead agency for this study with Caltrans as a joint applicant and project partner; and

WHEREAS, Reconnecting Communities Pilot Grant Program capital project planning funds can be used to develop a comprehensive corridor traffic safety plan; and

WHEREAS, if awarded, the grant funds will be placed in the Federal Capital Grants Fund (Fund 305) starting in FY 2023.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to submit a grant application to the Reconnecting Communities Pilot Grant Program for the Ashby Avenue Vision Zero Safety Plan for up to the amount of \$480,000; and accept the grant awarded, and execute any resultant agreements and amendments.



Disaster and Fire Safety Commission

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Disaster and Fire Safety Commission

Submitted by: Jose Luis Bedolla, Chairperson, Disaster and Fire Safety Commission

Subject: Red Curbs and Visible Signage

RECOMMENDATION

The Disaster and Fire Safety Commission (“Commission” or “DFSC”) respectfully requests that Council immediately take the following remedial actions to improve emergency vehicle access and residents’ ability to evacuate in the event of a wildfire, while we await implementation of more comprehensive long-term actions such as the Safe Passages program.

In identified high fire risk areas (Fire Zones 2 and 3) and in other high-risk areas, such as where hazardous chemicals are stored or used:

1. Inspect, fix or replace all parking restriction signage as necessary;
2. Red curb all fire hydrant areas to the maximum extent allowed by law; and
3. Direct the Fire Department and Public Works to identify areas that could be pinch points for fire trucks to travel.

It is important that residents understand parking restrictions in the City and State Vehicle Codes. The City should lessen any confusion that might be caused by poorly maintained, misplaced or unclear signs or curbs. The simple step of a periodic inspection of existing parking visual cues (signage, red curbs, etc.) has a profound impact on the safety of all Berkeley residents at any time, but at this time, this effect is enhanced enormously when we are experiencing wildfire conditions tied to severe drought. This proposed periodic review is something that needs to be done and that can be done easily and quickly to reduce the increasing stress residents feel about fire danger and evacuation routes.

FISCAL IMPACTS OF RECOMMENDATION

The Commission is not privy to the budget or plans from Public Works Department and other departments, however, given the increasing fire danger, we ask that completion of this initiative be a priority. Use of Measure FF funds should be considered if necessary to expedite implementation of this initiative for the 2022 fire season.

### CURRENT SITUATION AND ITS EFFECTS

On June 22, the commission passed a motion to recommend remedial actions to improve emergency vehicle access and residents' ability to evacuate in the event of an emergency.

Motion: Dean, second: Bradstreet, Vote: 8 Ayes: Bedolla, Dean, Bradstreet, Cutler, Simmons, Degenkolb, Rader, Stein; 0 Noes; 0 Absent;; 0 Abstain:

### BACKGROUND

Signage in the Berkeley hills in particular is in various states of disrepair. Without clear signage, in these and other high-risk areas of the City, residents and visitors tend to ignore signage and park in prohibited areas. Parking in restricted areas could result in blocking fire trucks' ability to get to an emergency and could prevent residents from egress in the event of wildfire. While there is existing law that governs parking near hydrants regardless of red curbing, that tends to be ignored.

As such, red curbing to the maximum distance around hydrants to the extent allowed by law will serve as a reminder of the parking restriction and allow for the fire department to access hydrants in case of fire. Lastly, we ask for further interdepartmental discussions around identifying pinch points for fire trucks where red curbing those pinch points would allow for fire truck access in case of emergencies. In cases where there is no sidewalk, the edge of the asphalt could be painted to serve the same purpose.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There is no direct environmental impact of this recommendation.

### RATIONALE FOR RECOMMENDATION

The rationale is to improve emergency vehicle ingress during common emergencies and in the event of wildfire, and to improve emergency public egress in case of wildfire while we await a larger discussion around the Safe Passages program.

### ALTERNATIVE ACTIONS CONSIDERED

There is no alternative to improving existing signage and red-curbing around fire hydrants other than delayed or no action. Not red curbing the areas around the fire hydrants and focusing on parking enforcement is another possible approach but would require substantially increased parking enforcement.

### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report. The Fire Department has already begun to address replacement of all existing "No Parking" signs that have faded and the repainting of all existing Red Curbs in Fire Zones 1, 2, and 3.

Funding has been allocated within Measure FF to initiate this project. The Fire Department will evaluate what the one-time fees will be to update the painting of curbs, replacement of signs, and then analyze continual maintenance costs.

The Safe Passages Project is aimed at mitigation of wildfire risks by supporting Berkeley's Emergency Evacuation Plan and helping to keep emergency ingress and egress routes accessible.

CONTACT PERSON

Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508







Mental Health Commission

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: Dr. Margaret Fine, Mental Health Commission Chair  
 Subject: Appointment of Judy Appel to Mental Health Commission for the City of Berkeley

RECOMMENDATION

Adopt a Resolution appointing Judy Appel as a representative of the Special Public Interest Category (family member), to complete her first 3- year term beginning September 14, 2022 and ending September 13, 2025.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently five vacancies on the Commission. The Mental Health Commission is actively seeking candidates with the ability to fulfill the state law duties for Commissioners, including reviewing and evaluating the community's needs, services, facilities and special problems. Approval of the recommended action will fill one vacancy and allow the Commission to move one step closer to having a full and diverse complement of commissioners.

BACKGROUND

California State law requires that appointments to the Mental Health Commission meet specific categories, who may serve up to nine years consecutively. The general public interest category may include anyone who has an interest in and some knowledge of mental health services. The special public interest category includes direct consumers of public mental health services and family members of consumers, which together must constitute at least fifty percent or nine of the commission seats. Direct consumers and family members shall each constitute at least 20% of the commission membership.

The Mental Health Commission nominated Judy Appel as a special public interest consumer applicant for appointment to the Mental Health Commission for the City of Berkeley for a three-year term. She grew up with a sister who was close in age and who

had severe psychiatric disabilities. She was in mental health programs and hospitals much of her life, so Judy has that personal experience which in many ways that informs her professional experience. Her sister died several years ago.

Judy Appel is a long-time Berkeley resident with a deep commitment to supporting Berkeleyans living with mental health and substance use issues and disabilities. She currently serves on the Board of Directors for the Ashby Village and is a non-profit organizational development consultant. She is committed to addressing diversion for people calling 911 who need emergency mental health and substance use services in the community and moreover, avoiding involvement in the criminal legal system and incarceration. She has worked with very diverse populations of people impacted by mental health and substance use challenges, including for people experiencing homelessness.

In addition, Judy is a strong supporter of mental health and substance use services for young people in need. She was elected to the School Board for Berkeley Unified School District in 2012 and 2016 and served two times as President. She provided policy direction for educational instruction with a focus on closing the opportunity gap for students of color and low-income students. The School Board oversees a budget of \$160M from local, state, and federal sources and directs budgeting and fiscal oversight. She has lead School Board efforts to implement restorative justice, social-emotional learning, and trauma-informed practices at multiple school sites.

Further Judy served as a Senior Program Officer and Director of Special Projects for the Jonathan Logan Family Foundation. She managed a broad range of education portfolios and grantees focused on social justice projects, equity, and inclusion. She also leveraged an extensive network to secure involvement from community leaders and influencers on foundation initiatives, including a broad range of local, national, and global grantees.

The Mental Health Commission passed the following motions at the June 23, 2022 meeting:

M/S/C (Fine, Prichett) Motion to nominate Judy Appel to the Mental Health Commission  
Ayes: Fine, Jones, Opton, Pritchett Noes: None; Abstentions: None; Absent: Escarcega; Taplin

#### ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Approval of the recommended action will allow the Mental Health Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Jamie Works-Wright, Commission Secretary, HHCS, 510-981-7721

Attachments:

1: Resolution

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

APPOINTMENT OF JUDY APPEL TO THE MENTAL HEALTH COMMISSION

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (*or designee*), six special public interest appointments, and four general public interest appointments; and

WHEREAS, with the ongoing implementation of the Mental Health Services Act, the City of Berkeley will need to have a full complement of diverse appointees to the Commission to review and evaluate the community's mental health needs, resources, and programs and to fulfill its mandate; and

WHEREAS, Ms. Judy Appel has an investment in the mental health community and has family lived experience,

WHEREAS, the Mental Health Commission at its June 23, 2022 meeting recommended appointments of Judy Appel.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoint Judy Appel as a representative of the Special Public Interest family member category, to complete her first term ending September 13, 2025.



Peace and Justice Commission

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Peace and Justice Commission  
Submitted by: George Lippman, Chairperson, Peace and Justice Commission  
Subject: Taking Action on the City of Berkeley’s Commitment to Abortion Access

RECOMMENDATION

Adopt a Resolution Taking Action on the City of Berkeley’s Commitment to Abortion Access.

FISCAL IMPACTS OF RECOMMENDATION

Minimal impact to staff time.

CURRENT SITUATION AND ITS EFFECTS

Roe v. Wade, the landmark U.S. Supreme Court decision recognizing and confirming the right to privacy in the federal Constitution protects the right for pregnant people to choose to have an abortion prior to viability, is in imminent danger of being overturned

At its regular meeting of June 6, 2022, the Peace and Justice Commission unanimously proposed the attached resolution for the City Council.

M/S/C: (Bohn/Morizawa)

Ayes: Bohn, Gussman, Jacquelin, Lee, Lippman, Maran, Morizawa

Noes: None

Abstain: None

Absent: Leon-Maldonado, Rodriguez

BACKGROUND

On January 18, 2022, the Berkeley City Council adopted a resolution entitled “Reaffirming the City of Berkeley’s Commitment to Roe v. Wade and Access to Safe

Reproductive Health Services,” stating its “support for women to be able to exercise their constitutional rights and continue have access to critical health care services, including abortion.”

Limiting access to reproductive healthcare, including systematically stripping pregnant people of access to abortion, is not only a transgression against basic human reproductive rights but is also an assault on dignity.

Dozens of states have already taken legal action to limit or ban abortion, potentially stripping millions of people of reproductive care and endangering thousands of healthcare workers, including nurses and doctors who have dedicated their lives to caring for those in need.

California Governor Gavin Newsom has taken a number of steps, in anticipation of a Supreme Court ruling to overturn *Roe v. Wade*, to protect access to abortion for Californians and others across the country. These actions include the formation of the California Future of Abortion Council (CA-FAB Council), which has issued 45 recommendations including among many others:<sup>1</sup>

- Assistance to the expected up to 1.4 million visitors to the state seeking abortion services, as well as to the providers that will serve them.<sup>2</sup>
- Comprehensive community survey and research to identify unmet educational and health needs of California residents. To accurately assess the needs and preferences of people experiencing barriers to care, a survey must be conducted, and data analyzed on all of the following:
  - The educational and health awareness needs of populations most impacted by lack of access to abortion.
  - Community preferences for types of abortion services and levels of care.
  - How youth/young people access sexual and reproductive health services and education.
  - Access to telehealth and preference for various modalities when receiving sexual and reproductive care, including abortion services.

## ENVIRONMENTAL SUSTAINABILITY

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<sup>1</sup> “California plans to be abortion sanctuary if *Roe* overturned,” AP News, December 8, 2021, <https://apnews.com/article/abortion-california-sanctuary-625a118108bcda253196697c83548d5b>  
> [https://www.plannedparenthoodaction.org/uploads/filer\\_public/d8/e1/d8e17825-72e0-4f6f-9c57-7549bb54261e/ca\\_fab\\_council\\_report\\_pdf](https://www.plannedparenthoodaction.org/uploads/filer_public/d8/e1/d8e17825-72e0-4f6f-9c57-7549bb54261e/ca_fab_council_report_pdf)

<sup>2</sup> <https://states.guttmacher.org/>

No significant impacts.

RATIONALE FOR RECOMMENDATION

The East Bay is home to a number of nonprofit healthcare providers that provide free or low-cost reproductive care, including abortion. The demand for abortion access is likely to increase greatly, making cities like Berkeley a destination for individuals seeking care that may be made illegal in their home cities and states.

Research and study that is locally directed, grassroots-oriented, comprehensively diverse, and collaboratively designed by staff, commissions, community members, advocates and other subject matter experts will contribute a great deal to local and state policy-makers.

For this reason the Peace and Justice Commission proposes Council refer to the Commission a request to collaborate with the listed Commissions, Boards, and Departments among others to study what resources exist for reproductive health and educational services, what obstacles residents of Berkeley face in accessing them, and what disparities may exist on the basis of race and class; and give an interim report to the City Council on what actions should be taken to address such limitations on reproductive rights and services for Berkeley's residents, within four months.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

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

CONTACT PERSON

George Lippman, Chair, Peace and Justice Commission

Okeya Vance-Dozier, Commission Secretary, City Manager's Office, (510) 684-0503

Attachments:

1: Resolution

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

Resolution Taking Action on the City of Berkeley's Commitment to Abortion Access

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, limiting access to reproductive healthcare, including systematically stripping pregnant people of access to abortion, is not only a transgression against basic human reproductive rights but is also an assault on dignity;<sup>i</sup> and

WHEREAS, *Roe v. Wade*, the landmark U.S. Supreme Court decision recognizing and confirming the right to privacy in the federal Constitution protects the right for pregnant people to choose to have an abortion prior to viability, is in imminent danger of being overturned; and

WHEREAS, dozens of states have already taken legal action to limit or ban abortion, potentially stripping millions of people of reproductive care and endangering thousands of healthcare workers, including nurses and doctors who have dedicated their lives to caring for those in need; and

WHEREAS, the East Bay is home to a number of nonprofit healthcare providers that provide free or low-cost reproductive care, including abortion; and

WHEREAS, the Berkeley City Council passed a resolution on January 18, 2022, reaffirming Berkeley's commitment to *Roe v. Wade*, stating its "support for women to be able to exercise their constitutional rights and continue have access to critical health care services, including abortion;"<sup>3</sup> and

WHEREAS, the demand for abortion access is likely to increase greatly, making cities like Berkeley a destination for individuals seeking care that may be made illegal in their home cities and states.

THEREFORE BE IT RESOLVED, that the Council of the City of Berkeley declares Berkeley to be a Right-To-Choose Sanctuary City, recognizing that anyone should have a right to abortion, on-demand, and without question.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urges the State of California and Alameda County to increase funding for reproductive rights and abortion

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<sup>3</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-01-18%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>



Taking Action on the City of Berkeley's Commitment to Abortion Access

Consent Calendar  
September 13, 2022

access.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley refers this resolution to the Peace and Justice Commission requesting it to collaborate with the Berkeley Unified School District, the Health Department, the Community Health Commission, and the Commission on the Status of Women to study what resources exist for reproductive health and educational services, what obstacles residents of Berkeley face in accessing them, and what disparities may exist on the basis of race and class; and give an interim report to the City Council on what actions should be taken to address such limitations on reproductive rights and services for Berkeley's residents, within four months.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley reaffirms its support for codifying the right to an abortion into federal law via HR 3755, The Women's Health Protection Act of 2021 (Lee & Chu).<sup>4</sup>

BE IT FURTHER RESOLVED, that the copies of this Resolution be sent to Berkeley's county, state, and federal legislative representatives, Rep. Judy Chu, Governor Newsom, State Senate President Pro Tempore Toni Atkins, and the BUSD.

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<sup>4</sup> <https://www.congress.gov/bill/117th-congress/house-bill/3766>





Office of the Mayor

CONSENT CALENDAR  
September 13, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Rigel Robinson, and Councilmember Sophie Hahn

Subject: Pacific Center for Human Growth: 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 \$1,000 per Councilmember including \$1,000 from Mayor Arreguin to the Pacific Center for Human Growth, for the planning and production of a historical quilt to honor their 50<sup>th</sup> anniversary. Funds would be relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

BACKGROUND

Founded in 1973, the Pacific Center for Human Growth has served the Bay Area's LGBT+ community for almost 50 years. It is the oldest LGBT+ center in the Bay Area, and third oldest in the nation. The Pacific Center works to enhance the mental health and overall well being of its clients and LGBT+ community by providing support groups, community outreach, facilitated workshops, and culturally responsive therapy. Their programs aim to counter the social and institutional experiences of homophobia, ageism, misogyny, and racism.

The City of Berkeley has an existing partnership with the Pacific Center. In 2010, to better serve individuals in underserved populations who have been exposed to trauma, the City signed a contract with the Pacific Center. Through this, the Mental Health Division partners with the Pacific Center to provide trauma support services to the LBGT+ population. This contract continues today, which was last extended in July 2022.

To commemorate their 50<sup>th</sup> anniversary in the spring of 2023, the Pacific Center plans on creating a historical quilt. A local artist will design the quilt using testimonies from community members on how the Pacific Center has supported them. These stories will be presented visually on the quilt, which will create a sense of community and connectedness. To make this project happen, the Pacific Center is requesting \$3,500, which will be used for labor, materials, and related expenses (details in Attachment 2).

FINANCIAL IMPLICATIONS

No General Fund impact; \$1,000 is available from Mayor Arreguín's Council Office Budget discretionary account.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Description of 50<sup>th</sup> Anniversary Quilt Project

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Mayor Jesse Arreguin has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, the Pacific Center for Human Growth seeks funds in the amount of \$3500 to provide the following public services; to develop a historical quilt to commemorate their 50<sup>th</sup> anniversary, which will feature personal stories and testimonies about how the Pacific Center has meant to them; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of creating a sense of community and connectedness and advancing their causes of improving mental health in the LGBT+ community.

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 up to \$1,000 per office shall be granted to the Pacific Center for Human Growth.



Pacific Center for Human Growth: Honoring 50 Years Building LGBTQIA+ Community Wellness

Pacific Center for Human Growth (“PC”) is thrilled to celebrate 50 years of building community wellness for the East San Francisco Bay Area’s diverse LGBTQIA+ communities. The Pacific Center is the oldest LGBTQIA+ community center in the Bay Area and the third oldest in the nation.

Pacific Center requests a one time project support grant of \$3,500 from the City of Berkeley to support the planning and production of a historical quilt to honor our “golden” (50th) anniversary in spring 2023.

The vision for a historical quilt emerged from a local artist who approached Pacific Center to offer their vision of a collaborative project that will engage LGBTQIA+ community members in sharing their personal stories and testimonies about what Pacific Center has meant to them. Using a variety of media, the artist will facilitate a series of online or socially distanced workshops to support participants to tell their stories in a visual form.

Rooted in the East San Francisco Bay Area, we serve LGBTQIA+ community members from age nine through senior adulthood. Our peer groups, clinical program, training, and outreach activities positively impact a broad spectrum of LGBTQIA+ community members across age, race/ethnicity, and gender identities.

For 49 years, PC has provided accessible, culturally responsive mental health services and peer-driven community engagement programs. Our programs serve to counter the social and institutional experiences of homophobia, ageism, misogyny, and racism which present ongoing challenges to the wellbeing of LGBTQIA+/BIPOC community members.

The collaborative process inherent to the quilt project will increase participants’ sense of connectedness, decrease isolation, and create a legacy project to be enjoyed by many for decades to come.

Project Budget

A one-time project grant of \$3,500 will enable Pacific Center to purchase materials, compensate the labor of a Project Coordinator for 100 hours of work at a living wage of \$25.00 per hour, and cover overhead expenses.

Expense	Total	Details
Labor	\$ 2,500.00	Project Coordinator at 100 Hours x \$25.00 hour
Materials	\$ 500.00	Fabric, paper, ink, paint, other
Overhead	\$ 500.00	Technology platforms supporting safe and accessible meetings including Zoom, Google Workspace, Rev Live Captions
<b>TOTAL REQUEST</b>	<b>\$ 3,500.00</b>	



Office of the Mayor

CONSENT CALENDAR  
September 13, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Sophie Hahn

Subject: Ordinance Amendment: Correction to the COVID-19 Emergency Response Ordinance, BMC Chapter 13.110.

RECOMMENDATION

Adopt the first reading of an Ordinance correcting BMC Chapter 13.110, the COVID-19 Emergency Response Ordinance, to clarify the effect of Ordinance No. 7,762-N.S. upon tenant protections that were inadvertently omitted during the last update of BMC Chapter 13.110.

BACKGROUND

The City of Berkeley declared a local State of Emergency on March 3, 2020 in response to the COVID-19 pandemic, first detected globally in late December 2019. Shortly thereafter, Council passed BMC Chapter 13.110 - the COVID-19 Emergency Response Ordinance (“Chapter 13.110”) - prohibiting most evictions in Berkeley, which has been subsequently updated over the past couple of years. There is currently no timeline as to when the local State of Emergency will end, and even when the health crisis is no longer a significant threat to the community, the economic ramifications of COVID-19 will be felt for some time in the future.

Chapter 13.110 has been updated a total of five times: Ordinance No. 7,693-N.S. approved on March 17, 2020; Ordinance No. 7,698-N.S., approved on April 21, 2020; Ordinance No. 7,704-N.S. approved on May 26, 2020; Ordinance No. 7,743-N.S. approved on December 15, 2020; and Ordinance No. 7,762-N.S. approved on May 11, 2021. The intent of the latest amendment, as mentioned in the report in Attachment 2, was to make just one narrowly tailored amendment to exempt from the provisions of the ordinance commercial leases where the lease has expired and the City has issued a permit for the demolition or substantial alternation of the commercial unit. This was necessary to move forward with existing approved developments that are needed to address the housing affordability crisis and meet the quota of new units as prescribed in the Regional Housing Needs Allocation (RHNA). While the recommendation was clear in the intent of amending Chapter 13.110 for this singular purpose, the amendments made in the ordinance were drafted using an older version of the ordinance, Ordinance 7,698-N.S., as approved on May 26, 2020. Because of this, the amendments that were approved in Ordinance No. 7,704-N.S. on May 26, 2020, and Ordinance No. 7,743-N.S. on December 15, 2020 were inadvertently omitted from the text of Ordinance No. 7,762-N.S.

The amendments made in Ordinance No. 7,743-N.S. were based on recommendations approved by the 4x4 Joint Task Force Committee on Housing. This primarily includes the halting of evictions under the Ellis Act for the duration of the local state of emergency pertaining to the COVID-19 pandemic, in addition to establishment of civil penalties, adding actions that hurt a Resident's credit rating passed on non-payment of rent as a prohibited retaliation, along with general cleanup language. The changes incorporated and approved by the Council through Ordinance No. 7,743-N.S. has been reinstated in this corrected version of the ordinance.

ENVIRONMENTAL SUSTAINABILITY

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

FISCAL IMPACTS OF RECOMMENDATION

None

RATIONALE FOR RECOMMENDATION

This correction is needed to clarify and fully implement the legislative intent of the passage of Ordinance No. 7,762-N.S. This is done by incorporating the changes that were enacted in Ordinance Nos. 7,704-N.S. and 7,743-N.S. and then inadvertently omitted from the text of Ordinance 7,762-N.S.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Ordinance (clean)
- 2: Ordinance (track changes)
- 2: May 11, 2021 Council Item: Amending COVID-19 Emergency Response Ordinance Relating to Commercial Leases
- 3: Track changes between Ordinance No. 7,743-N.S. and Ordinance No. 7,762-N.S.



ORDINANCE NO. -N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,  
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110**  
**COVID-19 EMERGENCY RESPONSE ORDINANCE**

**Sections:**

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

**13.110.010 Findings and Purposes**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to

provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

**13.110.020 Prohibited Conduct**

A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a Resident of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local emergency declared by

the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

### **13.110.030 Definitions**

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B. "Covered Reason for Delayed Payment" means:

(1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

C. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

E. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

F. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

### **13.110.040 Collection of Back Rent and Late Fees**

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the Covered Period, whichever is later. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) *et seq.* does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

#### **13.110.050 Application**

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation), a landlord may seek rent accrued during the Covered Period as set forth in Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the Covered Period. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time during the Covered Period, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on non-payment of rent during the Covered Period as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

### **13.110.060 Implementing Regulations**

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

### **13.110.070 Waiver.**

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

### **13.110.080 Remedies**

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of

attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.

B. The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

C. A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

### **13.110.090 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

### **13.110.100 Liberal Construction**

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Effective Date



This ordinance shall go into effect thirty days from the time of 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.

ORDINANCE NO. -N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,  
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110  
COVID-19 EMERGENCY RESPONSE ORDINANCE**

**Sections:**

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

**13.110.010 Findings and Purposes**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022 the council ratified an extension of the local state of emergency through June 21, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to

provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

#### **13.110.020 Prohibited Conduct**

A. During the ~~local State of Emergency~~Covered Period, no Landlord or Lender ~~other entity~~ shall evict or attempt to evict an ~~occupant~~ Resident of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to ~~for~~ the health and safety of ~~residents~~other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the ~~local State of Emergency~~Covered Period.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local ~~state-of-emergency~~ declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the ~~local State-of-Emergency~~Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

### 13.110.030 Definitions

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B. "Covered Reason for Delayed Payment" means:

(1) the basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or ~~or, a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) in a group living arrangement wherein all tenants are collectively responsible for payment of the rent to the landlord, a reduction in the number of tenants living in the unit~~ which reduces the ability of the remaining tenants to pay ~~the~~ rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

CB. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

EC. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

FD. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

IE. "Tenant" includes a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

### **13.110.040 Collection of Back Rent and Late Fees**

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

~~B. Tenants shall have up to twelve (12) months to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement "Delayed Rent Payment Agreement". Notwithstanding any lease~~

~~provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.~~

~~1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").~~

~~2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").~~

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent ~~over the 12 months~~. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the ~~local State of Emergency is ended~~Covered Period, whichever is later. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) et seq. does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

### **13.110.050 Application**

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire ~~on or after the effective date of this Chapter through the end of the local State of Emergency during the Covered Period~~. It does not apply ~~to withdrawal of accommodations from the rental market pursuant to Government Code 7060 et seq. ("Ellis Act")~~, commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. ~~Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation) With respect to delayed payment covered by this Ordinance~~, a landlord may seek such rent after the expiration of the local State of Emergency, pursuant to Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued ~~due to a Covered Reason for Delayed Payment during the term of the local State of Emergency during the Covered Period~~. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time ~~during the Covered Period, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant. from the effective date of this Chapter to the expiration of the local State of Emergency and there exists a Covered Reason for Delayed Payment.~~

C. A Landlord or Lender shall not retaliate against a Tenant for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Tenant would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on non-payment of rent during the Covered Period as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

### **13.110.060 Implementing Regulations**

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

### **13.110.070 Waiver.**

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

### **13.110.080 Remedies**



A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation-tenant may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

~~Money damages shall only be awarded if the trier of facts finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state, or federal law.~~

1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

4. In addition, this ~~Ordinance Chapter~~ grants a defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this ~~Ordinance Chapter~~.

B. The protections provided by this ordinance shall be available to all tenants, regardless of any agreement wherein a tenant waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

CA. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2.The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

### **13.110.090 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

### **13.110.100 Liberal Construction**

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

### Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage.

#### Vote Required, Immediately Effective

Based upon the findings in Section 13.110.010 of this Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction o the Charter of the City of Berkeley.

This ordinance shall go into effect thirty days from the time of 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.



CONSENT CALENDAR

May 11, 2021

TO: Members of the City Council

FROM: Mayor Jesse Arreguin

SUBJECT: Amending COVID-19 Emergency Response Ordinance Relating to Commercial Leases

**RECOMMENDATION**

Adopt an urgency ordinance amending Berkeley Municipal Code Section 13.110.050 (COVID-19 Emergency Response Ordinance) to exempt from the provisions of the ordinance commercial leases where the lease term has expired and the City has issued a permit for the demolition or substantial alternation of the commercial unit. The proposed ordinance change reads as follows:

13.110.050 Application

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served or filed or which expire on or after the effective date of this Chapter through the end of the local State of Emergency. It does not apply to withdrawal of accommodations from the rental market pursuant to Government Code [7060](#) et seq. ("Ellis Act"), commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

**BACKGROUND**

The City of Berkeley declared a local State of Emergency on March 3, 2020 in response to the COVID-19 pandemic, first detected globally in late December 2019. Shortly thereafter, Council passed BMC 13.110 - the COVID-19 Emergency Response Ordinance - prohibiting most evictions in Berkeley, which has been subsequently updated over the past year. Despite recent data showing a decline in new cases in the Bay Area and progress in the distribution and administration of vaccines, the threat of another wave of infections remains, and cases in other regions continue to rise. There is currently no timeline as to when the local State of Emergency will end, and even when the health crisis is no longer a significant threat to the community, the economic ramifications of COVID-19 will be felt for some time in the future.

The current COVID-19 Emergency Response Ordinance provides a critical lifeline to residential and commercial tenants who have faced financial difficulties as a result of the pandemic. This item makes a very narrow amendment to the ordinance exempting from its provisions a lease termination for a commercial tenant whose lease term has expired and where the City has already approved a permit for demolition or substantial alteration of the unit.

While the City does not want to create an incentive to evict existing commercial tenants. However in limited cases where the lease has already expired and there has been an approved project, the City should enable those housing and mixed-use projects to proceed. Berkeley faces a critical shortage of housing, particularly for low, very-low and extremely-low income households. It was never the intent of the Council to prohibit already entitled projects, where the lease has expired to be stalled due to the commercial eviction moratorium.

This is necessary to move forward with existing approved developments that are needed to address the housing affordability crisis and meet the quota of new units as prescribed in the Regional Housing Needs Allocation (RHNA). Without an end date for when the local State of Emergency will be lifted, clarity in the ordinance language is needed to allow property owners who have already entitled projects to proceed with building needed housing.

## **CONTACT**

Mayor Jesse Arreguín  
mayor@cityofberkeley.info | 510-981-7100

### Attachments:

1. Urgency Ordinance

ORDINANCE NO. -N.S.

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BERKELEY AMENDING THE COVID-19 EMERGENCY RESPONSE ORDINANCE; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.

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

Section 1. That Chapter 13.110 of the Berkeley Municipal Code is hereby amended to read as follows:

Chapter 13.110

COVID-19 EMERGENCY RESPONSE ORDINANCE

Sections:

- 13.110.010 Findings and Purpose.
- 13.110.020 Prohibited Conduct.
- 13.110.030 Definitions.
- 13.110.040 Collection of Back Rent and Late Fees.
- 13.110.050 Application.
- 13.110.060 Implementing Regulations.
- 13.110.070 Waiver.
- 13.110.080 Remedies.
- 13.110.090 Severability.

13.110.010 Findings and Purpose.

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, the council ratified an extension of the local state of emergency through June 21, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 6, 2020, the Judicial Council of California issued emergency rules suspending court proceedings for unlawful detainer and judicial foreclosures until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

13.110.020 Prohibited Conduct.

A. During the local State of Emergency, no landlord or other entity shall evict or attempt to evict an occupant of real property unless necessary for the health and safety of residents. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served during the local State of Emergency.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local state of emergency declared by the Director of Emergency Services. For purposes of this section, rent



means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the local State of Emergency, if a tenant has a Covered reason for delayed payment the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic. (Ord. 7720-NS § 1, 2020: Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

#### 13.110.030 Definitions.

A. "Covered Reason for Delayed Payment" means:

(1) the basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupants' income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or, in a group living arrangement wherein all tenants are collectively responsible for payment of the rent to the landlord, a reduction in the number of tenants living in the unit which reduces the ability of the remaining tenants to pay the rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) the decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

B. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

C. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

D. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

E. "Tenant" includes a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property. (Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

#### 13.110.040 Collection of Back Rent and Late Fees.

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

B. Tenants shall have up to twelve (12) months to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement"). Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the repayment of rent over the 12 months. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the local State of Emergency is ended, whichever is later. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure section 1161(2) does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

#### 13.110.050 Application.

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served or filed or which expire on or after the effective date of this Chapter through the end of the local State of Emergency. It does not apply to withdrawal of accommodations from the rental market pursuant to Government Code 7060 et seq. ("Ellis Act"), commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent after the expiration of the local State of Emergency, pursuant to Section

13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) et seq. or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued due to a Covered Reason for Delayed Payment during the term of the local State of Emergency. In any action to evict based on alleged non-payment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time from the effective date of this Chapter to the expiration of the local State of Emergency and there exists a Covered Reason for Delayed Payment.

C. A Landlord shall not retaliate against a Tenant for exercising their rights under this Ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the Tenant would otherwise be entitled.

D In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

#### 13.110.060 Implementing Regulations.

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring landlords to give a notice to Tenants informing them of this Chapter and the right to seek the benefits of this Chapter. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

#### 13.110.070 Waiver.

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

#### 13.110.080 Remedies.

In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate. Money damages shall only be awarded if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney'and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.

The protections provided by this ordinance shall be available to all tenants, regardless of any agreement wherein a tenant waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

A. Violations of Section 13.110.020(C) - (Commercial rent restrictions:).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those in violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

13.110.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

Section 2. Vote Required, Immediately Effective

Based upon the findings in Section 13.110.010 of this Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.

ORDINANCE NO. -N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE, THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110  
COVID-19 EMERGENCY RESPONSE ORDINANCE**

**Sections:**

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13. 110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

**13.110.010 Findings and Purposes**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the ~~State of Local~~ Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, ~~June 16, 2020, July 28, 2020, September 22, 2020, and November 17, 2020,~~ the council ratified an extension of the local ~~state-of~~ emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, ~~2020~~ this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many

people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

~~On April 6, 2020, the Judicial Council of California issued emergency rules suspending court proceedings for unlawful detainer and judicial foreclosures until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.~~

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the

Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.



On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

**13.110.020 Prohibited Conduct**

A. During the ~~Covered Period local State of Emergency~~, no Landlord or ~~Lender other entity~~ shall evict or attempt to evict an ~~n-Resident occupant~~ of real property, ~~or otherwise require a Tenant to vacate,~~ unless necessary ~~to stop an imminent threat to~~ for the health and safety of ~~other occupants residents~~. For purposes of this Ordinance, the basis for an exception to this

Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the ~~Covered Period local State of Emergency~~.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local ~~state of~~ emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the ~~Covered Period local State of Emergency~~, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic

**13.110.030 Definitions**

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B.A.—"Covered Reason for Delayed Payment" means:

- (1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or, in a group living arrangement wherein all tenants are collectively responsible for payment of the rent to the landlord, a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay the rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and
- (2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

C.B.—"Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

E.C.—"Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

F.D.—"Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

~~I.E.~~ "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

#### **13.110.040 Collection of Back Rent and Late Fees**

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022 up to twelve (12) months to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent over the 12 months. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the Covered Period, whichever is later. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) et seq. does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

#### **13.110.050 Application**

**A.** This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period on or after the effective date of this Chapter through the end of the local State of Emergency. It does not apply to withdrawal of

accommodations from the rental market pursuant to Government Code 7060 et seq. (“Ellis Act”) ~~or to~~ units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. ~~Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation) with respect to delayed payment covered by this Ordinance,~~ a landlord may seek rent accrued during the Covered Period as set forth in ~~after the expiration of the local State of Emergency, pursuant to~~ Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) et seq. or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued ~~due to a Covered Reason for Delayed Payment~~ during the Covered Period ~~local State of Emergency~~. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time during the Covered Period, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord ~~or Lender~~ shall not retaliate against a TenantResident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities, ~~or~~ reducing services or amenities, refusing to make or delaying repairs to which the TenantResident would otherwise be entitled

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant’s effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

### **13.110.060 \_\_\_ Implementing Regulations**

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to TenantsResidents informing them of this Chapter and the right to seek the benefits of this Chapter.

### **13.110.070 Waiver.**

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

### **13.110.080 Remedies**

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate. ~~Money damages shall only be awarded if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney’s fees~~

~~and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.~~

- ~~1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.~~
- ~~2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.~~
- ~~3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.~~
- ~~4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.~~

~~B. The protections provided by this ordinance shall be available to all , regardless of any agreement wherein a waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.~~

~~C.A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).~~

~~1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.~~

~~2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.~~

~~D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.~~

### **13.110.090 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause,

phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

**13.110.100 Liberal Construction**

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage or on February 1, 2021, whichever is later.

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.



CONSENT CALENDAR  
Sept. 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin  
Subject: Resolution in Support of High-Quality, Equitable Healthcare Services at UCSF Children's Hospital Oakland

### RECOMMENDATION

Adopt a Resolution in support of patients, nurses, doctors, caregivers and other employees at UCSF Children's Hospital Oakland; and send resolution to the UC Board of Regents, UC Office of the President, and UCSF Health.

### FINANCIAL IMPLICATIONS

None.

### BACKGROUND

Since the 2014 Affiliation Agreement established Children's Hospital Oakland as a partnering organization and subsidiary of UCSF, patients<sup>1</sup> and caregivers<sup>2</sup> have been raising alarms<sup>3</sup> regarding staff burnout and attrition, loss of critical services, and redirecting East Bay patients from lower-income communities of color to facilities in San Francisco.

According to a 2020 letter from the California Nurses Association, "UCSF took over the leadership and control of Children's Oakland without financial responsibility for the effects of its decisions," which resulted in significant losses to "complex cardiovascular surgery, loss of adolescent medicine, loss of behavior and development specialists, loss of pulmonologists, loss of pediatric surgeons, lack of MRI capability, loss of neurooncologists, and loss of sickle cell clinicians and researchers."

In the letter, CNA made the following requests:

1. Restore high quality, tertiary care for all children at Children's Hospital Oakland.

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<sup>1</sup> Fernandez, L. & Jarosz, B. (2021). Patients, providers say UCSF affiliation with Children's Hospital means worse care for East Bay families. *KTVU*. Retrieved from <https://www.ktvu.com/news/patients-providers-say-ucsf-affiliation-with-childrens-hospital-means-worse-care-for-east-bay-families>

<sup>2</sup> Krans, B. (2021). Patients, workers maintain Children's Hospital still suffers under UCSF. *Oaklandside*. Retrieved from <https://oaklandside.org/2021/12/03/patients-workers-maintain-childrens-hospital-oakland-still-suffers-under-ucsf/>

<sup>3</sup> Kassabian, S. (2021). Children's Hospital Oakland joined UCSF in 2014. Was it a good move? *Oaklandside*. Retrieved from <https://oaklandside.org/2021/02/25/childrens-hospital-oakland-joined-ucsf-7-years-ago-was-it-a-good-move/>

2. Create a Board and Executive Leadership structure at Oakland independent of UCSF.
3. Create a health care system committed to rooting out structural racism and correcting the inequities between Oakland and San Francisco.
4. Commit to respecting and retaining nurses, physicians and other health care workers who have dedicated our careers to care for this community.

This resolution reiterates those requests, and supports a similar resolution issued by the Oakland City Council in January 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-5120

Attachments:  
1: Resolution



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

RESOLUTION IN SUPPORT OF HIGH-QUALITY, EQUITABLE HEALTHCARE SERVICES AT CHILDREN'S HOSPITAL OAKLAND

WHEREAS, the 2014 Affiliation of Children's Hospital Oakland and Children's Hospital Oakland Research Institute with University of California San Francisco (UCSF) was touted as a collaboration of equals—a public-private partnership strengthening both hospitals, with Children's Hospital Oakland retaining its identity and benefiting from additional financial resources; and

WHEREAS, the 2014 Affiliation of Children's Hospital Oakland and Children's Hospital Oakland Research Institute with University of California San Francisco (UCSF) was touted as a collaboration of equals—a public-private partnership strengthening both hospitals, with Children's Hospital Oakland retaining its identity and benefiting from additional financial resources; and

WHEREAS, the vast majority of Children's Hospital Oakland patients come from Alameda, Contra Costa, Solano, and San Joaquin Counties and the patient population at Children's Hospital Oakland reflects the demographics of the East Bay, including many immigrants and children from families of color; and

WHEREAS, costs to patients and families have skyrocketed, with devastating economic impacts often exacerbated by the loss of household income during the recent pandemic; and

WHEREAS, inpatient and surgical volumes at UCSF Oakland have gone down since the affiliation, while UCSF Children's Hospital in San Francisco has increased significantly; and

WHEREAS, as critical services have been adjusted, many of Children's Hospital Oakland's patients have been forced to travel to San Francisco for services that had been provided in Oakland for decades; and

WHEREAS, critical services and health care service providers in Oakland, including complex cardiovascular surgery, adolescent medicine, behavior and development specialists, pulmonologists, pediatric surgeons, MRI capability, neuro-oncologists, have been neglected or cut after UCSF took over the leadership and control of Children's Hospital Oakland; and

WHEREAS, Children's Hospital Oakland remains a separate, not-for-profit children's hospital lacking true representation in the UC system, and with a separate operating budget from UCSF; and

WHEREAS, decreases in Oakland patient volume as well as loss of subspecialty services have decreased revenue for Children's Oakland, further limiting staff and services; and

WHEREAS, loss of radiologists and other subspecialists such as neurologists and pulmonologists has limited the clinical program's ability to provide comprehensive care; and

WHEREAS, since the affiliation, nurses, health care technicians, nurse practitioners, and physicians have strived to address these increasing healthcare disparities and costs, and have attempted to engage the UCSF leadership as partners with limited and inadequate success; and

WHEREAS, the lack of success by UCSF management to fill vacant positions has exacerbated short staffing and called into question the remaining staff's ability to provide high quality care consistent with the Children's Hospital Oakland's long-standing reputation as one of the premier children's hospitals in the country; and

WHEREAS, the transfer of financial resources from Children's Hospital Oakland to UCSF in San Francisco can lead to racial inequity for East Bay families, where people with less access to resources also get more limited access to quality health care.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley respectfully urges UCSF Health, the UC Office of the President, and the UC Board of Regents to restore comprehensive high quality, tertiary care for all children at Children's Hospital Oakland locations;

BE IT FURTHER RESOLVED that the City Council respectfully urges UCSF Health, the UC Office of the President, and the UC Board of Regents to restore comprehensive high quality, tertiary care for all children at Children's Hospital Oakland locations;

BE IT FURTHER RESOLVED that the City Council requests and urges UCSF to create a health care system committed to correcting the inequities between San Francisco and Oakland— as well as the other East Bay and Central Valley communities where the overwhelming majority of Children Hospital's patient population lives;

BE IT FURTHER RESOLVED that the City Council urges UCSF to re-commit to respecting the views of and retaining nurses, doctors, and other health care workers who have dedicated their careers to care to serving children and families in our East Bay community.



CONSENT CALENDAR  
Sept. 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin  
Subject: Berkeley Youth Alternatives (BYA) Charity Golf Classic: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

#### RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$200 from Councilmember Taplin, to support the 4<sup>th</sup> Annual Charity Golf Classic hosted by Berkeley Youth Alternatives (BYA).

#### FINANCIAL IMPLICATIONS

No General Fund impact. \$200 is available from contributing Councilmember's Council Office Budget discretionary accounts.

#### BACKGROUND

Berkeley Youth Alternatives (BYA) is hosting its fifth annual Charity Golf Tournament on September 16, 2022.

For over 40 years, BYA has served the children and families of Berkeley and the surrounding cities in Alameda County and Contra Costa Counties by providing comprehensive services in a supportive and bias-free haven. Founded in 1969 as a runaway youth shelter, BYA has since expanded to provide comprehensive youth and family services. Funds raised by this charity event will help support important services such as mental health counseling, case management, academic support, mentoring, health education, sports and fitness programs, recreation, workforce development and youth internships.



**Register Online Today!**  
<https://tinyurl.com/BYAGOLF22>  
 or scan QR code

For more information, please contact  
**Brandon Mason at (510) 849-1402,**  
 email [bmason@byaonline.org](mailto:bmason@byaonline.org).

All funds help promote academic success, economic self-sufficiency, health and wellness for youth of color in the Great East Bay!

SCHEDULE:	
10:30 AM	REGISTRATION
11:00 AM	LUNCH
12:30 PM	SHOTGUN START
6:00 PM	TEXAS STYLE BBQ

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

Attachments:  
 1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Taplin has surplus funds in his office expenditure account (budget code 011-11-102-100-0000-000-411); and

WHEREAS, a California non-profit tax exempt corporation Berkeley Youth Alternatives seeks funds in the amount of \$200 to provide the following public services: BYA 4<sup>th</sup> Annual Charity Golf Classic; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: providing youth athletic programming and mentorship;

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 up to \$200 amount per office shall be granted to Berkeley Youth Alternatives to support the BYA Charity Golf Classic.





CONSENT CALENDAR  
Sept. 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Councilmember Droste (co-sponsor), Councilmember Wengraf (co-sponsor), Councilmember Kesarwani (co-sponsor)

Subject: California Marriage Equality Resolution (Prop 8 Repeal)

#### RECOMMENDATION

Adopt a Resolution Urging the California Legislature to Place a Measure on the Ballot to Repeal Article I Section 7.5 of the State Constitution, a.k.a. Proposition 8; and send copies to the Offices of the Speaker of the Assembly, Senate President Pro Tempore, and Governor.

#### FINANCIAL IMPLICATIONS

None.

#### BACKGROUND

Marriage equality and LGBTQ+ rights are under existential threat in the United States. When the US Supreme Court voted to remove essential reproductive rights by overturning *Roe v. Wade* (1973) in *Dobbs v. Jackson* (2022), Justice Clarence Thomas issued a concurring opinion citing *Obergefell v. Hodges* (2015), the historic decision providing marriage equality to same-sex couples, as another judicial precedent that he wished to revisit.<sup>1</sup>

As a nakedly partisan body, the conservative Supreme Court majority is very likely to pursue further action to undermine civil rights. Thus, it is urgent for California to enshrine marriage equality in state law. In order to do so, voters would have to repeal Proposition 8 (2008), which prohibited same-sex marriage. The state legislature has the power to place measures on the ballot without the costly signature-gathering process, and the City of Oakland has already issued a resolution calling for Prop 8 repeal to be placed on the ballot.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### CONTACT PERSON

Councilmember Terry Taplin      Council District 2      510-981-7120

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<sup>1</sup> *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. (2022).

Prop 8 Resolution

CONSENT CALENDAR  
Sept. 13, 2022

Attachments:  
1: Resolution



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

**RESOLUTION URGING THE CALIFORNIA STATE LEGISLATURE TO DEFEND MARRIAGE EQUALITY BY PLACING A MEASURE ON THE BALLOT TO REPEAL ARTICLE I SECTION 7.5 OF THE STATE CONSTITUTION, ALSO KNOWN AS PROPOSITION 8**

WHEREAS, the path to full marriage equality in the United States has been one of the most affirmative social movements fought by the lesbian, gay, bisexual, Transgender, and Queer (LGBTQ+) community over the past century; and

WHEREAS, according to estimates from the 2019 Current Population Survey Annual Social and Economic Supplement (CPS ASEC), there are 543,000 same-sex married households across the US; and

WHEREAS, in California, Proposition 8 was approved by 52% of the voters on November 4, 2008, adding a new section to the state Constitution that “Only marriage between a man and a woman is valid or recognized in California.”; and

WHEREAS, when Proposition 8 passed in 2008, the State of California reported an increase in depression, anxiety, and suicide in the LGBTQ+ community and in children with LGBTQ+ parents; and

WHEREAS, following the Dobbs v. Jackson (2022) decision overturning abortion rights that had been guaranteed by Roe v. Wade (1973), US Supreme Court Justice Clarence Thomas issued a concurring opinion suggesting further legal challenges to same-sex marriage rights; and

WHEREAS, LGBTQ+ rights are increasingly under threat in the United States and the world at large.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby urges California State Legislature to defend marriage equality by placing a measure to repeal Article I Section 7.5 of the state Constitution, also known as Proposition 8, onto the ballot.





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Terry Taplin (Co-Sponsor), Mayor Jesse Arreguín (Co-Sponsor), and Councilmember Kate Harrison (Co-Sponsor)

Subject: Referral: Keep Innovation in Berkeley

RECOMMENDATION

Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments, codified performance standards, and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:

1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.
  - a. Performance standards should regulate and mitigate potential impacts on quality of life, public health, and environmental health, such as noise, odors, fumes, vibrations, dust, light pollution, hours of operation, and disposal and storage protocols for flammable, combustible, chemical, and hazardous substances.
2. Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.

POLICY COMMITTEE RECOMMENDATION

On July 19, 2022, the Land Use, Housing, & Economic Development Policy Committee adopted the following action: M/S/C (Robinson/Bartlett) to approve the item with a positive recommendation. Vote: All Ayes.

### BACKGROUND

The City of Berkeley has over 400 “innovation sector” businesses in tech, biotech, R&D, and other STEM industries. The 2021 Berkeley Economic Dashboard (published in Q1 2022) reported robust growth opportunities in this sector, with 10 Berkeley-based companies receiving a total of nearly \$9 million in federal and state grants for R&D.<sup>1</sup> 35% of Berkeley’s innovation companies develop software, 31% develop biotechnology and healthcare technologies, and 13% develop clean technologies to support environmental sustainability and address climate change. Nearly 87% of these innovation companies are relatively early stage and take advantage of the city’s coworking spaces, accelerators, and incubators.

It is critical for the City to continue efforts to encourage the growth of R&D in Berkeley. In addition to providing jobs and fueling economic development locally, innovation companies make a global impact across sectors, including in the healthcare field and the fight against climate change. Berkeley benefits from the presence of the University of California, Berkeley and the Lawrence Berkeley National Laboratory (LBNL), whose affiliates go on to found startups supported by the Berkeley Startup Cluster and accelerators or incubators like Berkeley SkyDeck or Bakar Labs.<sup>2</sup> There is a clear demand for R&D space from companies who have grown out of UC Berkeley and are seeking to build their enterprise in Berkeley, close to the talent, facilities, and entrepreneur support programs on campus. If the City’s zoning regulations do not provide sufficient opportunities for emerging growth companies, they have no choice but to leave Berkeley and settle in nearby cities that accommodate them with open arms, such as Oakland, Emeryville, San Leandro, and Alameda.

On March 22, 2022, Council adopted the first reading of a Zoning Ordinance amendment that modified the land use definition of Research and Development (R&D) in Berkeley Municipal Code 23.502.020.R.8.<sup>3</sup> This amendment came to Council as a referral response to a March 20, 2020 referral from Mayor Arreguín and Councilmember Wengraf.

The original definition read:

*Research and Development.* An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities:

<sup>1</sup> <https://berkeleyca.gov/sites/default/files/2022-04/2022-03-22%20Item%2038%20Economic%20Dashboards%20Update.pdf>

<sup>2</sup> <https://berkeleystartupcluster.com/>

<sup>3</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-03-22%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

The updated definition reads:

*Research and Development:* An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

The March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. For example, the definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The referral requested that the new definition reflect evolving business practices and provide flexibility for R&D establishments to occupy spaces that meet their operating needs. Modifying the R&D definition supported the City's Strategic Plan goal of fostering a dynamic, sustainable, and locally-based economy.

Through that process, additional issues have come to light that have the effect of inhibiting innovation in Berkeley, which this referral aims to address.

***Recommendation #1: Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.***

BMC 23.204.020.A Table 23.204-1<sup>4</sup> and 23.206.020.A Table 23.206-1<sup>5</sup> lay out allowed land uses for each commercial and manufacturing district, respectively. Currently, R&D is permitted in three districts across the city: C-W (with an Administrative Use Permit) and MM and MU-LI (with a Zoning Certificate if under 20,000 sq. ft. and an AUP if over 20,000 sq. ft.).

Notably, the commercial districts in Southside (C-T), the southern portion of Telegraph (C-C), and the Downtown (C-DMU) do not currently allow R&D. R&D spaces close to campus would be extremely valuable to students, alumni, and others affiliated with UC Berkeley and LBNL. By allowing R&D in these districts, the City would make it easier to keep the innovation and talent that flows from the university in Berkeley. Furthermore, permitting R&D in the University Avenue commercial corridor (C-U) would play an important role in connecting West Berkeley and UC Berkeley, the City's two primary hubs of innovation.

<sup>4</sup> <https://berkeley.municipal.codes/BMC/23.204.020>

<sup>5</sup> <https://berkeley.municipal.codes/BMC/23.206.020>

Startups have expressed that the City's permitting process remains a challenge, particularly if the Zoning Ordinance requires an AUP. This process can take months or even years, which is problematic for R&D companies whose runway for finding a suitable space to develop proof of concept is limited by the funding they have available from early-stage investors. The timelines associated with an AUP provide founders no concrete assurance and can jeopardize operations during the most critical time for startups.

However, noise disruption and biohazard safety are of particular concern when permitting new uses in commercial districts due to their mixed-use residential buildings and proximity to residential districts. It is important that staff and the Planning Commission consider strategies for mitigating any impacts of R&D in C-prefixed districts, including the use of performance standards. Performance standards, which lay out metrics and regulations that the applicant must agree to before being issued a Zoning Certificate, are an important tool to ensure conformance to the neighborhood without imposing lengthy permit approval timelines.

One example that the City of Berkeley can look towards is the City of Fremont. Fremont utilizes performance standards in their industrial districts, which house R&D activities, to ensure that "adjoining properties, persons and the community as well as the region are provided protection against adverse conditions which may be created by the various uses operating within the industrial zoning districts." The performance standards regulate noise, vibration, glare or heat, fire hazards, liquid or solid wastes, fissionable or radioactive material, and aesthetics.<sup>6</sup> See Attachment 1.

The City of San Diego serves as a case study of how R&D can co-exist with commercial and residential uses. In 2019, the San Diego City Council approved the creation of two new mixed-use zones, RMX (Residential Mixed-Use) and EMX (Employment Mixed-Use).<sup>7</sup> The stated purpose of the zones was to "provide housing and jobs near commercial centers and corridors to reduce dependency on the automobile, promote access to transit and multi-modal transportation systems, and to provide for a walkable, pedestrian-oriented setting, including infill of existing development." In both RMX and EMX zones, R&D is permitted by-right alongside multi-family residential development, retail, and most commercial services. San Diego also permits R&D in several of its commercial zones.<sup>8</sup>

***Recommendation #2:*** Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.

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<sup>6</sup> <https://www.codepublishing.com/CA/Fremont/#!/html/Fremont18/Fremont1850.html> (18.50.040 Performance Standards)

<sup>7</sup> <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division07.pdf>

<sup>8</sup> <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division05.pdf>

The “District Purpose” sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses are allowed, welcomed, and explicitly stated to further the City’s goals. R&D applicants need to feel confident that they will have a place in the district if they choose to locate there. In MM and MU-LI, where R&D is currently permitted, the Purpose sections do not mention R&D despite calling out the importance and belonging of similar industries, including manufacturing, industrial use, and laboratories.

Staff and the Commission should consider amending BMC 23.206.070.A and 23.206.080.A with the following language:

**23.206.070 MM Mixed Manufacturing District.**

- A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:
1. Implement the West Berkeley Plan MM designation;
  2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
  3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
  4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
  5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;
  6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
  7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
  8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

**23.206.080 MU-LI Mixed Use-Light Industrial District.**

- A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:
1. Implement the West Berkeley Plan Light Manufacturing District designation;
  2. Encourage development of a mixed use-light industrial area for a range of compatible uses;

3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for laboratory development the development of research and development facilities in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

***Recommendation #3: Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.***

BMC 23.322.030 details the minimum off-street parking spaces required for each use. Currently, in M-prefixed districts, R&D is not explicitly named in Table 23.322-4, meaning that it is parked under “All non-residential uses except uses listed below” at 2 spaces per 1,000 sq. ft. In contrast, laboratories are parked as 1 space per 650 sq. ft., despite R&D spaces typically accommodating a similar number of people per square foot as laboratories. This disadvantages R&D by requiring them to provide more parking than their laboratory counterparts, which is expensive and creates incentives for employees to drive to work that run counter to the City’s Climate Action Plan goals. For the purposes of consistency, R&D parking requirements should be amended to align with Laboratory parking requirements.

In C-T, off-street parking is not required, so no amendments are needed. In C-prefixed districts excluding C-T, R&D is also not listed in Table 23.322-2. It may be unclear to applicants whether R&D falls under Manufacturing (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU, 1 per 1,000 sq. ft. in C-W, and 2 per 1,000 sq. ft. in all other C-prefixed districts), or under “All non-residential uses except uses listed below,” (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU and 2 per 1,000 in all other C-prefixed districts). This can create confusion for R&D companies looking to locate in C-W. Adding an R&D section here to align parking requirements with Manufacturing would improve clarity and consistency.



In addition to considering the following changes to BMC 23.322.030 Table 23.322-2 and Table 23.322-4, staff and the Commission may take up the R&D parking discussion in concert with other Council referrals that address off-street parking, such as Councilmember Taplin's "Parking Minima for Mixed-Use Projects and Manufacturing Districts" item referred on June 28, 2022.

**Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)**

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	See Chapter <u>23.306</u>
Dwellings, including Group Living Accommodations	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Hotel, Residential	None required
Mixed-Use Residential (residential use only)	None required
Senior Congregate Housing	None required
<b>Non-Residential Uses</b>	
All non-residential uses except uses listed below	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 300 sq. ft.
Hotels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees All Other Commercial Districts: 2 per 1,000 sq. ft.
Motels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites

	C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Small Vehicle Sales and Service	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Manufacturing	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
<u>Research and Development</u>	<u>C-DMU District: 1.5 per 1,000 sq. ft.</u> <u>C-W District: 1 per 1,000 sq. ft [1]</u> <u>All Other Commercial Districts: 2 per 1,000 sq. ft.</u>
Wholesale Trade	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft All Other Commercial Districts: 2 per 1,000 sq. ft.
Live/Work	If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

**Notes:**

[1] Spaces must be on the same lot as building it serves.

**Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS**

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	See Chapter <u>23.306</u>
Dwellings	None required
Group Living Accommodation	None required
<b>Non-Residential Uses</b>	

All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	1 per 2 non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
<u>Research and Development</u>	<u>1 per 650 sq. ft.</u>
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	MU-LI District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	MU-R District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

**Notes:**

**[1]** For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.

**Recommendation #4:** *Reviewing Berkeley Municipal Code 23.206.080 to ensure that language related to Biosafety Level (BSL) Classes 1-4 is clear and consistent with requirements in neighboring jurisdictions and other cities that support a broad range of*

*R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted.*

BSL lab levels, ranging from BSL-1 to BSL-4, are set by the Centers for Disease Control and Prevention to protect laboratory personnel and the surrounding community. The primary risks that determine levels of containment are infectivity, severity of disease, transmissibility, and the nature of the work conducted.<sup>9</sup>

**Chart of Biosafety Levels<sup>10</sup>**

Biosafety Level	BSL-1	BSL-2	BSL-3	BSL-4
Description	<ul style="list-style-type: none"> <li>· No Containment</li> <li>· Defined organisms</li> <li>· Unlikely to cause disease</li> </ul>	<ul style="list-style-type: none"> <li>· Containment</li> <li>· Moderate Risk</li> <li>· Disease of varying severity</li> </ul>	<ul style="list-style-type: none"> <li>· High Containment</li> <li>· Aerosol Transmission</li> <li>· Serious/Potentially lethal disease</li> </ul>	<ul style="list-style-type: none"> <li>· Max Containment</li> <li>· "Exotic," High-Risk Agents</li> <li>· Life-threatening disease</li> </ul>
Sample Organisms	E.Coli	Influenza, HIV, Lyme Disease	Tuberculosis	Ebola Virus
Pathogen Type	Agents that present minimal potential hazard to personnel & the environment.	Agents associated with human disease & pose moderate hazards to personnel & the environment.	Indigenous or exotic agents, agents that present a potential for aerosol transmission, & agents causing serious or potentially lethal disease.	Dangerous & exotic agents that pose a high risk of aerosol-transmitted laboratory infections & life-threatening disease.
Autoclave Requirements	None	None	Pass-thru autoclave with Bioseal required in laboratory room.	Pass-thru autoclave with Bioseal required in laboratory room.

Another way of classifying biological agents and organisms is using Risk Groups 1-4. While these two classification methods often align (e.g. BSL-2 equals Risk Group 2), they do not always. Biosafety Levels prescribe the work practices, engineering controls, personal protective equipment, and facility requirements required for working with biological agents. The Risk Group classification is only one factor to consider when determining the appropriate Biosafety Level for a particular agent. Other factors to

<sup>9</sup> <https://www.cdc.gov/training/quicklearns/biosafety/>

<sup>10</sup> <https://consteril.com/biosafety-levels-difference/>

consider include the mode of transmission, pathogenicity, manipulations that will be conducted, volume, experience of staff, and more.<sup>11</sup>

4 RISK CLASSIFICATIONS OF INFECTIOUS MATERIAL			
Risk Group	Individual	Community	Examples
<b>1</b> <b>(lowest)</b> Basic Laboratory, clean open bench, no BSC needed (unlikely to cause disease in healthy workers/animals/plants)	Low	Low	-non-infectious bacteria -E. coli -Lactobacillus spp.
<b>2</b> Biological safety cabinet needed Pathogens spread via ingestion, inoculation and mucous membrane routes	Moderate	Low	-Influenza virus -Herpes simplex -Hepatitis (A, B, C, D, E) -Tetanus
<b>3</b> Pathogen transmitted by aerosols HEPA filtration required, respiratory protection	High	Low	-Hepatitis (some C's) -West Nile -Anthrax -TB
<b>4</b> <b>(highest)</b> serious human disease that may not be treatable, easily transmitted self-contained lab	High	High	-Ebola virus -Herpes B

BMC 23.206.080.B.5<sup>12</sup> reads:

*Commercial Physical or Biological Laboratories.* Commercial physical or biological laboratories using Class 3 organisms are not permitted in the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

This section is the only place in the BMC where organism classes, presumably referring to BSL, are mentioned other than in the defined terms. The BMC is silent on BSL regulations in districts other than MU-LI, or for non-laboratory uses such as research and development.

A preliminary review finds that the City of Berkeley is more restrictive than other Bay Area cities in our regulation of Biosafety Levels. For example, the Cities of Emeryville,

<sup>11</sup> <https://www.safetypartnersinc.com/are-biosafety-levels-and-risk-groups-the-same/#:~:text=Biosafety%20levels%20prescribe%20the%20work,level%20for%20a%20particular%20age nt.>

<sup>12</sup> <https://berkeley.municipal.codes/BMC/23.206.080>

San Jose, Mountain View, Alameda, San Leandro, South San Francisco, and San Mateo do not reference BSLs or Risk Groups in their zoning ordinances. The Cities of Fremont, Oakland, Palo Alto, and San Francisco permit BSL-1, BSL-2, and BSL-3 (or the Risk Group equivalents) in varying degrees. See Attachment 2.

Moreover, laboratories that work with Risk Group 1-3 agents are already allowed on the UC Berkeley campus. Most campus experiments use agents classified as Risk Group 1 or 2, although work with Risk Group 3 is permitted with a biological use authorization (BUA) application approved by UC Berkeley's Committee for Laboratory and Environmental Biosafety.<sup>13</sup>

Staff and the Commission should conduct further research into nearby jurisdictions, including Oakland, San Francisco, South San Francisco, Emeryville, Alameda, San Leandro, and Fremont, as well as other cities across the country that support a broad range of R&D, such as Cambridge, MA. This research should provide insight into best practices for BSL zoning regulations that keep the surrounding neighborhood safe while allowing biological research facilities where they make sense, with federally-required protocols and locally-required performance standards or other conditions in place.

Staff and the Commission should return to Council with amendments to this BMC section and other relevant sections that provide clarity for potential applicants, ensure that Biosafety Levels are clearly stated and defined in accordance with the most recent CDC guidelines, and bring the City of Berkeley in alignment with other jurisdictions.

***Recommendation #5: Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.***

The City Manager and/or Planning Commission may choose to return to Council with additional recommendations that would serve to encourage R&D in Berkeley, in addition to the ones suggested in this item.

#### FINANCIAL IMPLICATIONS

Staff time.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable negative environmental impacts associated with this action.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Angie Chen, Legislative Assistant

<sup>13</sup> <https://ehs.berkeley.edu/sites/default/files/biosafetymanual.pdf>

Attachments:

- 1: City of Fremont performance standards
- 2: BSL regulations in neighboring jurisdictions



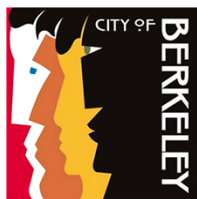
Attachments  
Not Received

These attachments have not been received from the submitting office.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, City Council's Web site:**  
<http://www.cityofberkeley.info/citycouncil/>





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author) and Councilmember Ben Bartlett (Author)

Subject: Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Center for Independent Living's 50th Anniversary

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmember Robinson and Councilmember Bartlett, to the Center for Independent Living to fund a Berkeley mural project, street festival, CIL open house, three-day conference on independent living, and other activities for their 50th Anniversary.

BACKGROUND

In 1972, The Center for Independent Living was established in Berkeley, California as the first independent living center in the United States, founded in order to support people with disabilities in living independent and dignified lives. The Center for Independent Living engaged in grassroots advocacy that resulted in the passage of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, in addition to some of the first curb cuts in the nation that were installed here in Berkeley.

Their work became the catalyst of the emerging Independent Living Movement, based on the principle that people with disabilities are entitled to the same civil rights, options, and autonomy over their lives as people without disabilities. The movement grew to over 400 independent living centers in the United States and more in 20 countries across the globe.

From October 19-23, 2022, The Center for Independent Living will hold a week of events to honor their 50th Anniversary, celebrate with the community, and raise funds to continue to advocate for and provide services to support independent living for people with diverse disabilities. The Center for Independent Living is requesting funds from the City of Berkeley to assist with paying for their 50th Anniversary events.

FINANCIAL IMPLICATIONS

No General Fund impact; \$500 each is available from Councilmember Robinson's and Councilmember Bartlett's discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Rigel Robinson

(510) 981-7170

Councilmember Ben Bartlett

(510) 981-7130

Attachments:

1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

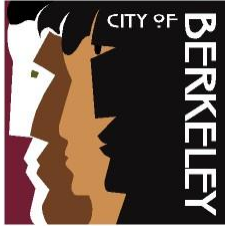
WHEREAS, Councilmember Ben Bartlett and Councilmember Rigel Robinson have surplus funds in their office expenditure accounts; and

WHEREAS, a California non-profit tax exempt corporation, The Center for Independent Living, Inc., seeks funds in the amount of \$500 to fund a Berkeley mural project, street festival, CIL open house, three-day conference on independent living, and other activities for their 50th Anniversary; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of supporting and celebrating a treasured disability rights advocacy group that catalyzed the Independent Living Movement and continues to support people with disabilities in the City of Berkeley today.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the \$500 relinquished by Councilmembers Robinson and Bartlett from each of their Council Office Budgets and any other Councilmember who wishes to contribute shall be granted to the Center for Independent Living to fund their 50th Anniversary activities.





Kate Harrison  
Councilmember District 4

## REVISED AGENDA MATERIAL for Supplemental Packet 1

**Meeting Date:** July 26, 2022

**Item Number:** 29

**Item Description:** Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers

**Submitted by:** Vice Mayor Harrison

### **RECOMMENDATION**

Adopt the updated BPD Policy 1302, the legally enforceable Surveillance Use Policy for Automated License Plate Readers (ALPR) pursuant to BMC 2.99.

### **BACKGROUND**

The proposed Policy 1302 represents near complete agreement between BPD, the City Manager's Office, and Vice Mayor Harrison's Office.

Council originally financed and authorized ALPR technology to help automate BPD's parking and scofflaw enforcement, but through BPD policy development, usage expanded to criminal enforcement. To date, due to the pandemic and policy concerns regarding data retention, sharing, and civil liberties protections, Council deferred adoption of a Surveillance Use Policy pursuant to BMC Sections 2.99.020 and 2.99.050 of the Surveillance Ordinance for ALPR.

BPD Administrative Order #001-2016, prepared in 2016 before adoption of the Surveillance Ordinance, has served as a de facto ALPR policy, yet Administrative Order #001-2016 is out of date with local and state law and does not satisfy the specific requirements of the Surveillance Ordinance. Most recently, adoption of a proposed update to the use policy for ALPRs (Policy 1302) was deferred by Council in 2020 and 2021. In November 2021, Councilmembers Harrison and Hahn, and separately Councilmember Taplin, submitted proposed revisions. Council referred the matter to the Agenda Committee for future scheduling to allow for further policy development.

Since the referral to the Agenda Committee, Vice Mayor Harrison and Councilmember Hahn have been working diligently with BPD, the City Manager, City Attorney, the Information Technology and Public Works Departments, and City Contractors to craft a sensible policy that (1) fully addresses the requirements of the Surveillance Ordinance, (2) clarifies the purpose and scope of collection, (3) enacts various safeguards to protect sensitive data, and (4) provides clarity on the circumstances when parking enforcement and analysis ALPRs and associated data can be used to support criminal investigations.

Use Policy Updates Overview:

*Definitions*

- Provides key new definitions related to the City's ALPR equipment, vendors, and data types. Also provides definitions for Parking Enforcement Operations and Parking Analysis as part of the goBerkeley system.
- Enumerates the specific authorized uses of ALPR technology associated with Parking Enforcement and Parking Analysis.

*Authorized and Prohibited Uses*

- Allows BPD to query ALPR data retroactively to support a specific BPD criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query the data must be granted by the Chief of Police and City Manager. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99.
- Provides that officers may investigate hits based on reasonable suspicion resulting from apparent matches, discovered in the regular course of work of Parking Enforcement Operations, between the Genetec ALPR System and the following databases: Stolen Vehicles System, Amber, Silver, and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.
- Explicitly prohibits ALPR use that invades privacy and during crowd control.
- Limits the use of ALPR in conjunction with lists or databases to the: Stolen Vehicles System, Amber, Silver and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.

*Data Collection and Retention*

- *ALPR Reads Not Resulting in ALPR Hits* - All ALPR Read Images and ALPR Read Metadata transmitted to and stored in the Genetec ALPR System shall be purged within fourteen (14) days to allow for the City's enforcement of its

72- Hour Rule (BMC Section 14.36.050).

ALPR Read Metadata in the form of license plate data or other non-PII data may be transmitted to and stored in the Passport Automatic Data Collection System for Parking Analysis purposes and retained pursuant to applicable retention policies.

- *ALPR Hits* - All ALPR Hits and related metadata resulting from ALPR Reads should be uploaded daily to the Genetec server and shall be purged from Genetec within fourteen (14) days to allow for the City's enforcement of its 72-Hour Rule (BMC Section 14.36.050).
- *Unenforced ALPR Hits* - All erroneous and unenforced ALPR Hit data shall be purged locally at least nightly.
- *Enforced ALPR Hits* - Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management System servers, with a maximum retention period of one (1) year in Passport and in accordance with the established records retention schedule.

#### *Third Party Data Sharing*

- The ALPR data may be shared only with other law enforcement or prosecutorial agencies as pursuant to a valid court order, subpoena, or a search warrant, Cal. Civ. Code §1798.90.5(f), and as limited by this Policy, and shall not be shared with federal immigration enforcement officials consistent with this policy and other applicable City policy.
- Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided by this policy and the Records Maintenance and Release Policy.
- Aggregated ALPR data not related to specific criminal or civil investigations authorized by a court order, subpoena, or search warrant shall not be released to any local, or state agency or entity without the express written consent of the City Manager and only in accordance with this Use Policy.

## **Surveillance Use Policy -- ALPR- Automated License Plate Reader**

### **1302.1 PURPOSE**

This Surveillance Use Policy is ~~issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by legally-enforceable pursuant to~~ BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for Parking Enforcement Operations, Parking Analysis, and limited criminal enforcement purposes associated with Parking Enforcement Operations while recognizing the established privacy rights of the public.

### **1302.2 DEFINITIONS**

"Alleged Parking Violation" means an alleged violation of time limits in parking areas designated by state and local law, or a violation of time limits and/or non-permit parking in the City's RPP zones.

"ALPR Read Image" means images of license plates, vehicles, wheels or any other incidentally captured image.

"ALPR Read" means computer-readable data captured by an ALPR Reader, including ALPR Read Image and associated ALPR Read Metadata. ALPR Reads are transient means to create potential government records, to include Parking Analysis data and Enforced Citations.

"ALPR Hit" means an Alleged Parking Violation or Stolen Vehicle System alert resulting from computer generated analysis of ALPR Reads by the Genetec ALPR System resulting in an apparent:

1. match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the Stolen Vehicle System; or
2. cross checking between ALPR Read and permit information which is stored on the Genetec ALPR System.

"ALPR Read Metadata" means any image-based or other metadata, including but not limited to, global positioning system coordinates, block face information, tire position information, digitized license plates in alphanumeric characters, and timestamps.

"Automated License Plate Reader" or "ALPR" means one or more Genetec AutoVu mobile cameras affixed to Parking Enforcement Vehicles and combined with computer software and algorithms to read and convert images of license plates, the characters they contain, and associated ALPR Read Metadata related to Parking Enforcement Operations or Parking Analysis into computer-readable data.

"Deploy" or "Deployment" means any operation or use of ALPR Readers affixed to Parking Enforcement Vehicles.

"Enforced ALPR Hit" means an Alleged Parking Violation confirmed by a Parking Enforcement



Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

"Genetec ALPR System" means the computerized Genetec server and database that stores all ALPR Reads, metadata and hits, and also pushes an Enforced ALPR Hit metadata to the Passport Parking Management System.

"Residential Parking Permits" or "RPP" means an annual, visitor, merchant or in-home care parking permit, typically represented by a vehicle's license plate, and associated with the City's Residential Parking Permit program across designated zones.

"Parking Enforcement Vehicle" means the GO-4 three-wheeled parking enforcement vehicle.

"Parking Enforcement Officers" means employees of the City who work weekly rotations on Parking Enforcement Operations beats throughout the City and are properly trained to operate ALPRs and access the Genetec ALPR System.

"Parking Enforcement Operations" means Parking Enforcement Officer enforcement of parking regulations associated with local ordinances, the California Vehicle Code, and Stolen Vehicle System enforcement through Parking Enforcement Vehicle-based automated (ALPR) and non-automated means.

"Personally Identifiable Information" or "PII" means information:

1. that directly identifies an individual (e.g., name, address, telephone number, email address, etc.) or
2. by which the City or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification.

"Parking Analysis" means ongoing computational or algorithmic analyses performed by the City of Berkeley on ALPR Read Metadata regarding the occupancy of total parking spaces across commercial districts as part of goBerkeley, the City's data-driven, demand-responsive parking management program. ALPR Read Metadata data associated with Parking Analysis may include non-randomized license plates, to be maintained by Public Works for Parking Analysis.

"Parking Permit Application" means an application submitted to the City for RPP or other permit that may include but is not limited to PII such as names, address, photo identification, vehicle registration (license plate and vehicle identification number), phone number and email address.

"Passport Automatic Data Collection System" means the server and database whereby the Passport Parking Management System vendor, on behalf of the City, downloads, stores and transfers Parking Analysis ALPR Read Metadata stripped of any and all PII before being transferred to the goBerkeley program.

"Passport Parking Management System" means the servers and databases maintained by Passport Labs Incorporated, containing the database of the license plate numbers and other PII associated with Parking Permit Applications and Residential Parking Permits, and including historic parking citation data, to include Enforced Hits.

"OPSMAN Mobile" means a mobile device providing handheld ticket issuance and ALPR data reference capabilities.

"Stolen Vehicle System" or "SVS" means information from the California Law Enforcement Telecommunications System's (CLETS) Department of Justice (DOJ) Stolen Vehicle System (SVS) database providing data regarding wanted and stolen vehicles.

### **1302.3 AUTHORIZED AND PROHIBITED USES**

Use of an ALPR is restricted to the purposes outlined below.

All data and images gathered by the ALPR are for ~~the~~ official use ~~of~~ by the Berkeley Police Department (BPD) for Parking Enforcement Operations and may be retroactively queried in limited circumstances only as specified by this department. Because such data may contain policy and/or federal, state, local law.

ALPR data may be used by the Finance, Information Technology (IT), Customer Service, and Public Works Departments only as specified in this policy, and consistent with Parking Enforcement Operations and Parking Analysis. Data that is considered confidential information, pursuant to case law, state statutes, and BPD Policy 804 Records Release Management and/or applicable federal, state, or local law is not open to public review. (Ref. policy 422.2)

Berkeley Police

## ~~1302.2 AUTHORIZED AND PROHIBITED USES USE~~

~~Use of an ALPR is restricted to the purposes outlined below.~~ Department members or other Departments shall not use, or allow others to use the equipment or database records for any unauthorized purpose ~~(Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4),~~ and will enforce this policy pursuant to Section 1302.11(1).

- (a) An ALPR shall only be Deployed and used for official law enforcement business Parking Enforcement Operations, and Parking Analysis.
- (b) ALPR data obtained from Parking Enforcement Operations and retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be queried and used to support a specific BPD criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query or use the data must be granted by the Chief of Police and City Manager. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99.
- (c) Notwithstanding subsection (b), officers may investigate hits based on reasonable suspicion resulting from apparent matches, discovered in the regular course of work of Parking Enforcement Operations, between the Genetec ALPR System and the following databases: Stolen Vehicles System, Amber, Silver, and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.
- (d) Data obtained from Parking Analysis shall not be queried or used for criminal investigations.
- (e) The following uses of the Genetec ALPR System are specifically prohibited:

### 1. Invasion of Privacy

- (a) It is a violation of this Policy to utilize the Genetec ALPR System to capture license plates not on a public road or street, or in a place not accessible to the public.

### 2. Crowd Control

- (a) ALPRs shall not be deployed in crowd control operations except strictly for the purposes of Parking Enforcement Operations.

### 3. Criminal Enforcement

- (a) It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation except pursuant to Section 1302.3(c) of this Policy.

### 4. Use of Lists and Databases

- (a) It is a violation of this Policy to use the Genetec ALPR System or

associated ALPR Read data in conjunction with any list or database other than those specified pursuant to Section 1302.3(c) of this Policy, or for any personal use.

~~1302.4~~ An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.

~~(a) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.~~

### ~~1302.3 DATA COLLECTION~~

~~All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may~~ **DATA COLLECTION AND RETENTION**

The Investigations Division Captain, or their designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) Department and associated Genetec ALPR system providers/vendors as identified below.

IT's role will be limited to providing initial infrastructure set-up and accessing or viewing individual records or reports (potentially including PII or CLETS information as authorized by the Chief of Police), and testing the accuracy of the equipment. Genetec ALPR System data provided to Parking Control Officers may also contain confidential CLETS information and is not open to public review.

~~(a) ALPR information gathered and retained by this department may be used~~ Read Images

ALPR Reads Images are license plate images which are uploaded daily Genetec server and shall be purged pursuant to the retention guidelines in subsection (b).

~~(b) ALPR Reads Not Resulting in ALPR Hits~~

All ALPR Read Images and shared with prosecutors ALPR Read Metadata transmitted to and stored in the Genetec ALPR System shall be purged within fourteen (14) days to allow for the City's enforcement of its 72- Hour Rule (BMC Section 14.36.050).

ALPR Read Metadata in the form of license plate data or other non-PII data may be transmitted to and stored in the Passport Automatic Data Collection System for Parking Analysis purposes and retained pursuant to applicable retention policies.

~~(c) ALPR Hits~~

All ALPR lawHits and related metadata resulting from ALPR Reads should be uploaded daily to the Genetec server and shall be purged from Genetec within fourteen (14) days to allow for the City's enforcement agencies only as permitted by law. (Ref. policy 422 of its 72-Hour Rule (BMC Section 14.36.050).

~~(d) Unenforced ALPR Hits~~

All erroneous and unenforced ALPR Hit data shall be purged locally at least nightly.

~~(e) Enforced ALPR Hits~~

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management System servers, with a maximum retention period of one (1) year in Passport and in accordance with the established records retention schedule.

1302.5 }

#### ~~1302.4~~ DATA ACCESS

- (a) Only properly trained Parking Enforcement Officers, Sworn Officers as selected by the Investigation's Division Captain, and Information Technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.
- ~~(a)~~(b) No member of ~~this department~~the BPD shall operate ALPR equipment or access ALPR data without first completing department-approved training, which shall include compliance with this use policy.
- ~~(b)~~(c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- ~~(c)~~(d) If a Sworn officer is called to verify a stolen vehicle, if practicable, the officer should verify an ALPR response through ~~the California Law Enforcement Telecommunications System (CLETS)~~ before taking enforcement action that is based solely on an ALPR ~~alert~~Hit.
- (e) Sworn Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. BPD members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific Stolen Vehicle System list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

1302.

**1302.5 — 6 DATA PROTECTION**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data ~~(Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):~~

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login and/or password-protected system capable of documenting all access of information by name, date and time ~~(Civil Code § 1798.90.52).~~
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for ~~legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.~~ Parking Enforcement Operations or

~~Aggregated ALPR data not related to specific BPD criminal or civil investigations shall not be released to any local, state or federal agency authorized by a court order, subpoena, or entity without the express written consent of the City Manager search warrant.~~

- (c) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question. If a Berkeley Police Department member becomes aware of an inaccurate manual entry into the ALPR databases, that member shall immediately contact the originating agency or officer to notify the agency of the inaccuracy. The member shall then notify both the Investigations Division Captain and the Inspections and Audit Sergeant of the data error for appropriate follow up and tracking.

**1302.67 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal, state, and ~~state~~local law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third-Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to impacts that may violate the First and Fourth Amendments and other potentially disparate or adverse impacts on any communities or groups.

**1302.7 — DATA RETENTION**

~~The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records. The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for the purpose of federal immigration~~

enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

~~All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)~~

~~(-) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.~~

### 1302.8 PUBLIC ACCESS

~~(a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))~~

Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of ~~his or her~~their identity and of ownership of the vehicle in question. ~~(Ref. policy 422.6 (b))~~All requests will be evaluated on a case-by-case basis to ensure they conform to the requirements and limitations of public records requests and other applicable law.

### 1302.9 THIRD -PARTY DATA-SHARING

(a) Non-law enforcement requests for anonymized ALPR bulk data related to parking enforcement and access to stored ALPR data related to parking management shall be processed according to this policy, the Records Maintenance and Release Policy and applicable federal, state, and local law.

~~(a)(b)~~ The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes as pursuant to a valid court order, subpoena, or as otherwise a search warrant, Cal. Civ. Code § 1798.90.55(b), and as permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may this policy and shall not be shared with federal immigration enforcement officials consistent with this policy and other applicable City policy.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in by this policy and the Records Maintenance and Release Policy ~~(Civil Code § 1798.90.55).~~

Aggregated ALPR data not related to specific criminal or civil investigations authorized by a court

order, subpoena, or search warrant shall not be released to any local, ~~or state or federal~~ agency or entity without the express written consent of the City Manager. ~~(Ref. policy 422.6 (e))~~ and only in accordance with this Use Policy.

Such third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

The Berkeley Police Department is prohibited from selling any ALPR data.

### **1302.10 TRAINING AND ALPR ADMINISTRATOR**

Training for the operation of ALPR ~~Technology~~technology shall be provided by BPD personnel. All BPD employees who utilize ALPR ~~Technology~~technology shall be provided a copy of this Surveillance Use Policy.

(1) The Investigations Division Captain shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

(i) Ensuring that training requirements are completed for authorized users. The Administrator shall ensure that members receive department-approved training for those authorized to use or access ALPRs (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

(ii) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52 and this Use Policy

(+)(iii) Ensuring this policy and related procedures are conspicuously posted on the City's website.

### **1302.11 AUDITING AND OVERSIGHT**

Genetec ALPR ~~system~~System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. ~~(Ref. policy 422.6 (g))~~

1. Any unauthorized access or data breach shall be reported immediately to the City Manager. BPD will enforce against prohibited uses of the Genetec ALPR system, associated ALPR Read and Hit metadata, and lists and databases pursuant to Policy P-26, or other applicable law or policy.
2. The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within Professional Standards Bureau.

### **1302.12 MAINTENANCE**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under ~~his/her~~their command to administer the day-to-day operation of the ALPR equipment and data. ~~(Ref. policy 422.3)~~

~~1302.12.1~~ ALPR ADMINISTRATOR

~~The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.3.1):~~

- ~~(a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.~~
- ~~(b) Training requirements for authorized users.~~
- ~~(c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.~~
- ~~(d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.~~
- ~~(e) The title and name of the current designee in overseeing the ALPR operation.~~

~~Ensuring this policy and related procedures are conspicuously posted on the City's website.~~



*Surveillance Use Policy- Automated License Plate Reader*

Policy  
**1302**

Berkeley Police Department  
Law Enforcement Services Manual

## Surveillance Use Policy- Automated License Plate Reader

### 1302.1 PURPOSE

This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for Parking Enforcement Operations, Parking Analysis, and limited criminal enforcement purposes associated with Parking Enforcement Operations while recognizing the established privacy rights of the public.

### 1302.2 DEFINITIONS

**"Alleged Parking Violation"** means an alleged violation of time limits in parking areas designated by state and local law, or a violation of time limits and/or non-permit parking in the City's RPP zones.

**"ALPR Read Image"** means images of license plates, vehicles, wheels or any other incidentally captured image.

**"ALPR Read"** means computer-readable data captured by an ALPR Reader, including ALPR Read Image and associated ALPR Read Metadata. ALPR Reads are transient means to create potential government records, to include Parking Analysis data and Enforced Citations.

**"ALPR Hit"** means an Alleged Parking Violation or Stolen Vehicle System alert resulting from computer generated analysis of ALPR Reads by the Genetec ALPR System resulting in an apparent:

1. match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the Stolen Vehicle System; or
2. cross checking between ALPR Read and permit information which is stored on the Genetec ALPR System.

**"ALPR Read Metadata"** means any image-based or other metadata, including but not limited to, global positioning system coordinates, block face information, tire position information, digitized license plates in alphanumeric characters, and timestamps.

**"Automated License Plate Reader"** or **"ALPR"** means one or more Genetec AutoVu mobile cameras affixed to Parking Enforcement Vehicles and combined with computer software and algorithms to read and convert images of license plates, the characters they contain, and associated ALPR Read Metadata related to Parking Enforcement Operations or Parking Analysis into computer-readable data.

**"Deploy"** or **"Deployment"** means any operation or use of ALPR Readers affixed to Parking

## *Surveillance Use Policy- Automated License Plate Reader*

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Enforcement Vehicles.

**"Enforced ALPR Hit"** means an Alleged Parking Violation confirmed by a Parking Enforcement Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

**"Genetec ALPR System"** means the computerized Genetec server and database that stores all ALPR Reads, metadata and hits, and also pushes an Enforced ALPR Hit metadata to the Passport Parking Management System.

**"Residential Parking Permits"** or **"RPP"** means an annual, visitor, merchant or in-home care parking permit, typically represented by a vehicle's license plate, and associated with the City's Residential Parking Permit program across designated zones.

**"Parking Enforcement Vehicle"** means the GO-4 three-wheeled parking enforcement vehicle.

**"Parking Enforcement Officers"** means employees of the City who work weekly rotations on Parking Enforcement Operations beats throughout the City and are properly trained to operate ALPRs and access the Genetec ALPR System.

**"Parking Enforcement Operations"** means Parking Enforcement Officer enforcement of parking regulations associated with local ordinances, the California Vehicle Code, and Stolen Vehicle System enforcement through Parking Enforcement Vehicle-based automated (ALPR) and non-automated means.

**"Personally Identifiable Information"** or **"PII"** means information:

1. that directly identifies an individual (e.g., name, address, telephone number, email address, etc.) or
2. by which the City or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification.

**"Parking Analysis"** means ongoing computational or algorithmic analyses performed by the City of Berkeley on ALPR Read Metadata regarding the occupancy of total parking spaces across commercial districts as part of goBerkeley, the City's data-driven, demand-responsive parking management program. ALPR Read Metadata data associated with Parking Analysis may include non-randomized license plates, to be maintained by Public Works for Parking Analysis.

**"Parking Permit Application"** means an application submitted to the City for RPP or other permit that may include but is not limited to PII such as names, address, photo identification, vehicle registration (license plate and vehicle identification number), phone number and email address.

**"Passport Automatic Data Collection System"** means the server and database whereby the Passport Parking Management System vendor, on behalf of the City, downloads, stores and transfers Parking Analysis ALPR Read Metadata stripped of any and all PII before being transferred to the goBerkeley program.

**"Passport Parking Management System"** means the servers and databases maintained by Passport Labs Incorporated, containing the database of the license plate numbers and other PII associated with Parking Permit Applications and Residential Parking Permits, and including historic parking citation data, to include Enforced Hits.

### *Surveillance Use Policy- Automated License Plate Reader*

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"**OPSMAN Mobile**" means a mobile device providing handheld ticket issuance and ALPR data reference capabilities.

"**Stolen Vehicle System**" or "**SVS**" means information from the California Law Enforcement Telecommunications System's (CLETS) Department of Justice (DOJ) Stolen Vehicle System (SVS) database providing data regarding wanted and stolen vehicles.

#### **1302.3 AUTHORIZED AND PROHIBITED USES**

Use of an ALPR is restricted to the purposes outlined below.

All data and images gathered by the ALPR are for official use by the Berkeley Police Department (BPD) for Parking Enforcement Operations and may be retroactively queried in limited circumstances only as specified by this policy and/or federal, state, local law.

ALPR data may be used by the Finance, Information Technology (IT), Customer Service, and Public Works Departments only as specified in this policy, and consistent with Parking Enforcement Operations and Parking Analysis. Data that is considered confidential pursuant to case law, state statutes, and BPD Policy 804 Records Release Management and/or applicable federal, state, or local law is not open to public review.

Berkeley Police Department members or other Departments shall not use, or allow others to use the equipment or database records for any unauthorized purpose, and will enforce this policy pursuant to Section 1302.11(1).

- (a) An ALPR shall only be Deployed and used for Parking Enforcement Operations, and Parking Analysis.
- (b) ALPR data obtained from Parking Enforcement Operations and retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be queried and used to support a specific BPD criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query or use the data must be granted by the Chief of Police and City Manager. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99.
- (c) Notwithstanding subsection (b), officers may investigate hits based on reasonable suspicion resulting from apparent matches, discovered in the regular course of work of Parking Enforcement Operations, between the Genetec ALPR System and the following databases: Stolen Vehicles System, Amber, Silver, and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.
- (d) Data obtained from Parking Analysis shall not be queried or used for criminal investigations.
- (e) The following uses of the Genetec ALPR System are specifically prohibited:
  1. Invasion of Privacy
    - (a) It is a violation of this Policy to utilize the Genetec ALPR System to capture license plates not on a public road or street, or in a place not accessible to the public.

### *Surveillance Use Policy- Automated License Plate Reader*

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2. Crowd Control
  - (a) ALPRs shall not be deployed in crowd control operations except strictly for the purposes of Parking Enforcement Operations.
3. Criminal Enforcement
  - (a) It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation except pursuant to Section 1302.3(c) of this Policy.
4. Use of Lists and Databases
  - (a) It is a violation of this Policy to use the Genetec ALPR System or associated ALPR Read data in conjunction with any list or database other than those specified pursuant to Section 1302.3(c) of this Policy, or for any personal use.

#### **1302.4 DATA COLLECTION AND RETENTION**

The Investigations Division Captain, or their designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) Department and associated Genetec ALPR system providers/vendors as identified below.

IT's role will be limited to providing initial infrastructure set-up and accessing or viewing individual records or reports (potentially including PII or CLETS information as authorized by the Chief of Police), and testing the accuracy of the equipment. Genetec ALPR System data provided to Parking Control Officers may also contain confidential CLETS information and is not open to public review.

##### (a) ALPR Read Images

ALPR Reads Images are license plate images which are uploaded daily Genetec server and shall be purged pursuant to the retention guidelines in subsection (b).

##### (b) ALPR Reads Not Resulting in ALPR Hits

All ALPR Read Images and ALPR Read Metadata transmitted to and stored in the Genetec ALPR System shall be purged within fourteen (14) days to allow for the City's enforcement of its 72-Hour Rule (BMC Section 14.36.050).

ALPR Read Metadata in the form of license plate data or other non-PII data may be transmitted to and stored in the Passport Automatic Data Collection System for Parking Analysis purposes and retained pursuant to applicable retention policies.

##### (c) ALPR Hits

All ALPR Hits and related metadata resulting from ALPR Reads should be uploaded daily to the Genetec server and shall be purged from Genetec within fourteen (14) days to allow for the City's enforcement of its 72-Hour Rule (BMC Section 14.36.050).

##### (d) Unenforced ALPR Hits

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All erroneous and unenforced ALPR Hit data shall be purged locally at least nightly.

#### (e) Enforced ALPR Hits

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management System servers, with a maximum retention period of one (1) year in Passport and in accordance with the established records retention schedule.

### **1302.5 DATA ACCESS**

- (a) Only properly trained Parking Enforcement Officers, Sworn Officers as selected by the Investigation's Division Captain, and Information Technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.
- (b) No member of the BPD shall operate ALPR equipment or access ALPR data without first completing department-approved training, which shall include compliance with this use policy.
- (c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (d) If a Sworn officer is called to verify a stolen vehicle, if practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR Hit.
- (e) Sworn Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. BPD members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific Stolen Vehicle System list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

### **1302.6 DATA PROTECTION**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login and/or password-protected system capable of documenting all access of information by name, date and time.
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for Parking Enforcement Operations or

## *Surveillance Use Policy- Automated License Plate Reader*

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specific BPD criminal or civil investigations authorized by a court order, subpoena, or search warrant.

- (c) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question. If a Berkeley Police Department member becomes aware of an inaccurate manual entry into the ALPR databases, that member shall immediately contact the originating agency or officer to notify the agency of the inaccuracy. The member shall then notify both the Investigations Division Captain and the Inspections and Audit Sergeant of the data error for appropriate follow up and tracking.

### **1302.7 CIVIL LIBERTIES AND RIGHTS PROTECTION**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal, state, and local law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third-Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to impacts that may violate the First and Fourth Amendments and other potentially disparate or adverse impacts on any communities or groups.

The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for the purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

### **1302.8 PUBLIC ACCESS**

Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of their identity and of ownership of the vehicle in question. All requests will be evaluated on a case-by-case basis to ensure they conform to the requirements and limitations of public records requests and other applicable law.

### **1302.9 THIRD PARTY DATA-SHARING**

(a) Non-law enforcement requests for anonymized ALPR bulk data related to parking enforcement and access to stored ALPR data related to parking management shall be processed according to this policy, the Records Maintenance and Release Policy and applicable federal, state, and local law.

### *Surveillance Use Policy- Automated License Plate Reader*

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(b) The ALPR data may be shared only with other law enforcement or prosecutorial agencies as pursuant to a valid court order, subpoena, or a search warrant, Cal. Civ. Code § 1798.90.55(b), and as permitted by this policy and shall not be shared with federal immigration enforcement officials consistent with this policy and other applicable City policy.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided by this policy and the Records Maintenance and Release Policy.

Aggregated ALPR data not related to specific criminal or civil investigations authorized by a court order, subpoena, or search warrant shall not be released to any local, or state agency or entity without the express written consent of the City Manager and only in accordance with this Use Policy.

Such third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

The Berkeley Police Department is prohibited from selling any ALPR data.

#### **1302.10 TRAINING AND ALPR ADMINISTRATOR**

Training for the operation of ALPR technology shall be provided by BPD personnel. All BPD employees who utilize ALPR technology shall be provided a copy of this Surveillance Use Policy.

(1) The Investigations Division Captain shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

(i) Ensuring that training requirements are completed for authorized users. The Administrator shall ensure that members receive department-approved training for those authorized to use or access ALPRs (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

(ii) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52 and this Use Policy

(iii) Ensuring this policy and related procedures are conspicuously posted on the City's website.

#### **1302.11 AUDITING AND OVERSIGHT**

Genetec ALPR System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

1. Any unauthorized access or data breach shall be reported immediately to the City Manager. BPD will enforce against prohibited uses of the Genetec ALPR system, associated ALPR Read and Hit metadata, and lists and databases pursuant to Policy P-26, or other applicable law or policy.
2. The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley

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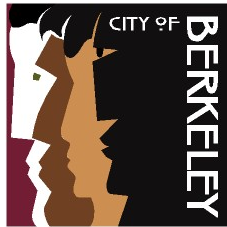
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website in an appropriate location, and retained within Professional Standards Bureau.

**1302.12 MAINTENANCE**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under their command to administer the day-to-day operation of the ALPR equipment and data.





Kate Harrison  
Councilmember District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** February 25, 2020

**Item Number:** 23

**Item Description:** Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

**Submitted by:** Councilmember Harrison

### **Revisions**

Revised the following Berkeley Police Department (BPD) proposed Policies 422, Policy 1302 and 1302(a) as follows:

1. Clarified that the intended purpose of ALPR technology is to capture and store digital license plate data and images for parking and scofflaw enforcement, while also recognizing data retained by BPD (limited to positive ALPR hits) may only be used to support specific criminal investigations.
2. Removed blanket provision that reasonable suspicion or probable cause is not required before ALPR use.
3. Removed ALPR crime scene canvass provision and blanket policy of entering plates into the ALPR system in an attempt to identify suspect vehicles.
4. Clarified that it shall be a violation of City policy to share a login with anyone outside of the City of Berkeley, except in cases of disaster or emergency that do not allow time for proper procedures to be followed.
5. Clarified that unauthorized access or data breaches shall be reported immediately to the City Manager.

6. Consistent with the Surveillance Ordinance BMC 2.99.020 (2) (a), clarified that third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification.

## **Rationale**

Proposed Policies 1302 and 422 inappropriately expand the scope of permitted deployments of Automated License Plate Readers (ALPR) to “support criminal investigations” and “canvass license plates around any crime scene.” Both policies instruct officers that “[p]artial license plates reported during major crimes should be entered into the ALPR system in any attempt to identify suspect vehicles.”<sup>1</sup>

Council has neither given policy nor budgetary approval for such proposed ALPR uses and therefore the Resolution as proposed by staff should not be accepted without revision.

The proposed BPD Policies 1302 and 422 are inconsistent with the scope of the following effective Council and BPD policies regarding ALPR:

1. *Resolution No. 68,085-N.S.*

- Resolution No. 68,085-N.S. authorizes the collection of ALPR data for a single use: anonymized parking data supporting the goBerkeley parking program.

2. July 11, 2017 City Council Annotated Agenda

- The Annotated Agenda notes Council direction to the City Manager to amend Section 7.f of General Administrative Order #0001-2016 to defer any release of data until the surveillance policy and ordinance are adopted. To date, the City Manager has not amended Order #0001-2016.

3. *BPD General Administrative Order #001-2016*

- Section 1 of the effective BPD General Administrative Order #001-2016 specifies that only the BPD Parking Enforcement and Traffic Units may use ALPRs.
- Section 9 specifies further that “parking and scofflaw enforcement” are the only permitted use and deployment for ALPR technology in the City of Berkeley.

4. *Contract No. 9977*

- The scope of Contract No. 9977 is limited to the purchase of ALPR units in service of parking enforcement activities.

## **Attachments**

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<sup>1</sup> Sections 1302.2 (b) - (c); Sections 422.4 (b) - (c).

1. Revised Policies 422, Policy 1302 and 1302(a)
2. July 11, 2017 City Council Annotated Agenda
3. BPD General Administrative Order #001-2016
4. Contract No. 9977

PROPOSED D4 AMENDMENTS

**BPD Policy Manual 422**

**Automated License Plate Readers (ALPRs)**

**422.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

**422.2 POLICY**

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images [for parking and scofflaw enforcement](#) while recognizing the established privacy rights of the public. All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

**422.3 ADMINISTRATION**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

**422.3.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

**422.4 USE OF THE ALPR**

~~The intended purpose of an ALPR shall only be used is for official law enforcement business parking and scofflaw enforcement.~~

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

PROPOSED D4 AMENDMENTS

(a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.

(b) ~~An ALPR data obtained from parking and scofflaw enforcement may be used to support a specific criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.~~

~~(c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.~~

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System

(CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

**422.5 DATA COLLECTION AND RETENTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information

Technology (IT Department and associated ALPR system providers/vendors as identified below.

IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

(a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.

(b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not showing violations will not be transferred to the server.

**422.6 ACCOUNTABILITY**

PROPOSED D4 AMENDMENTS

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code§ 1798.90.51; Civil Code§ 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code§ 1798.90.52). It shall be a violation of this policy to share a login with anyone outside of the City of Berkeley, except in cases of disaster or emergency that do not allow time for proper procedures to be followed.
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. For security or data breaches, see the Records Release and Maintenance Policy. Any unauthorized access or data breach shall be reported immediately to the City Manager.

**422.7 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
  1. The name of the agency.
  2. The name of the person requesting.
  3. The intended purpose of obtaining the information.
  4. The related case number.

PROPOSED D4 AMENDMENTS

(b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.

(c) The approved request is retained on file. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

Third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

**422.8 SCOFFLAW ENFORCEMENT**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "go Berkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit

**PROPOSED D4 AMENDMENTS**

violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



PROPOSED D4 AMENDMENTS

**Surveillance Use Policy - ALPR**

**1302.1 PURPOSE**

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for parking and scofflaw enforcement while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

**1302.2 AUTHORIZED AND PROHIBITED USES USE**

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

(a) ~~The intended purpose of An ALPR shall only be used is~~ for parking and scofflaw enforcement. ~~official law enforcement business.~~

(b) ~~An ALPR data obtained from parking and scofflaw enforcement~~ may be used to support a ~~patrol operation or specific~~ criminal investigation. ~~Reasonable suspicion or probable cause is not required before using an ALPR.~~

~~(c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.~~

**1302.3 DATA COLLECTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

**1302.4 DATA ACCESS**

(a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

(b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

PROPOSED D4 AMENDMENTS

(c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

**1302.5 DATA PROTECTION**

All saved data will be safeguarded and protected by both procedural and technological means.

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code§ 1798.90.51; Civil Code§ 1798.90.53) (Ref. policy 422.6):

(a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52). It shall be a violation of this policy to share a login with anyone outside of the City of Berkeley, except in cases of disaster or emergency that do not allow time for proper procedures to be followed.

(b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.

(c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.

(d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question. Any unauthorized access or data breach shall be reported immediately to the City Manager.

**1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

**1302.7 DATA RETENTION**

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the

City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role

PROPOSED D4 AMENDMENTS

will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

(a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

**1302.8 PUBLIC ACCESS**

(a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))

(b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

**1302.9 THIRD-PARTY DATA-SHARING**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.

[Third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 \(2\) \(a\).](#)

(Ref. policy 422.6 (e))

**1302.10 TRAINING**

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

**1302.11 AUDITING AND OVERSIGHT**

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

**1302.12 MAINTENANCE**

PROPOSED D4 AMENDMENTS

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division

Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

1302.12.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq.

This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

PROPOSED D4 AMENDMENTS

1302 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT-AUTOMATED LICENSE PLATE READER DEVICES

AUTOMATED LICENSE PLATE READER (ALPR) DEVICES

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement

**Vehicles.**

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

**B. PURPOSE**

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

**C. LOCATION**

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

**D. IMPACT**

The Berkeley Police Department is dedicated to promoting public safety with the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

**E. MITIGATION**

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D).

PROPOSED D4 AMENDMENTS

See subsection (G) for further.

**F. DATA TYPES AND SOURCES**

Photographs of license plates and location data may be obtained through the use of ALPR Units.

**G. DATA SECURITY**

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code§ 1798.90.51; Civil Code§ 1798.90.53):

1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code§ 1798.90.52). It shall be a violation of this policy to share a login with anyone outside of the Berkeley Police Department, except in case of disaster or emergency that does not allow time for proper procedures to be followed.
2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department related civil or administrative action and parking enforcement.
3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

**H. FISCAL COST**

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.

Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:

PROPOSED D4 AMENDMENTS

a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.

a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle.

Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.

b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

3. Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

4. Other Law Enforcement Agency Access: ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or nonprosecutorial agencies will be processed as provided in the Records Maintenance and

Release Policy (Civil Code§ 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.

5. Member Access: No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless

PROPOSED D4 AMENDMENTS

otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.

6. Public Access: Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

[7. Third-party data-sharing is subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 \(2\) \(a\).](#)

**J. ALTERNATIVES**

None.

**K. EXPERIENCE OF OTHER ENTITIES**

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.



**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING  
Tuesday, July 11, 2017  
6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 6:03 p.m.

**Present:** Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington, Arreguin

**Absent:** Harrison

Councilmember Harrison present 6:14 p.m.

**Ceremonial Matters:**

1. Recognition of UN Association of California, Alpha Kappa Alpha, and Alpha Nu Omega

**City Auditor Comments:**

1. Recognition of Public Works for completing the Equipment Fund Audit

**City Manager Comments:**

1. Launch of Berkeley Bike Share Program on July 11, 2017

**Public Comment on Non-Agenda Matters:** 3 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 1 speakers.

**Consent Calendar**

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

**Vote:** All Ayes.

## Consent Calendar

1. **Referral Response: Healthy Default Beverages with Children’s Meals; Adding BMC Chapter 12.72**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,560-N.S. adding Berkeley Municipal Code (BMC) Chapter 12.72 to require that any food vendor that sells a children’s meal with a beverage included shall make the default beverage offered with the children’s meal either water or milk, with no added sweeteners.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Paul Buddenhagen, Housing and Community Services, 981-5400  
**Action:** Adopted second reading of Ordinance No. 7,560-N.S.
  
2. **Technical Corrections to the Zoning Ordinance, Amending Berkeley Municipal Code Sub-Titles 23D and 23E**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,561-N.S. amending Berkeley Municipal Code Sub-Titles 23D and 23E to make non-substantive, technical corrections to the Zoning Ordinance.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** None  
Contact: Timothy Burroughs, Planning and Development, 981-7400  
**Action:** Adopted second reading of Ordinance No. 7,561-N.S.
  
3. **Changes to Affordable Housing Mitigation Fee; Amending Berkeley Municipal Code Section 22.20.065**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,562-N.S. amending BMC Section 22.20.065 related to the Affordable Housing Mitigation Fee.  
**First Reading Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – None; Abstain - Droste; Absent – None  
**Financial Implications:** See report  
Contact: Zach Cowan, City Attorney, 981-6950  
**Action:** Adopted second reading of Ordinance No. 7,562-N.S.
  
4. **FY 2018 Annual Appropriations Ordinance**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,563-N.S. adopting the FY 2018 Annual Appropriations Ordinance (AAO) in the amount of \$476,396,570 (gross appropriations) and \$424,590,046 (net appropriations).  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000  
**Action:** Adopted second reading of Ordinance No. 7,563-N.S.

## Consent Calendar

- 5. Housing Trust Fund Recommendation – Harper Crossing**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1) Approving a Housing Trust Fund (HTF) reservation for Satellite Affordable Housing Associates' Harper Crossing in the amount of \$285,464, and 2) Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.  
**Financial Implications:** See report  
 Contact: Paul Buddenhagen, Housing and Community Services, 981-5400  
**Action:** Adopted Resolution No. 68,077–N.S.
- 6. Housing Trust Fund Recommendation – Northern California Land Trust (NCLT) Scattered Site Rehabilitation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reserving funds for Northern California Land Trust's Scattered Sites rehabilitation, specifically by: 1. Waiving Section III.A.1 of the Housing Trust Fund (HTF) Guidelines and accepting NCLT as an eligible developer despite its lack of recent experience. 2. Adopting a finding that a City subsidy in excess of 40% of total development costs is justified by the nature of Northern California Land Trust's Scattered Site Rehab and unavailability of alternative funding, as required by the HTF Guidelines, Section V.B.7. 3. Approving a HTF reservation for Northern California Land Trust's Scattered Site Rehab project, in the amount of \$569,692. 4. Authorizing City Manager to refinance the Scattered Site Rehab properties' outstanding HTF loans, with a combined balance currently estimated at \$695,000, into the new development loan with terms consistent with the HTF Guidelines. 5. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate these actions. 6. Recommending that Council recommend to the Northern California Land Trust that the organization move towards establishing a Board of Directors' structure consistent with current community land trust model standards.  
**Financial Implications:** See report  
 Contact: Paul Buddenhagen, Housing and Community Services, 981-5400  
**Action:** Moved to Action Calendar. 4 speakers. M/S/C (Maio/Harrison) to adopt Resolution No. 68,078–N.S. revised to add the two Whereas clauses below, and to direct staff to include the conversion language in the loan documents with NCLT.

*BE IT FURTHER RESOLVED that NCLT educate all current tenants about the benefits of transitioning to a limited equity co-op structure, subsequently begin negotiations to make the conversion to a limited equity co-op structure, and collaborate with an organization that has the capacity and experience to conduct the education and advise on the conversion process.*

*BE IT FURTHER RESOLVED that NCLT submit quarterly financial reports and annual reports relaying the status of their financial situation and progress in changing the structure of the Board of Directors and transition to a limited equity co-op.*

**Vote:** All Ayes.

## Consent Calendar

7. **Classification and Salary: Homeless Services Coordinator**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending Resolution No. 67,484-N.S. Classification and Salary Resolution for Public Employees Union - Local One, to establish the classification of Homeless Services Coordinator with a monthly salary range of \$8,200 - \$9,915 effective July 11, 2017.  
**Financial Implications:** See report  
 Contact: Sarah Reynoso, Human Resources, 981-6800  
**Action:** Adopted Resolution No. 68,079–N.S.
  
8. **Contract: AMS.NET for Network Equipment and Maintenance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with AMS.NET, Inc. for network hardware, support, and maintenance, for a total not to exceed \$455,335 from July 1, 2017 to June 30, 2020.  
**Financial Implications:** Capital Improvement Fund - \$455,335  
 Contact: Savita Chaudhary, Information Technology, 981-6500  
**Action:** Adopted Resolution No. 68,080–N.S.
  
9. **Contract No. 10522 Amendment: Redwood Engineering Construction for Willard Park Play Area and Pathway Renovations Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10522 with Redwood Engineering Construction for the Willard Park Play Area and Pathway Renovation project, increasing the amount by \$115,000 for an amended total amount not to exceed \$417,400.  
**Financial Implications:** Parks Tax Fund - \$417,400  
 Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700  
**Action:** Adopted Resolution No. 68,081–N.S.
  
10. **Contract No. 9044 Amendment: Building Opportunities for Self Sufficiency (BOSS)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9044 with Building Opportunities for Self Sufficiency for leaf and litter abatement services increasing the contract amount by \$120,000 for a total not to exceed \$1,722,500.  
**Financial Implications:** Zero Waste Fund - \$120,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,082–N.S.

## Consent Calendar

- 11. Contract No. 9488B Amendment: Berry Brothers Towing for Towing Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9488B with Berry Brothers Towing to provide towing services for Department of Public Works Equipment Maintenance, increasing the contract amount \$20,000 for an amended total not to exceed of \$110,000.  
**Financial Implications:** Equipment Maintenance Fund - \$20,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,083–N.S.
- 12. Contract No. 9730A Amendment: Fairbanks Scales, Inc.**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9730A with Fairbanks Scales, Inc. for preventative maintenance and repairs on various scales at the City’s Solid Waste Management and Transfer Station, increasing the contract amount by \$50,000 for a total contract amount not to exceed \$140,000, and extending the term of the contract to June 30, 2019.  
**Financial Implications:** Zero Waste Fund - \$50,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,084–N.S.
- 13. Contract No. 9977 Amendment: Portable Computer Systems dba PCS Mobile to Purchase 15 Automated License Plate Recognition (ALPR) Units**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9977 with Portable Computer Systems dba PCS Mobile to purchase fifteen additional Automated License Plate Recognition units to increase parking enforcement operations capacity and effectiveness, and increasing the total \$1,200,000 for a new amount not to exceed \$1,650,000, and extending the term from May 30, 2020 to June 30, 2022.  
**Financial Implications:** Parking Meter Fund - \$1,200,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Moved to Action Calendar. 8 speakers. M/S/C (Worthington/Wengraf) to adopt Resolution No. 68,085–N.S. authorizing the City Manager to execute an amendment to Contract No. 9977 with Portable Computer Systems dba PCS Mobile to purchase fifteen additional Automated License Plate Recognition units to increase parking enforcement operations capacity and effectiveness, and increasing the total \$1,200,000 for a new amount not to exceed \$1,650,000, and extending the term from May 30, 2020 to June 30, 2022; and amend Section 7.f of Administrative Order #0001-2016 to defer any release of data until the surveillance policy and ordinance are adopted.  
**Vote:** Ayes – Maio, Harrison, Wengraf, Worthington, Droste, Arreguin; Noes – Davila, Bartlett, Hahn.

## Consent Calendar

- 14. Contract No. 10472 Amendments: ELS Architecture & Urban Design and Contract No. 10464 Noll & Tam Architects: On-Call Architectural Services**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager to execute amendments to the following contracts for on-call architectural services for a combined total of \$2,000,000 as follows:
1. ELS Architecture and Urban Design, Contract No. 10472, increasing the contract amount by \$1,000,000, for a total not-to-exceed amount of \$1,500,000 and extending the contract period through June 30, 2019;
  2. Noll & Tam Architects, Contract No. 10464, increasing the contract amount by \$1,000,000, for a total not-to-exceed amount of \$1,500,000 and extending the contract period through June 30, 2019.
- Financial Implications:** Various Funds - \$2,000,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,086–N.S. (ELS) and Resolution No. 68,087–N.S. (Noll & Tam)
- 15. Contract: Chrisp Company for Roadway Thermoplastic Markings**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Roadway Thermoplastic Markings Project, 16-11078-C; and authorizing the City Manager to execute a five year contract period from July 1, 2017 through June 30, 2022, and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications with Chrisp Company in an amount not to exceed \$1,250,000.  
**Financial Implications:** Various Funds - \$1,250,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,088–N.S.
- 16. Contract: Clean Harbors, Inc. for Hazardous Waste Management Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with Clean Harbors, Inc. for hazardous waste management, removal, and disposal services for the City of Berkeley in an amount not-to-exceed \$150,000 for the period August 1, 2017 through June 30, 2020.  
**Financial Implications:** Various Funds - \$150,000  
 Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Adopted Resolution No. 68,089–N.S.

## Consent Calendar

- 17. Mitigating Impacts of Outdoor Air Quality on Indoor Air Quality in Berkeley**  
**From: Community Environmental Advisory Commission**  
**Recommendation:** Direct the City Manager to request the Planning Commission use the analyses presented here, and the draft provided in Appendix II, to create new Standard Conditions of Approval (SCA) for new building construction near major sources of air pollution, to achieve an acceptable level of indoor air quality (IAQ) for sensitive receptors. Total spending for required IAQ mitigations shall be at 1-2% of estimated total project costs.  
**Financial Implications:** See report  
 Contact: Nabil Al-Hadithy, Commission Secretary, 981-7400  
**Action:** Approved recommendation as modified below.

*Refer the item to the Planning Commission to consider the analyses presented here, and the draft provided in Appendix II, to create new Standard Conditions of Approval (SCA) for new building construction near major sources of air pollution, to achieve an acceptable level of indoor air quality (IAQ) for sensitive receptors.*

- 18. Ending Tax Breaks for Private Prisons Act**  
**From: Peace and Justice Commission**  
**Recommendation:** Adopt a Resolution: 1. Directing the City Clerk to send a letter to Rep. Devin Nunes (R-CA) of the Joint Committee on Taxation with copies to all members of the Congressional Joint Committee on Taxation, and the Senate Finance Committee calling on Congress to pass the “Ending Tax Breaks for Private Prisons Act;” and 2. Having the Council of the City of Berkeley sign the MoveOn.org online petition telling congress to end private prison tax breaks.  
**Financial Implications:** None  
 Contact: Eric Brenman, Commission Secretary, 981-5400  
**Action:** Moved to Action Calendar. 1 speaker. M/S/C (Worthington/Maio) to adopt Resolution No. 68,090–N.S.

**Vote (Recommendation #1):** All Ayes.

**Vote (Recommendation #2):** Ayes – Maio, Davila, Bartlett, Harrison, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – Hahn.

## Council Consent Items

- 19. Vitality of University Avenue**  
**From: Councilmembers Maio, Davila, and Harrison**  
**Recommendation:** Refer to the City Manager and Economic Development to analyze storefront vacancies on University Avenue and make recommendations on how to create a more vibrant streetscape on our main boulevard.  
**Financial Implications:** Staff time  
 Contact: Linda Maio, Councilmember, District 1, 981-7110  
**Action:** Approved recommendation.
- 20. Support Oakland Public Defender Rodney Brooks' Efforts to Keep In-Custody Arraignment Hearings in Oakland and Not Move Them to the East County Hall of Justice in Dublin**  
**From: Councilmembers Davila and Harrison, and Mayor Arreguin**  
**Recommendation:** Send a letter from Berkeley City Council supporting Oakland Public Defender Rodney Brooks' efforts to keep in-custody arraignment hearings in Oakland and not move them to the East County Hall of Justice in Dublin.  
**Financial Implications:** None  
 Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Approved recommendation.
- 21. Referral to the Community Environmental Advisory Commission: Cigarette Butt Pollution Prevention Program in South Berkeley (*Item contains revised materials.*)**  
**From: Councilmembers Bartlett and Harrison**  
**Recommendation:** Refer to the Community Environmental Commission (CEAC) to consider developing a Cigarette Butt Pollution Prevention Program for South Berkeley. Explore the following items: a) Location. Work with the local business associations, business owners, as well as other neighborhood and community organizations to identify key locations for cigarette butt receptacles. b) Operation. Work with local businesses to develop a system for cleanup and disposal of the contents of the receptacles. c) Cost. Identify any one-time costs associated with the program, including purchasing and installation of the receptacles. Identify any costs that should be set aside for maintenance. There should not be regular ongoing costs. CEAC should work with the businesses and neighborhoods to develop a community-based system to facilitate daily operations.  
**Financial Implications:** Staff time  
 Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Approved recommendation as revised in Supplemental Reports Packet #1 to add Councilmember Harrison as a co-sponsor and add that the item is also referred to the City Manager.



## Council Consent Items

22. **Support for AB 932 – Bill Giving San Francisco and San Diego Flexibility to Build Shelters and Transitional Housing for Unsheltered Homeless Residents From: Councilmembers Bartlett, Hahn, and Davila**  
**Recommendation:** Recommend that the Berkeley City Council send a letter to Senator Nancy Skinner and Governor Jerry Brown urging them to support AB 932.  
**Financial Implications:** None  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Approved recommendation with the letter revised to add the following phrase to the last sentence, “and request the addition of the City of Berkeley to the cities included in the bill.”
23. **Support for SB 33: Bill Prohibiting Financial Institutions from Forcing Consumers to Give up Legal Rights when the Bank has Committed Intentional Fraud Against Them**  
**From: Councilmembers Bartlett, Hahn, and Davila**  
**Recommendation:** Recommend that the Berkeley City Council send a letter to Assemblymember Tony Thurmond, and Governor Jerry Brown urging them to support SB 33.  
**Financial Implications:** None  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Approved recommendation.
24. **Support of AB 214: Postsecondary Education, Student Hunger** (*Item contains revised materials.*)  
**From: Councilmembers Harrison, Hahn, Davila, and Bartlett**  
**Recommendation:** Adopt a Resolution supporting AB 214 Postsecondary Education, Student Hunger, an act to reduce hunger and homelessness in college students in California, and sending a copy of the resolution to Governor Jerry Brown, and Assemblymembers Lorena Gonzalez Fletcher (Appropriations Chair), Frank Bigelow (Vice Chair), Richard Bloom, Raul Bocanegra, Rob Bonta, William Brough, Ian Calderon, Ed Chau, Susan Talamantes Eggman, Vince Fong, Laura Friedman, James Gallagher, Eduardo Garcia, and Adam Gray.  
**Financial Implications:** Minimal  
Contact: Kate Harrison, Councilmember, District 4, 981-7140  
**Action:** Adopted Resolution No. 68,091–N.S.

## Council Consent Items

- 25. Adopt a Resolution Approving the Allocation of \$3,131,651 in Predevelopment from the Housing Trust Fund for the Berkeley Way Project**  
**From: Councilmembers Worthington, Harrison, Hahn, and Mayor Arreguin**  
**Recommendation:** That the Council adopts a Resolution to approve the allocation of \$3,131,651 in Housing Trust Funds for the predevelopment of BRIDGE Housing Corporation and Berkeley Food and Housing Project's Berkeley Way project, in compliance with the Housing Advisory Commission's recommendation, scheduled to be voted on July 6, 2017.  
**Financial Implications:** See report  
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Adopted Resolution No. 68,092–N.S. as revised in Supplemental Reports Packet #2.
- 26. Support California AB 395 to Protect Internet Privacy**  
**From: Councilmember Worthington**  
**Recommendation:** That the Council support California Assembly Bill 395 (AB 395) in its aim to protect the internet security and privacy of Californians.  
**Financial Implications:** See report  
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Approved recommendation as Revised in Supplemental Reports Packet #2 to correct the bill number to AB 375.

## Action Calendar – Public Hearings

- 27. Amending the Berkeley Election Reform Act to Implement Public Financing**  
**From: Fair Campaign Practices Commission**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance amending Berkeley Municipal Code 2.12 to make changes to facilitate the implementation of the Berkeley Fair Elections Act of 2016 by a vote of not less than two-third of the City Council, in accordance with procedure for amending the Berkeley Election Reform Act set forth in Berkeley Municipal Code 2.12.051.A.  
**Financial Implications:** See report  
 Contact: Jessica Mar, Commission Secretary, 981-6950
- Public Testimony:** The Mayor opened the public hearing. 3 speakers. M/S/C (Worthington/Hahn) to close the public hearing.  
**Vote:** All Ayes.
- Action:** Adopted first reading of Ordinance No. 7,564–N.S. Second reading scheduled for July 25, 2017.  
**Vote:** All Ayes.

## Action Calendar – Old Business

**28a. Automatic Door Openers in Multi-Unit Residential Buildings** *(Continued from May 30, 2017)*

**From: Commission on Disability**

**Recommendation:** Adopt a Resolution requiring: all new construction of multi-unit residential buildings (four or more units) with a common entryway in the City of Berkeley to include automatic door openers; significant remodeling or conversion of residential multi-unit buildings with four or more units and a common entryway to include automatic door openers; and owners of existing multi-unit residential buildings (four or more units) with a common entryway must install automatic door openers at the request of a resident.

**Financial Implications:** Unknown

Contact: Ella Callow, Commission Secretary, 981-6300

**28b. Companion Report: Automatic Door Openers in Multi-Unit Residential Buildings** *(Continued from May 30, 2017)*

**From: City Manager**

**Recommendation:** The City Manager recommends the City Council evaluate the resolution requested by the Commission on Disability as an amendment to BMC § 19.28.010. If Council agrees with the substantive recommendations in the Commission on Disability (CoD) report entitled “Recommendations to Require Inclusion of Automatic Door Openers in Residential Buildings with Four or More Units and a Common Entryway,” the City Manager recommends Council consider a stand-alone ordinance (similar to BMC § 19.80) that would (1) limit the scope to privately owned buildings with four or more units and a common entryway; (2) not subsidize installation of automatic door openers by building owners/builders; (3) include language that limits the City’s responsibility to conduct inspections to ensure compliance; and (4) limit the City’s liability for torts related to automatic door openers that are installed.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

**Action:** 2 speakers. M/S/C (Worthington/Maio) to hold over the item to September 12, 2017.

**Vote:** All Ayes.

## Action Calendar – Old Business

29. **Housing Accountability Act** (*Continued from June 13, 2017. Item includes supplemental materials.*)

**From: City Manager**

Contact: Zach Cowan, City Attorney, 981-6950

**Action:** 5 speakers. M/S/C (Arreguin/Davila) to refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
2. Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
3. Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
4. Quantify and set objective zooming standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often underlie detriment findings.

**Vote (Paragraphs 1-3):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – Bartlett, Droste.

**Vote (Paragraph 4):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Arreguin; Noes – Bartlett, Droste, Worthington.

Recess: 9:10 p.m. – 9:27 p.m.

30. **Amend BMC Sections 3.78.030, 040, and 050 Related to Commission Procedures** (*Continued from June 13, 2017*)

**From: Human Welfare and Community Action Commission**

**Recommendation:** Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley Municipal Code that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.

**Financial Implications:** See report

Contact: Wing Wong, Commission Secretary, 981-5400

**Action:** Moved to Consent Calendar. No action taken by the City Council on this item.

**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.

## Action Calendar – Old Business

- 31. Ordinance to Ban the Sale of Fur in Berkeley; Adding BMC Chapter 9.22**  
**From: Councilmember Worthington** (*Continued from June 13, 2017*)  
**Recommendation:** Adopt second reading of Ordinance No. 7,539-N.S. adding BMC Chapter 9.22 to eliminate the sale of fur apparel products in order to promote community awareness of animal welfare.  
 First Reading Vote: Ayes - Maio, Davila, Bartlett, Hahn, Wengraf, Arreguin; Noes – Harrison, Worthington, Droste; Abstain – None; Absent – None.  
**Financial Implications:** None  
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170  
**Action:** Item held over to July 25, 2017.
- 32. Support the Resilient Shoreline Program of Citizens for East Shore Parks**  
*(Continued from June 27, 2017)*  
**From: Mayor Arreguin and Councilmembers Hahn, Wengraf, and Maio**  
**Recommendation:** Adopt a Resolution supporting the Resilient Shoreline Program of Citizens for East Shore Parks (CESP) to raise awareness about the detrimental effects of sea-level rise and promote resilient shoreline solutions. Additionally, refer to the mid-year budget process a contribution of \$10,000 to participate in CESP’s Visualizing Sea-level Rise event in Berkeley.  
**Financial Implications:** General Fund - \$10,000  
 Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Moved to Consent Calendar. Adopted Resolution No. 68.093–N.S. in support of the Resilient Shoreline Program, and Resolution No. 68,094–N.S. to authorize the expenditure of surplus funds from the Mayor’s and Councilmembers’ expense accounts for CESP from the following Councilmembers up to amounts listed: Mayor Arreguin - \$2,000; Councilmember Wengraf - \$500; Councilmember Maio - \$250; Councilmember Harrison - \$250; Councilmember Davila - \$250.
- 33. Expedited Review for Affordable Housing Projects** (*Continued from June 27, 2017. Item contains revised materials.*)  
**From: Councilmembers Hahn, Davila, and Bartlett**  
**Recommendation:** 1. Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed on-site units; and  
 2. Direct the City Manager to immediately confer priority status and offer expedited review to 100% Affordable projects, pending adoption of a more formal and widely applicable expedited review process.  
**Financial Implications:** Staff time  
 Contact: Sophie Hahn, Councilmember, District 5, 981-7150  
**Action:** Item held over to July 25, 2017.

## Action Calendar – Old Business

34. **General Fund Stability Reserve Usage Criteria** *(Continued from June 27, 2017. Item contains revised materials.)*

**From: Councilmembers Droste, Wengraf, and Maio**

**Recommendation:** Discuss the General Fund Stability Reserve Usage Policies described in the report and adopt policies such as those proposed, requiring a two-thirds vote of the City Council to amend them. Following recommendation from the City Manager, the City Council shall, from time to time, recognize and define “essential services”, “appropriate levels” of such services, and “extreme conditions”. Any draw-down of Stability Reserve funds shall coincide with the adoption of a plan to repay the dollar amount of the draw down. If adopting a repayment plan immediately is infeasible due to emergency circumstances, it shall be adopted no more than 3 months from the date of the withdrawal appropriation. The level of the Stability Reserve shall be restored as economic recovery occurs, consistent with the maintenance of essential services, with repayment to begin no more than 5 years from the date of withdrawal and be completed within 10 years from the date of withdrawal.

**Financial Implications:** See report

Contact: Lori Droste, Councilmember, District 8, 981-7180

**Action:** 4 speakers. M/S/C (Hahn/Arreguin) to continue the item to September 26, 2017.

**Vote:** All Ayes.

## Action Calendar – Old Business

35. **Medical Cannabis Cultivation Ordinance Revisions** (*Continued from June 27, 2017. Item contains revised materials.*)

**From: City Manager**

**Recommendation:** Consider the responses provided by the Planning Commission and Medical Cannabis Commission (MCC) to Council's referral regarding the desired maximum number of Medical Cannabis Cultivation locations (Zoning Ordinance/BMC Section 23E.72.040.A) and give direction to staff regarding any recommended changes to the Zoning Ordinance.

**Financial Implications:** See report

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

**Action:** M/S/C (Arreguin/Maio) to suspend the rules and extend the meeting to 11:30 p.m.

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – None; Abstain – Droste.

**Action:** 1 speaker. M/S/Failed (Hahn/Bartlett) to adopt the proposal from Councilmember Hahn in Supplemental Reports Packet #2

1. *To initially allow 6 Standard cultivation sites at no more than 22,000 square feet per site, as allowed by State regulations, for a cumulative maximum of 132,000 square feet. The remainder of square footage, up to a cumulative maximum of 182,000 square feet, would be dedicated to a Small Sites program, reserved for local, artisan, cooperative, and green growers, with 5 additional sites allowed, each of no more than 10,000 square feet. The total combined number of Standard and Small Sites allowed would be 11, and total square footage capped at 182,000 square feet;*
2. *To direct staff to create two application processes; one for Standard Sites and another for Small Sites favoring local, artisan, cooperative, and green growers;*
3. *To allow only 1 site per operator, and create an overall preference for qualified owners from populations or groups that are or have been disproportionately targeted for enforcement, criminalization, and/or incarceration related to marijuana offenses;*
4. *One year after a site commences operations, direct staff to undertake an evaluation that includes, but is not limited to, contacting neighbors and businesses within 500 feet and evaluating potential positive and negative impacts, recommending any helpful/necessary changes to the enabling code and helping ensure the operator is in compliance with all rules and regulations. This site-by-site review will be limited to 8 sites, representing a variety of sizes and locations, as a means of identifying benefits and challenges of cultivation operations and improving the City's regulatory framework;*
5. *Once the first 11 sites have been permitted, direct staff to evaluate the overall and cumulative success and impacts of the cultivation sites program on a neighborhood and city-wide basis, review the preferences and programs for effectiveness, and consider whether the number of sites can be increased.*

**Vote:** Ayes – Bartlett, Hahn; Noes – Davila, Harrison; Abstain – Maio, Wengraf, Worthington, Droste, Arreguin.

## Action Calendar – Old Business

**Action:** M/S/C (Harrison/Maio) to adopt the proposal from Councilmember Harrison in Supplemental Reports Packet #2 amended to include paragraph #3 from Councilmember Hahn's proposal.

*Direct staff to prioritize local growers and cooperatives in the permitting process or set aside some of the allotted square footage specifically for use by local small growers and cooperatives. This could be achieved by maintaining the limit of 6 cultivation locations between 15,000 and 22,000 ft<sup>2</sup> in size for all forms of cultivators (using between 90,000 and 132,000 of the available 180,000 ft<sup>2</sup>) while allocating the remaining 48,000 ft<sup>2</sup> to local cultivators and cooperatives, without a specific location limit. During the permitting process, each operator will be limited to one site to avoid anti-competitive practices and prevent a monopoly. After one year of operation, staff will evaluate the positive and negative impacts of the cultivation site on the surrounding businesses and neighbors, and enforce on a complaint-driven basis*

*#3 Hahn: To allow only 1 site per operator, and create an overall preference for qualified owners from populations or groups that are or have been disproportionately targeted for enforcement, criminalization, and/or incarceration related to marijuana offenses;*

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – Hahn.

**Action:** M/S/Failed (Droste/Wengraf) to adjourn the meeting.

**Vote:** Ayes – Maio, Bartlett, Wengraf, Droste; Noes – Davila, Harrison, Hahn, Worthington, Arreguin.

**Action:** M/S/C (Arreguin/Maio) to suspend the rules and extend the meeting to 12:00 a.m.

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Worthington, Arreguin; Noes – Droste; Abstain – Wengraf.



## Action Calendar – Old Business

36. **Analysis and Recommendations for the Pathways Project to Address Homelessness in Berkeley** *(Continued from June 27, 2017. Item contains supplemental materials.)*

**From: City Manager**

**Recommendation:** Prioritize funding decisions for proposed Pathways Project programs (an Encampment Resolution Team, a STAIR Center, a Bridge Living Community, and a Homeward Bound program) based on which homeless issue Council most wishes to address in Berkeley:

1. Fund an Encampment Resolution Team and a STAIR Center for an estimated \$2.4 million in year one, plus \$2.1 million annually thereafter, if Council most wishes to provide temporary respite for unsheltered homeless individuals with no dedicated housing exits.
2. Fund a Bridge Living Community and a Homeward Bound program for an estimated \$2.6 million in year one, plus \$2.4 million annually thereafter, if Council most wishes to house an estimated 100-120 homeless individuals per year, but add no new emergency respite programs.
3. Fund all four programs at an estimated \$4.8 million in year one, and an estimated \$4.3 million annually thereafter, if Council wishes to address both the goal of temporary respite and permanent housing concurrently.

All funding estimates include roughly \$190,000 for 1 FTE in new City Staff time for program administration.

The City Manager recommends prioritizing a Bridge Living Community and associated rental subsidies and a Homeward Bound program.

**Financial Implications:** See report

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400

**Action:** M/S/C (Arreguin/Maio) to suspend the rules and extend the meeting to 12:15 a.m.

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Worthington, Arreguin; Noes – Droste; Abstain – Wengraf.

**Action:** 5 speakers. M/S/C (Hahn/Davila) to adopt “Option 4” as presented in the City Manager’s report to Council on June 27, 2017, submitted by Paul Buddenhagen, Director of Health, Housing and Community Services, to establish a combined STAIR Center/Bridge Living Community and associated Homeward Bound and rapid rehousing components with the following additions, as recommended by formal action of the Council’s Ad Hoc Subcommittee on Homelessness:

1. Add an Outreach Resolution Team
2. Add a program to address illegal dumping and excessive accumulations of items and materials associated with homeless encampments, in particular in the heavily impacted West Berkeley corridor

**Vote:** All Ayes.

## Action Calendar – Old Business

**37a. Allocation of U1 Funds by the City Council** *(Continued from June 27, 2017)*

**From: Housing Advisory Commission**

**Recommendation:** 1. As specified by Measure U1, the City Council shall receive and consider housing strategy recommendations from the Housing Advisory Commission prior to allocating any Measure U1 funds.

2. When considering allocations for U1 funds, the City Council will make specific findings of how the spending meets the goals of Measure U1: improve housing affordability in Berkeley and protect residents from homelessness.

**Financial Implications:** See report

Contact: Amy Davidson, Commission Secretary, 981-5400

**37b. Companion Report: Allocation of U1 Funds by the City Council** *(Continued from June 27, 2017)*

**From: City Manager**

**Recommendation:** 1. Reaffirm that, as specified in Measure U1, the City Council shall receive and consider recommendations by the Housing Advisory Commission on funding and programs to increase affordable housing and protect Berkeley residents from homelessness, either annually or biannually. 2. Take no action with regard to committing to make findings that expenditures meet the goals of Measure U1.

**Financial Implications:** See report

Contact: Jovan Grogan, Deputy City Manager, (510) 981-7000

**Action:** Item 37b moved to the Consent Calendar and approved recommendation as amended below.

*1. Reaffirm that the City Council shall receive and consider recommendations by the Housing Advisory Commission as specified in Measure U1; and 2. Take no action with regard to committing to make findings that expenditures meet the goals of Measure U1.*

**38a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley** *(Continued from June 27, 2017)*

**From: Housing Advisory Commission**

**Recommendation:** That the City Council not use U1 funds to backfill the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue, and 1925 Ninth Street, City of Berkeley.

**Financial Implications:** See report

Contact: Amy Davidson, Commission Secretary, 981-5400

## Action Calendar – Old Business

- 38b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley** *(Continued from June 27, 2017)*

**From: Housing Advisory Commission**

**Recommendation:** Accept staff's recommendation to use \$4,730,815 of Measure U1 revenue over a 5 year period (\$946,163 annually) to repay the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley.

**Financial Implications:** See report

Contact: Jovan Grogan, Deputy City Manager, (510) 981-7000

**Action:** M/S/Failed (Hahn/Davila) to suspend the rules and extend the meeting to 12:25 a.m.

**Vote:** Ayes – Davila, Harrison, Hahn, Worthington, Arreguin; Noes – Maio, Bartlett, Wengraf; Abstain – None; Absent - Droste.

Councilmember Droste absent 12:05 a.m. – 12:15 a.m.

**Action:** 5 speakers. Item held over to July 25, 2017

## Action Calendar – New Business

- 39a. International Symbol of Accessibility (ISA) Change for City Signage**

**From: Commission on Disability**

**Recommendation:** Adopt a Resolution changing future signs indicating accessibility in Berkeley. The Berkeley Commission on Disability is recommending Council support a proposed change in signs that indicates accessibility.

**Financial Implications:** Minimal

Contact: Ella Callow, Commission Secretary, 981-6300

- 39b. Companion Report: International Symbol of Accessibility (ISA) Change for City Signage**

**From: City Manager**

**Recommendation:** Refer the item back to the Commission on Disability for further analysis regarding cost differences between the existing International Symbol of Accessibility signage and the recommended signage as well as specific vendors that currently provide the recommended signage to other municipalities.

**Financial Implications:** Unknown

Contact: Phillip Harrington, Public Works, 981-6300

**Action:** Item 39a moved to Consent Calendar. Adopted Resolution No. 68,095-N.S. changing future signs indicating accessibility in Berkeley.

## Action Calendar – New Business

### Information Reports

40. **FY 2018 Civic Arts Grant Awards**  
**From: City Manager**  
Contact: Jordan Klein, Economic Development, 981-7530  
**Action:** Received and filed.
41. **FY 2017 Investment Report: Quarter Ended March 31, 2017**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, 981-7300  
**Action:** Received and filed.
42. **Status of City's \$6M Loan to the Ed Roberts Campus**  
**From: City Manager**  
Contact: Paul Buddenhagen, Housing and Community Services, 981-5400  
**Action:** Received and filed.
43. **Update on Retrofit Grants Program, Activities Funded by FEMA Hazard Mitigation Grant, and Status of the Soft Story Ordinance**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, 981-7400  
**Action:** Received and filed.
44. **Status Report July 2017 - Audit of Equipment Replacement Reserve**  
**From: City Manager**  
Contact: Phillip Harrington, Public Works, 981-6300  
**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda – 0 speakers.**

### Adjournment:

Adjourned at 12:15 a.m. in memory of:

1. Frances Rachel, Local Activist
2. David Williamson, Local Athlete and Mentor

### Communications

#### Restricting Flavored Tobacco Sales

1. Carol Denney

#### Vegetables Growing in Shade

2. Diego Aguilar-Canabal

#### Community Concerns

3. Nick Faber

**Housing and Climate Change**

4. Cameron Scherer

**Thank You Letter**

5. Berkeley Neighborhoods Council

**Housing and Zoning Suggestions**

6. Berkeley Design Advocates

**Berkeley Animal Care Services Concerns**

7. Jane Funk / Jovan Grogan

**Free Speech**

8. Therese Fitzpatrick (2)

**Environmental Health Division Concerns**

9. Leo Schwartz

**Bank Divestments**

10. Sheila Goldmacher

**Berkeley Police Department Response to Protest**

11. Rachel Lederman

**Bike Improvements for Repaving**

12. Dave Campbell

**Berkeley Rose Garden**

13. Annie Dillon

**Request for Certificate of Permissible Rent Level Form**

14. W.B.C.

**Supplemental Communications and Reports 1**

**Item 21: Referral to the Community Environmental Advisory Commission: Cigarette Butt Pollution Prevention Program in South Berkeley**

15. Revised materials, submitted by Councilmember Bartlett

**Item 24: Support of AB 214: Postsecondary Education, Student Hunger**

16. Revised materials, submitted by Councilmember Harrison

**Item 29: Housing Accountability Act**

17. Rob Wrenn

**Item 33: Expedited Review for Affordable Housing Projects**

18. Revised materials, submitted by Councilmember Hahn

**Item 35: Medical Cannabis Cultivation Ordinance Revisions**

19. Supplemental materials, submitted by Councilmember Hahn

**Item 36: Analysis and Recommendations for the Pathways Project to Address Homelessness in Berkeley**

20. Supplemental materials, submitted by Councilmember Hahn

**Item 37a: Allocation of U1 Funds by the City Council**

**Item 37b: Companion Report: Allocation of U1 Funds by the City Council**

**Item 38a: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

**Item 38b: Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

21. Cecile Pineda
22. Norma Harrison
23. Tree Fitzpatrick
24. Nico Calavita

**Item 40: FY 2018 Civic Arts Grant Awards**

25. Bruce Coughran
26. Cherie Hill
27. Andrea Hirsig
28. Susan Muscarella
29. Andrew Page
30. Liz Ozol
31. Pamela Miller
32. Carol Lashof
33. Rebecca Seeman
34. George-Ann Bowers
35. Sara Gambina-Belknap
36. Janice Murota
37. Inferno Theatre
38. Dyana Vukovich
39. Sharon Dolan
40. Wendy Ponder
41. Emmerich Anklam
42. Rachel Nissim
43. Carol Handelman
44. Jan Zvaifler
45. Emily Wainacht

## **Supplemental Communications and Reports 2**

**Item 6: Housing Trust Fund Recommendation – Northern California Land Trust (NCLT) Scattered Site Rehabilitation**

46. Revised materials, submitted by Councilmember Harrison

**Item 13: Contract No. 9977 Amendment: Portable Computer Systems dba PCS Mobile to Purchase 15 Automated License Plate Recognition (ALPR) Units**

47. Alfred Twu
48. Ryan Thorngren

**Item 21: Referral to the Community Environmental Advisory Commission: Cigarette Butt Pollution Prevention Program in South Berkeley**

49. Carol Denney

**Item 25: Adopt a Resolution Approving the Allocation of \$3,131,651 in Predevelopment from the Housing Trust Fund for the Berkeley Way Project**

- 50. Revised materials, submitted by Councilmember Worthington
- 51. Supplemental materials, submitted by Health, Housing & Community Services

**Item 26: Support California AB 395 to Protect Internet Privacy**

- 52. Revised materials, submitted by Councilmember Worthington

**Item 27: Amending the Berkeley Election Reform Act to Implement Public Financing**

- 53. Daniel Newman, on behalf of the Berkeley Fair Elections Coalition
- 54. Rob Wrenn
- 55. Igor Tregub

**Item 28: Automatic Door Openers in Multi-Unit Residential**

- 56. Supplemental materials, submitted by Commission on Disability

**Item 32: Support the Resilient Shoreline Program of Citizens for East Shore Parks**

- 57. Revised materials, submitted by Mayor Arreguin

**Item 33: Expedited Review for Affordable Housing Projects**

- 58. Supplemental materials, submitted by Councilmember Droste

**Item 35: Medical Cannabis Cultivation Ordinance Revisions**

- 59. Supplemental materials, submitted by Councilmember Hahn
- 60. Supplemental materials, submitted by Councilmember Harrison
- 61. Medical Cannabis Commission
- 62. Charley Pappas

**Item 37a: Allocation of U1 Funds by the City Council**

**Item 37b: Companion Report: Allocation of U1 Funds by the City Council**

**Item 38a: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

**Item 38b: Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

- 63. Sheila Goldmacher (2)
- 64. Lynnda Ohama
- 65. Jim Latchney
- 66. Christine Schwartz
- 67. Kris Eggen
- 68. Diana Bohn
- 69. Sally Nelson (2)
- 70. Bill Bogert
- 71. Judy Nakadegawa
- 72. Pei Wu
- 73. Joshua
- 74. Joel Reed
- 75. Daniel Moore
- 76. Joshua Pfeffer
- 77. Gary Hicks
- 78. Ellen Woods

- 79. Happy Skywalker
- 80. Pam Webster
- 81. Phil Allen
- 82. Marcia Poole
- 83. Lisa Giampaoli
- 84. Maurice Catlett
- 85. Norma Harrison
- 86. Moni Law
- 87. Cassidy Crofton
- 88. Linda Franklin
- 89. Chimey Lee
- 90. Lauren Chester
- 91. Alex White

**Item 25: Adopt a Resolution Approving the Allocation of \$3,131,651 in Predevelopment from the Housing Trust Fund for the Berkeley Way Project**

- 92. 37 Communications submitted via Berkeley Considers, includes summary information.

**Supplemental Communications and Reports 3**

**Item 6: Housing Trust Fund Recommendation – Northern California Land Trust (NCLT) Scattered Site Rehabilitation**

- 93. Ian Winters

**Item 13: Contract No. 9977 Amendment: Portable Computer Systems dba PCS Mobile to Purchase 15 Automated License Plate Recognition (ALPR) Units**

- 94. Presentation, submitted by Public Works Department
- 95. Gunnar Rieth
- 96. Felipe Diaz
- 97. Blair Beekman

**Item 27: Amending the Berkeley Election Reform Act to Implement Public Financing**

- 98. Presentation, submitted by Fair Campaign Practices Commission

**Item 35: Medical Cannabis Cultivation Ordinance Revisions**

- 99. Presentation, submitted by Planning & Development

**Item 36: Analysis and Recommendations for the Pathways Project to Address Homelessness in Berkeley**

- 100. Presentation, submitted by Health, Housing & Community Services

**Item 37a: Allocation of U1 Funds by the City Council**

**Item 37b: Companion Report: Allocation of U1 Funds by the City Council**

**Item 38a: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

**Item 38b: Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley**

- 101. Sheila Goldmacher
- 102. John Tortorice



**Misc. Communications**

**Board of Library Trustees**

103. Unknown

**HERO Program**

104. Unknown

DEPARTMENT ORDER

ADMINISTRATIVE ORDER #001-2016

DATE ISSUED: 02/18/16

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**SUBJECT: AUTOMATED LICENSE PLATE READER (ALPR)**

PURPOSE

- 1 - This order establishes guidelines for the use of the Berkeley Police Department's Automated License Plate Reader (ALPR) technology and data. ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR). ALPRs may be used by the Berkeley Police Department Parking Enforcement and Traffic Units for official law enforcement purposes.

POLICY

**Administration of ALPR Data**

- 2- Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain through the Traffic Bureau. The Investigations Division Captain will assign personnel under his/her command to administer the day-to-day operation of the ALPR equipment and data.

**ALPR Operation**

- 3- Department personnel shall not use, or allow others to use, the ALPR equipment or database records for any unauthorized purpose.
  - a. An ALPR shall only be used for official and legitimate law enforcement business.
  - b. Reasonable suspicion or probable cause is not required before using an ALPR.
  - c. No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
  - d. No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

DEPARTMENT ORDER

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DATE ISSUED: 02/18/16

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**ALPR Data Collection and Retention**

- 4- All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.
- 5- The Parking Enforcement Manager is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by City Department of Information Technology personnel and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.
- 6- All ALPR data shall be stored as described in this order and thereafter shall be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data shall be downloaded from the server onto portable media and booked into evidence. The records will then be subject to standard evidence retention policies and statutes.
  - a. Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

**Accountability and Safeguards**

- 7- All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:
  - a. Non-law enforcement requests for access to stored ALPR data shall be processed according to General Order R-23 in accordance with applicable law.
  - b. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requestor is the registered owner of the vehicle in question, and when providing such

## DEPARTMENTAL ORDER

ADMINISTRATIVE ORDER #001-2016

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information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

- c. ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time.
- d. Berkeley Police personnel approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relates to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- e. ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes only in connection with specific criminal investigations.
- f. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state, or federal agency or entity without the express written consent of the City Manager.
- g. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units are marked, corrected, or deleted in accordance with the type and severity of the error in question.
- h. ALPR system audits will be conducted by personnel assigned to the Professional Standards Bureau on a regular basis, at least biennially.

**Current ALPR Deployments**

- 9- The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.
- 10- Effective 2/18/16, the Parking Enforcement Unit will utilize five (5) Parking Enforcement Go-4 vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV/SVS database (stolen and wanted vehicles). The

## DEPARTMENTAL ORDER

ADMINISTRATIVE ORDER #001-2016

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current contracted vendor for this system is PCS Mobile using Genetec ALPR technology.

- 11- The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and checks scanned "reads" against a file of vehicles which have five or more outstanding parking citations exceeding 30-days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the city to recover outstanding citation fees and penalties. ALPR equipment is installed in the Parking Enforcement Unit's Scofflaw Enforcement vehicle.
- 12- The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
  - a. All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
- 13- When a car is booted and/or towed, the read, hit, and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
- 14- The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's goBerkeley parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner. The reports will provide only the date, time, location, approximate address, goBerkeley blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement

DEPARTMENTAL ORDER

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DATE ISSUED: 02/18/16

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officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



Michael K. Meehan  
Chief of Police

References: NCRIC ALPR Policy  
SB 34  
General Order R-23

Cc: All BPD Personnel

**EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM: NEW CONTRACT**

CMS # XUHAL  
(To be filled in by department)

Contract # 9977  
(To be filled in by Auditor)

CONTRACTOR NAME: Portable Computer Systems dba PCS Mobile

Subject of Contract: License Plate Recognition System

This contract package contains:	Attached	Waiver Attached	Not Required
<b>3 Original Contracts (Department, Vital Record and Vendor) in folders</b>			
*The Vital Record contract MUST be in a folder. *Optional: In lieu of folders, Department and Vendor copies may be assembled with an Acco-fastener.			
1. CONTRACT BOILERPLATE <u>W/changes - see M. Woo e-mail</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Scope of Services (Exhibit <u>X</u> @ boilerplate) <u>Exhibit/Attachment B</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<del>3. Payment Provisions (Exhibit <u>X</u> @ boilerplate) <u>Attachment C</u></del>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<del>4. Evidence of Competitive Solicitation OR Waiver by CM or by Council Resolution</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. CERTIFICATIONS <u>SPICK 14-10875-C</u>			
<del>a. Workforce Composition (businesses with 5 or more employees)</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<del>b. Nuclear Free Berkeley Disclosure</del>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<del>c. Oppressive States Disclosure (Exception: Community-based, non-profit organizations)</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<del>d. Certification of Compliance with Living Wage Ordinance (LWO): use current form on web*</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<del>e. Certification of Compliance with Equal Benefits Ordinance: use current form on web*</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<del>f. Community Agency: Certification of Anti-Lobbying</del>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<del>g. Community Agency: Certification of Drug-Free Workplace</del>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<del>6. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s (originals, not copies)</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<del>7. Authorizing Council Resolution # <u>66,917 1/27/15</u></del>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<del>8. Consultant Contracts: Form 700, Statement of Economic Interests</del>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<del>9. Federally Funded Project Requirement: Debarment status printout</del>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Berkeley Business License # BL-002930  
 Requisition # 185183 (Hard copy attached)  
 Budget Code 674 4920 431 30.38 11TD06  
840 4920 431 30.38 14TD01  
 Was there any advance payment? No  Yes  .....  
 30.38

Contract Amount \$ 450,000  
 Council Approved Amount \$ 450,000  
 If Yes, Advanced Amount \$ \_\_\_\_\_  
 If Yes, Purchase Order # \_\_\_\_\_

**Routing and signatures:**

All elements of the contract package, including information provided above, have been reviewed for completeness and accuracy and evidenced by the following signatures (Project Manager please print name):

1. WILLA NG / FARID JAVANDEL PW-TRANS 981-7061 6/11/15  
 Project Manager (PRINT NAME) & Department Phone No. Date

2. [Signature] 6/19/15  
 Department Administrative Officer/Accounting Date

3. [Signature] 6/19/15  
 Department Head Date

4. [Signature] 26 JUN 15  
 Contract Administrator Date

5. [Signature] 6/25/15  
 Budget Manager Date

Routing continues to the following persons, who sign directly on the contract:

6. City Manager (Will not sign unless all signatures and dates appear above)

**RECEIVED**  
 JUN 29 2015  
**CITY AUDITOR**

\* For current vendor forms, go to City of Berkeley website: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=5418>

amb 6/29/15 JA 6/30/15

**LICENSE PLATE RECOGNITION SYSTEM SERVICES CONTRACT**

**THIS CONTRACT** is between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and Portable Computer Systems, Inc. dba PCS Mobile ("Provider"), a Colorado corporation doing business at 1200 W. Mississipp Avenue, Denver, Colorado, 80223, who agree as follows:

**Article 1. CONTRACT APPENDICES**

The Contract Appendices are as follows:

- A Security Center License Agreement
- B Scope of Services
- C Payment Terms
- D Equipment Specifications
- E Detailed Training Outline
- F Warranty Agreement and Software Maintenance Agreement
- G Equipment Acceptance Certificate
- H Current Police Administrative Order on use of aLPR Equipment

The terms of each of the appendices are incorporated herein by reference and made a part of this Contract. However, in the event of a conflict between any provision or term in this Contract and an Appendix, the terms of this Contract shall prevail.

**Article 2. SCOPE OF SERVICES**

Contractor agrees to perform all services described in Appendix A, Appendix B, Appendix E, Appendix F, Appendix G and Appendix H in accordance with its stated terms and conditions.

**Article 3. TERM AND RENEWAL**

3.1. The term of this contract shall be for a period of five (5) years. This Contract shall begin on May 1, 2015 and end on May 30, 2020. The City Manager of the City may extend the term of this contract by giving written notice.

3.2. The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Provider.

3.4. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Manager  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704

For purposes of this Contract, all notices to Provider shall be addressed as follows:

CMS# HULAL  
AUTH# 66,917



Steve McKay, Treasurer, Manager of Finance  
Portable Computer Systems, Inc dba PCS Mobile  
1200 W. Mississippi Avenue  
Denver, CO 80233

3.5. If City terminates this Contract for convenience before Provider completes the services in Appendix B, Provider shall then be entitled to recover its costs expended up to that point plus a reasonable profit, but no other loss, cost, damage, expense or liability may be claimed, requested or recovered.

3.6. PCS Mobile warrants and represents that its officials, including its officers and employees in their official capacity, presently have no interest and agrees that its officials, including its officers and employees in their official capacity, will not acquire any interest which would represent a conflict of interest under California Government Code sections 1090 et seq. and 87100 et seq. during the performance of this Agreement.

**Article 4. PAYMENT TERMS**

4.1 For services referred to in Article 2 (Scope of Services), City will pay Provider a total amount not to exceed \$450,000. City shall make payments to Provider in accordance with the provisions described in Appendix C, which is attached to and made a part of this Contract.

**Article 5. PROVISIONS OF LICENSE PLATE RECOGNITION  
EQUIPMENT PURCHASE AND IMPLEMENTATION**

5.1. The license plate recognition ("LPR") equipment and software implementation will occur in accordance with the terms specified in Article 2 (Scope of Services).

5.2. Provider shall provide all required hosting and operations support for the System at costs identified in Appendix C.

5.3. Provider shall provide City a non-exclusive, non-transferable license to use the Hosted Software in accordance with the applicable documentation and in accordance with the terms set forth in Appendix A for the term of this Contract at a cost identified in Appendix C.

5.4. Provider shall provide five (5) LPR units, with specification described in Appendix D, to the City and provide all necessary City employees training as set forth in Appendix E to maintain this equipment for the term of this Contract.

5.5. Provider shall provide and perform the services in full compliance with all applicable laws, codes and standards (both public and private), including, but not limited to, the standards included in Appendix B and warranties expressed in Appendix F.

5.6. Provider shall provide goods for the term of this Contract as set forth in Appendix B.

5.7. Provider shall provide City technical support for the term of this Contract as set forth in Appendix B and Appendix F.

**Article 6. CITY'S RESPONSIBILITIES**

6.1. In connection with the performance of this contract and the provision of services, City shall be responsible for the following:

6.1.1 City shall be responsible for ensuring that City's use of the services and the performance of City's other obligations hereunder comply with all laws applicable to City.

6.1.2 City shall be responsible for the accuracy and completeness of all records and databases provided by City in connection with this Contract for use on Provider's system.

**Article 7. SUBCONTRACTING**

7.1. Provider is prohibited from subcontracting this Contract, or any part of it, unless such subcontracting is approved by City in advance in writing.

**Article 8. PROVIDER'S REPRESENTATIONS AND WARRANTIES**

In order to induce the City to enter into this Contract, Provider makes the following representations and warranties:

8.1. Provider has the expertise, manufacturing, management and maintenance capabilities, and financial capabilities to perform and complete all of its obligations contained in this Contract.

8.2. Provider is and will at all times be fully qualified and capable of performing its obligations under this Contract and possesses or will timely obtain all necessary licenses and/or permits required to perform such obligations.

8.3. Provider represents and agrees that the Services shall be performed in a professional manner and shall conform to established industry best practices.

8.4. Provider shall deliver all obligations undertaken in this Contract free and clear of all liens, rights of conditional vendors, encumbrances, and claims of copyright, patent or license holders, and in conformance with the requirements of this Contract.

**Article 9. INSURANCE**

9.1. Not less than ten (10) days prior to commencing any work, Provider shall furnish to City satisfactory proof that Provider has taken out for the entire period of this Contract the

following insurance in a form satisfactory to City and with an insurance carrier satisfactory to City, authorized to do business in California and rated by A.M. Best & Company A or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the services of Provider, for which Provider may be legally liable, whether performed by Provider, its subcontractors or subconsultants of any tier or by those employed directly or indirectly by them or any of them, or by anyone for whose acts any of them may be liable. All insurance, except professional liability insurance, shall name the City, its officers, agents, volunteers and employees as additional insured's and shall provide primary coverage with respect to the City, and there shall be a waiver of subrogation as to each named and additional insured.

**9.1.1 Commercial general liability insurance:** Comprehensive or Commercial General Liability Insurance with limits not less than two million dollars (\$2,000,000.00) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. If the Comprehensive or Commercial General Liability Insurance is written on a Claims Made Form then, following termination of this Contract, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Contract.

**9.1.2 Professional liability insurance:** If any licensed professional performs services under this Contract, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000.00) each occurrence to cover any claims arising out of Provider's performance of services under this Contract.

**9.1.3 Business automobile liability insurance:** Primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto), if applicable. Limits shall be not less than five hundred thousand dollars (\$500,000.00) each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than ten thousand dollars (\$10,000.00) payable by Provider.

**9.1.4 Full workers' compensation liability insurance** for all persons whom Provider may employ in furnishing and providing the Services hereunder, in accordance with California law. Workers' compensation policy shall include Employer Liability Insurance with limits not less than one million dollars (\$1,000,000.00) each accident or occurrence. There shall be a waiver of subrogation as to the City and each named and additional insured under such policy.

9.2 Certificates of Insurance and Endorsements shall have clearly typed thereon the City contract number and title of contract, shall provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to City's Contract Administrator. Endorsements naming the City as additional insured shall be attached to the Certificate of Insurance.

9.3 Nothing contained herein shall be construed as limiting in any way the extent to which Provider or any of its subcontractors or sub consultants may be held responsible for payment of damages resulting from their operations.

9.4 If Provider fails to maintain insurance, the City may take out insurance to cover any damages of the above mentioned classes for which the City and others to be insured referenced above might be held liable on account of Provider's failure to pay such damages, or compensation which the City might be liable under the provision of the Worker's Compensation Insurance and Safety Act, by reason of employee of Provider being injured or killed, and deduct, and in addition to any other remedy, retain amount of premium from any sums due Provider under this Contract.

9.5 Provider shall forward all insurance documents to:

**Department Name:** Public Works Transportation Division

**Attn:** Willa Ng

**CMS#** XUHAL

**Department Address:** 1947 Center Street, 3<sup>rd</sup> Floor, Berkeley, CA 94704

**Article 10. INDEMNIFICATION**

10.1 Provider shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, commissioners, officers, agents, employees and volunteers from and against any and all loss, liability, claims, suits, actions, damages, injury (including, without limitation, injury to or death of an employee of Provider or its subcontractors), or any violation of any federal, state, or municipal law or ordinance, arising out of the willful misconduct or negligent acts or omissions of Provider or its employees, subcontractors, or agents, or by acts for which they could be held strictly liable, or by the quality or character of their work.

10.2 The foregoing obligation of Provider shall not apply when (a) the injury, loss of life, damage to property or violation of law arise wholly from the negligence or willful misconduct of the City or its officials, commissioners, officers, agents, employees and volunteers and (b) the actions of Provider or its employees, subcontractors, or agents have contributed in no part to the injury, loss of life, damage to property or violation of law. It is understood that the duty of Provider to indemnify and hold harmless includes the duty to defend as set forth in California Civil Code section 2778. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Provider from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Provider agrees to the provisions of this Section and acknowledges that it is a material element of consideration.

**Article 11. CANCELLATION AND TERMINATION**

11.1 **Termination of Provider for Default.** In the event Provider fails to perform one or more of its material obligations under this Contract and has failed within twenty (20) days

of receiving notice from City to (a) cure the default or (b) if the default cannot be cured within twenty (20) days, provide the written assurances and plan as specified in subsection 11.1.1, this Contract may be terminated and all of Provider's rights hereunder ended. Termination will be effective after twenty (20) days written notice to Provider. No new work will be undertaken after the date of receipt of any notice of termination, or five (5) days after the date of the notice, whichever is earlier. In the event of such termination, Provider will be paid for those services performed under this Contract up to the date of termination and for reasonable direct costs incurred up to the date of termination, and any annual fees will be pro-rated. However, City may offset from any such amounts due Provider any damages or other costs City has or will incur due to Provider's non-performance. Any such offset by City will not constitute a waiver of any other remedies City may have against Provider for financial injury or otherwise.

11.1.1 If the City at any time reasonably believes that Provider is or may be in default under this Contract, the City may in its sole discretion notify Provider of this fact and request written assurances from Provider of performance of the Contract and a written plan from Provider to identify and attempt to remedy any failures to perform the terms of the Contract which the City may advise the Provider of in writing. Failure of the Provider to provide written assurances of performance as required herein will constitute a separate material breach of this Contract sufficient to invoke paragraph 11.1 above.

11.1.2 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with subsection 11.2, and Provider shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance.

**11.2 Termination of Provider for Convenience.** Termination of this Agreement for convenience shall be in accordance with 49 C.F.R. 18.44.

11.2.1 City may terminate this Contract for City's convenience and without cause at any time by giving Provider thirty (30) days written notice of such termination. In the event of such termination, Provider will be paid for those services performed, pursuant to this Contract, up to the date of termination in accordance with Appendix C (Payment Terms). In no event will City be liable for costs incurred by Provider after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits of this Contract, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not reasonable or authorized under this section.

**11.3 Obligations of Provider Upon Termination.** Upon termination of this Contract, Provider will submit an invoice to City for an amount which represents the value of its work or services actually performed prior to the effective date of termination and for direct costs for which Provider is entitled under this Contract to be compensated, except that with respect to reimbursement for Provider's services, in no event will the compensation paid for the month in which the termination occurs be greater than the charges for the services delivered prior to the notice. Upon approval and payment of this invoice by City, City shall be under no further obligation to Provider monetarily or otherwise.

**11.4 Termination of City for Default.** City shall be in default of this Contract thirty (30) days after written notice of City's failure to comply in any respect with any material terms and conditions of this Contract and City fails to cure such breach within such thirty (30) day period. Notwithstanding the above, City shall be in default hereunder upon ten (10) business days written notice in the event the breach is due to non-payment by the City and City fails to cure such breach due to non-payment within such ten (10) day period.

**11.5 Return of City Data.** Within thirty (30) days of notification of termination of this Contract, Provider shall provide City with all City-owned data in dedicated data files suitable for importation into commercially available database software (e.g., MS-Access or MS-SQL). The dedicated data files will be comprised of City's data contained in Provider's system. The structure of the relational database will be specific to the City's data and will not be representative of the proprietary Provider's database.

## **Article 12. GENERAL WARRANTIES, LIMITATIONS ON WARRANTIES**

**12.1 Compliance with Specifications.** Provider's computer programs, files, hosted services, documentation and all other work product will strictly comply with the descriptions and representations made in Appendix D (Equipment Specifications) and including performance capabilities, completeness, specifications, configurations, and function that appear therein.

**12.2** Provider may lawfully grant the license set forth in Section 5.3 and Appendix A.

**12.3** Neither the licensed software or use of the hosted services, including all subsequent versions, updates, enhancements and/or releases, nor licensed materials, or the use thereof within the scope of the License, infringes a patent, trademark or copyright or is claimed to be a trade secret of any person who has not consented to the granting of the License. Developer shall indemnify and hold harmless City from and against any claims, including reasonable legal fees and expenses, based upon infringement of any United States copyright or patent by the Software. City agrees to notify Developer of any such claim promptly in writing and to allow Developer to control the proceedings. City agrees to cooperate fully with Developer during such proceedings. Developer shall defend and settle at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, Developer may replace, in whole or in part, and at its own expense, the Software with a substantially compatible and functionally equivalent computer program or modify the Software to avoid the infringement.

**12.4** During the Initial Term, and any Renewal Term thereafter, the hosted services and software, including all subsequent versions, updates, enhancements and/or releases, will conform to the applicable printed documentation (i.e., all reference materials or manuals) delivered by Provider to City.

**12.5** Neither the software, including all subsequent versions, updates, enhancements and/or releases, nor the licensed materials or hosted services contain any virus, time bomb mechanism, or other software or code that can disable or adversely affect any and all of the software or the licensed materials or destroy any data or other software.

12.6 The limited warranty set forth in Section 12.1 is in lieu of all other warranties, express or implied warranties or merchantability and fitness for a particular purpose.

**Article 13. CONFORMITY WITH LAW AND SAFETY**

13.1 Provider shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Provider must be in accordance with these laws, ordinances, codes and regulations. Provider shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

13.2 If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Provider shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Provider shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Provider's subprovider, if any; 3) name and address of Provider's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

13.3 If a release of hazardous materials or hazardous waste that cannot be controlled occurs in connection with the performance of this Contract, Provider shall immediately notify the Berkeley Police Department and the City's Health Protection office.

13.4 Provider shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

**Article 14. NON-DISCRIMINATION**

14.1 Provider hereby agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26 as amended from time to time. In the performance of this Contract, Provider agrees as follows:

14.2 Provider shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

14.3 Provider shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Provider shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

**Article 15. INDEPENDENT CONTRACTOR**

15.1 Provider shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Provider performs the services required of

Provider by the terms of this Contract. Provider shall be liable for its acts and omissions, and those of its employees and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between City and Provider.

15.2 Direction from City regarding the subject of this Contract shall be construed as providing for direction as to policy and the result of Provider's Work only and not as to the means or methods by which such a result is obtained.

15.3 Except as expressly provided in this Contract, nothing in this Contract shall operate to confer rights or benefits on persons or entities not party to this Contract.

15.4 Payment of any taxes, including California Sales and use Taxes, levied upon this Contract, the transaction, or the services or goods delivered pursuant hereto, shall be the obligation of Provider.

**Article 16. CONFLICT OF INTEREST PROHIBITED**

16.1 In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Provider nor any employee, officer, director, partner or member of Provider, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Contract.

16.2 In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Provider, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Provider.

16.3 Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

16.4 Provider shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract, or any ensuing City construction project. Provider shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.

16.5 Provider hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

16.6 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

**Article 17. NUCLEAR FREE BERKELEY**

Provider agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.



**Article 18. OPPRESSIVE STATES CONTRACTING PROHIBITION**

18.1 In accordance with Resolution No. 59,853-N.S., Provider certifies that it has no contractual relations with, and agrees during the term of this Contract to forego contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

18.2 For purposes of this Contract, the Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang shall be deemed oppressive states.

18.3 Provider's failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 3. In the event that the City terminates Provider due to a default under this provision, City may deem Provider a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

**Article 19. RECYCLED PAPER FOR WRITTEN REPORTS**

If Provider is required by this Contract to prepare a written report or study, Provider shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Provider shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

**Article 20. BERKELEY LIVING WAGE ORDINANCE**

20.1 Provider hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Provider is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Provider will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Provider expressly acknowledges that, even if Provider is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Provider to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

20.2 If Provider is currently subject to the Berkeley Living Wage Ordinance, Provider shall be required to maintain monthly records of those employees providing service under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Provider for health benefits, if any, for each of its employees providing services under the Contract. These records are expressly subject to the auditing terms described in Section 23.

20.3 If Provider is currently subject to the Berkeley Living Wage Ordinance, Provider shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all

subcontracts in which Provider engages to execute its responsibilities under this Contract. All subprovider employees who spend 25% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

20.4 If Provider fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Provider's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to Section 3. In the event that City terminates Provider due to a default under this provision, City may deem Provider a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Provider may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Provider's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Provider's breach. City may deduct any assessed liquidated damages from any payments otherwise due Provider.

**Article 21. BERKELEY EQUAL BENEFITS ORDINANCE**

21.1 Provider hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Provider is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Provider will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.

21.2 If Provider is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Provider agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 23 of this contract.

21.3 If Provider fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Provider's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Section 3. In the event the City terminates this contract due to a default by Provider under this provision, the City may deem Provider a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Provider may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Provider's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages

set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Provider's breach. City may deduct any assessed liquidated damages from any payments otherwise due Provider.

**Article 22.                    PREVAILING WAGES**

Certain labor categories under this contract may be subject to prevailing wages as identified in the State of California Labor Code commencing with Sections 1720 et. seq. and 1770 et. seq. These labor categories, when employed for any "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," constitute a "Public Work" within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages. In performing its obligations under this contract, Contractor is solely responsible to determine which, if any, of the work is governed by a labor category pursuant to California Labor Code sections 1720 et. seq. and 1770 et. seq. and pay the pertinent prevailing wage. Contractor shall defend, indemnify and hold harmless City concerning any liability arising out of Labor Code section 1720 et. seq. and 1770 et. seq.

**Article 23.                    AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Provider's financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such audit, Provider agrees to provide the City Auditor with reasonable access to Provider's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Provider an opportunity to discuss and respond to any findings before a final audit report is filed.

**Article 24.                    AMENDMENTS**

The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Provider.

**Article 25.                    CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Provider has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Provider is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Provider shall pay all state and federal income taxes and any other taxes due. **Provider certifies under penalty of perjury that the taxpayer identification number written below is correct.**

Business License Number    BL-002930  
Taxpayer ID Number        84-1396969

**Article 26.****MISCELLANEOUS**

**26.1 Governing Law.** This Contract shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Contract shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in Alameda County, California.

**26.2 Assignment.** Neither City nor Provider shall assign this Contract without the prior written consent of the other party and any purported assignment without the other party's consent shall be void.

**26.3 Compliance with Applicable Laws.** Provider and any subcontractors shall comply with all laws, including the Berkeley City Charter, the Berkeley Municipal Code, and all city policies, rules and regulations which are applicable to the performance of the Services hereunder.

**26.4 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Contract is invalid, void, or unenforceable, the provisions of this Contract not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

**26.5 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Contract does not constitute a waiver of any other breach of that term or any other term of the contract.

**26.6 Solicitation.** Provider agrees not to solicit business at any meeting, focus group, service call, or interview related to this Contract, either orally or through any written materials.

**26.7 Force Majeure.** Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Contract if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, or acts of terrorism, provided, however, that lack of funds shall not be deemed to be a reason beyond a party's reasonable control. The parties will promptly inform and consult with each other as to any of the above causes which in their judgment may be the cause of a delay in the performance of this Contract.

**26.8 Integration, Incorporation:** This Contract, including all of the Appendices attached hereto, represents the entire and integrated Contract between City and Provider and supercedes all prior negotiations, representations, or Contracts, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**26.9 Counterparts.** This Contract may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one Contract.

26.10 **Contract Administration.** This Contract shall be administered by Danette Perry, Parking Services Manager, Public Works Department, or her designee, who shall act as the City's representative. All correspondence shall be directed to or through Ms. Perry or her designee.

26.11 **Section Headings.** The sections and other headings of this Contract are for convenience of reference only and shall be disregarded in the interpretation of this Contract

26.12 **Notices.** Any written notice to the City shall be sent to:

Farid Javandel  
Public Works Department  
City of Berkeley  
1947 Center Street  
Berkeley, California 94704

Any written notice to Provider shall be sent to:

Steve McKay, Treasurer, Manager of Finance,  
Portable Computer Systems, Inc dba PCS Mobile  
1200 W. Mississippi Avenue  
Denver, Colorado, 80223

Article 27. **FEDERAL REQUIREMENTS**

27.1 **CONFLICT OF INTEREST**

- A. Provider shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract, or any ensuing City construction project. Provider shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.
- B. Provider hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

27.2 **REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)**

Provider warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any CITY employee. For breach or violation of this warranty, CITY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

27.3 **PROHIBITION OF EXPENDING CITY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. Provider certifies to the best of his or her knowledge and belief that:
  - 1. No state, federal or City appropriated funds have been paid, or will be paid by-or-on behalf of Provider to any person for influencing or attempting to influence an officer or

employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Provider shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. Provider also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

#### 27.4 STATEMENT OF COMPLIANCE

Provider's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Provider has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

During the performance of this Contract, Provider and its subProviders shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Provider and subProviders shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Provider and subProviders shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Provider and its subProviders shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

The Provider shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The Provider, with regard to the work performed by it during the Agreement shall act in

accordance with Title VI. Specifically, the Provider shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of SubProviders, including procurement of materials and leases of equipment. The Provider shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

#### 27.5 DEBARMENT AND SUSPENSION CERTIFICATION

A. Provider's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Provider has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Any exceptions to this certification must be disclosed to CITY.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Provider responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

#### 27.6 CONTINGENT FEE

Provider warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Provider for the purpose of securing business. For breach or violation of this warranty, City has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### 27.7 INSPECTION OF WORK

Provider and any subconsultant shall permit City, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

#### 27.8 NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, Provider hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Provider within the immediately preceding two-year period, because of Provider's failure to comply with an order of a federal court that orders Provider to comply with an order of the National Labor Relations Board.

#### 27.9 ACCESS TO RECORDS

A. In accordance with 49 C.F.R. 18.36(i), the Provider agrees to provide the CITY, the FHWA, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Provider which are directly

pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Providers agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the CITY, FHWA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).



IN WITNESS WHEREOF, City and Provider have executed this Contract as of the date written on the first paragraph of this Contract.

FOR CITY OF BERKELEY

Signed by:

\_\_\_\_\_  
*Christine Del*  
City Manager

Countersigned by:

\_\_\_\_\_  
*Ann Marie Hogan 6/29/15*  
City Auditor

Approved as to form by:

\_\_\_\_\_  
*Michael Woo*  
City Attorney for City of Berkeley

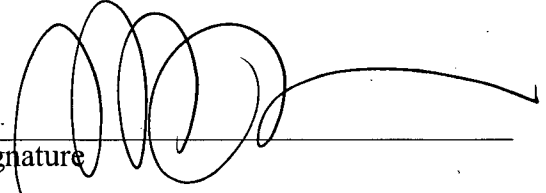
Attested by:

\_\_\_\_\_  
*Rose Hansen*  
Dep City Clerk

Provider

Portable Computer Systems Inc  
~~DA~~ PCS Mobile

Provider Name (print or type)



Signature

Martin Murphy

Print Name

Vice-President

Tax Identification



Berkeley Business License # BL-002930

Incorporated: Yes  No

Certified Woman Business Enterprise: Yes No

Certified Minority Business Enterprise: Yes No

If yes, state ethnicity: \_\_\_\_\_

Certified Disadvantaged Business Enterprise: Yes No

**TABLE OF APPENDICES**

Appendix	Title
A	SECURITY CENTER LICENSE AGREEMENT
B	SCOPE OF SERVICES
C	PAYMENT TERMS
D	EQUIPMENT SPECIFICATIONS
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I	CURRENT POLICE ADMINISTRATIVE ORDER ON USE OF ALPR

APPENDIX A

SECURITY LICENSE AGREEMENT?

This Appendix A is attached to and incorporated by reference in the Contract made May 1, 2015 between the CITY OF BERKELEY ("City") and Portable Computer Systems, Inc. dba PCS Mobile, ("Provider"), providing for the licensing and services related to License Plate Recognition Equipment and Software purchase.

**1 GRANT OF LICENSE**

- 1.1 Provider grants City a non-exclusive and non-transferable license for the term of this Contract to use the systems software that is hosted by Provider and described below in subsection 1.4.
- 1.2 **Licensed Content, Not City Owned:** Nothing in this Agreement will be construed as assigning, selling, conveying, or otherwise transferring any ownership rights or title in Genetec AutoVu , including but not limited to pre-existing or independently developed intellectual property, materials, software, methodologies, tools, or inventions, that are developed, conceived or created for any Genetec business purpose, or any derivative works to any of the foregoing.
- 1.3 **City Purchased Equipment:** Nothing in this agreement will be construed as assigning, selling, conveying, or otherwise transferring any intellectual property ownership rights in Genetec Equipment including but not limited to pre-existing or independently developed intellectual property materials, software, methodologies, tools, or inventions, that are developed, conceived or created for any PCS MOBILE / GENETEC business purpose, or any derivative works to any of the foregoing.

**2 RESTRICTIONS ON USE**

City is authorized to use the Software hosted by Provider only for City's internal purposes. City agrees that it will not use or permit the Software to be used by any other entity.

**3 DATA OWNERSHIP AND RESPONSIBILITIES**

- 3.1 Provider shall be responsible for providing all equipment and software necessary for maintaining all data files. Data files are expressly the property of the City of Berkeley. Additionally, data files shall be readily transferable to new systems that the City may choose to use in the future.  
Microsoft SQL Server (MSSQL) is the City's preferred Relational Data Base Management

System. The City is currently standardized on MSSQL 2008 R2, but has begun implementing MSSQL 2012 and MSSQL 2014.

- 3.2 Provider agrees that it shall not at any time sell, assign, transfer or otherwise make available to, or allow use by Provider, agent of Provider or a third party any of the City's Proprietary Information.
- 3.3 Provider shall hold in confidence the City's Proprietary Information and allow its employees access to City's data only for the purposes of complying with this Contract.
- 3.4 Provider will take all necessary measures to secure and protect City's data including, but not limited to, daily backups, offsite storage of backup media, graphics, physical security, software access controls, encryption and proper backup rotations. Provider acknowledges that City is entitled to copy, export or otherwise duplicate City's data at any time.
- 3.5 Provider will maintain data security protocols that match or exceed safeguards for data use, storage, access and archive stated in the Berkeley Police Departments' most current Administrative or General Order on the use of Automatic LPR equipment and software. The Police Departments' current Administrative Order is incorporated by reference in this section, and included in Appendix H.
- 3.6 The provisions of this section (Data Ownership and Responsibilities) of the Contract shall survive expiration or termination of this Contract.

END OF APPENDIX A

**APPENDIX B**

**SCOPE OF SERVICES**

This Appendix B is attached to and incorporated by reference in the Contract made May 1, 2015 between the CITY OF BERKELEY ("City") and Portable Computer Systems, Inc. dba PCS Mobile., ("Provider"), providing for the License Plate Recognition Equipment and Software purchase.

**1 Deliverables**

Provider shall provide the City with complete product, installation, and training associated with delivering a License Plate Recognition Equipment and Software System.

**DEFINITIONS:**

- 1.1.LPR: The term "LPR" or "license plate recognition" refers to equipment and software that detects the presence of a vehicle and reports the numbers and letters shown on the license plate.
- 1.2.mLPR: The term "mLPR" shall mean "mobile license plate recognition", are units specifically designed for mounting on a vehicle for detection of vehicles while in motion.
- 1.3.LPR system: The term "LPR system" shall refer to all components for an operational system, including the mLPR external and in-vehicle equipment, operating software, data storage systems and data transmission equipment and software and integration equipment and software.
- 1.4.Days: The term "Day(s)" shall mean calendar days and not business or working days, unless otherwise indicated.
- 1.5.Contract Manager: The term "Contract Manager" shall mean the City employee responsible for the coordination with the Provider for the implementation, operation and management of the LPR system and for the City's day-to-day administration and coordination of City responsibilities for the LPR system pursuant to the contract.
- 1.6.Parking Occupancy: The term "parking occupancy" refers to the number of vehicles parked on a blockface, block, street segment or area, by date and time.
- 1.7.Time Limit Violation: The term "time limit violation" shall be defined as any vehicle that has been parked longer than the time limit posted by the parking sign or parking meter that governs that space, unless the vehicle displays a valid permit for that space.

- 1.8. Automatic Data Collection System: The term "Automatic Data Collection System" refers to the system by which the City collects and summarizes parking occupancy data for the purposes of analysis and setting rate and time limit policies.
- 1.9. Functional LPR. The term "Functional LPR" shall mean any of the Provider's mLPR units functioning within the normal parameters of operation. A Functional LPR will detect and report vehicle license plates, report vehicles that match criteria input by the operator, e.g. time limit violations, create summary reports and integrate with the City's Automatic Data Collection System and police enforcement systems. Acceptance of the mLPR unit by the City shall be based on the mLPR unit being a fully Functional LPR.
- 1.10. Acceptance: The term "Acceptance" shall mean the point at which the City assumes responsibility for payment of merchandise provided by the Provider. Acceptance shall occur after the City has successfully installed the equipment and the equipment is properly integrated and communicating with the City's Automatic Data Collection System and enforcement systems. mLPR units must meet the definition of Functional LPR at the time of acceptance.

## **2 PROVIDER'S RESPONSIBILITIES**

- 2.1. Provider shall deliver and install a Functional LPR, and provide an external web-based system to which the mLPR units connect and provide services to the City of Berkeley in accordance with the terms of this Agreement. The items, quantities, descriptions and unit prices that PCS MOBILE will provide under this contract are listed in Appendix C Payment Terms.
- 2.2. The provider's technology shall conform to the following standards:
- Security protocols that meet or exceed the standards set in Appendix H.
  - All applicable local, state and federal guidelines and laws.
- 2.3. Provider shall deliver and install equipment and software for five (5) operational mLPR units on City vehicles that range in size from the Go-4 parking enforcement vehicle to an SUV type vehicle. All equipment is to be new and fully tested and perform according to the specifications provided and described in Appendix D of this Agreement.
- 2.4. Provider shall develop customized software for use of the Functional LPR to collect parking occupancy data, including complete integration to the City's Automatic Data Collection System.
- 2.5. Provider shall provide and maintain an external data storage and web-based service to integrate with the City's Automatic Data Collection System.

**3 SUPPORTIVE SERVICES**

3.1 Provider shall provide the following additional services in conjunction with this Agreement:

3.1.1 Pre-delivery, detailed training and preparation of City's staff as detailed in Appendix E and as required for the following:

3.1.2 Installation of mLPR units on City's GO-4 vehicles;

3.1.3 Maintenance activities;

3.1.4 Troubleshooting problems;

3.1.5 Operations- programming, inventory, etc.:

3.1 During the term of this agreement, the Provider shall provide the following services:

**3.2.1 SERVICE DESCRIPTIONS**

<u>Ref. No.</u>	<u>Service Name</u>	<u>Description</u>	<u>Specifications</u>
1.	Maintenance - Phone Support	This is a service that will give the Customer a tool for technical support, but the Customer will apply the fix. When an issue develops, the Customer can call a PCS Mobile technician and the technician will help the Customer troubleshoot the problem over the phone.	Shall be initiated only by Customer's Designated Representative. Phone support shall support English language. Incidents (Tickets) will be tracked in AutoTask for every issue. One of the tools PCS Mobile may use is a remote session to the computer of the affected unit to determine and address problem.
2.	Maintenance -On-Site Support	Any service or support that requires a PCS Mobile technician to go to the Customer site to resolve the issue. This service will be provided on an as needed and determined basis by the City of Berkeley exclusively.	Tickets will be tracked in AutoTask for every issue. Types of issues <ul style="list-style-type: none"> <li>• Mounting Issues: Issues where the mount needs to be addressed to resolve a safety concern.</li> <li>• Data Issues: Issues where the data solution is not working. This can be a connectivity issue or device failure.</li> <li>• Power Issues: Issues where the 12v power/wiring, power distribution is an issue.</li> </ul>



			<ul style="list-style-type: none"> <li>• Camera issues: Issues where the camera is not reading properly, etc. Must be a new issue or change in a known good operating solution. (Troubleshooting) Visits can be scheduled to handle a list of issues or for Preventative Maintenance (PM).</li> </ul>
3.	Depot Repair (Warranty)	This is a service where any hardware warranty issues are issued to PCS Mobile. The PCS Mobile technician will troubleshoot/verify the problem and facilitate the repair through the manufacturer, on behalf of the Customer.	<p>Ticket will be tracked in AutoTask for every issue.</p> <p>Equipment must be covered under the Manufacturer's Warranty.</p> <p>PCS Mobile must have physical possession of Equipment.</p> <p>Can be picked up by PCS Mobile representative or, can be shipped to PCS Mobile facility.</p> <p>PCS Mobile will set up Return Manufacturer Approval RMA with manufacturer.</p> <p>PCS Mobile will prepare the equipment to be shipped per manufacturer instructions.</p> <p>PCS Mobile will receive repaired/replaced equipment and deliver to customer.</p> <p>Warranty repair service history will be tracked and reported.</p>
4.	Spares	Spare equipment specifications have been provided in Appendix C.	
5.	Preventative Maintenance	<p>Service consisting of testing individual components to assist in the prevention of failure.</p> <p>Purpose of preventative maintenance is to stay ahead of any potential issues in the Customer's mobile environment.</p> <p>PCS Mobile will provide one (1) Preventative Maintenance visit for each of 5 mLPR units deployed per 6 months.</p>	<p>Work will be performed on-site.</p> <p>All preventative maintenance will be documented in an AutoTask Ticket so that proper reporting can be delivered to customer and to internal staff.</p> <p>Preventative Maintenance work shall include:</p> <ul style="list-style-type: none"> <li>• Checking mounting equipment – sturdiness, torque on bolts, general wear and tear, etc.</li> <li>• MDC quick hardware diagnostics – this is a pass/fail test on the internal hardware components.</li> <li>• Video processor diagnostics.</li> <li>• Camera diagnostics.</li> <li>• Checking mounting of cameras.</li> <li>• Verification of proper termination, voltage and containment of all wiring.</li> <li>• Inventory of all mobile data, video and</li> </ul>

			<ul style="list-style-type: none"> <li>mounting equipment.</li> <li>General cleaning of external surfaces of devices.</li> <li>Reporting features of work done, which can include preventative maintenance history, listing of common problems to determine failure rates.</li> <li>Minor adjustments and/or fixes.</li> </ul>
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3.2.2 SERVICE MANAGEMENT

3.2.2.1 SERVICE AVAILABILITY

Ref. No.	Service Name	Availability	Response	Restrictions
1.	Maintenance - Phone Support	8 to 5 Pacific Standard Time, business days (Normal Working Hours).	PCS Mobile will respond to phone call and/or phone message within 30 minutes.	
2.	Maintenance - On-Site Support	8 to 5 Pacific Standard Time, business days (Normal Working Hours).	<p>PCS Mobile will respond as quickly as determined necessary by the City of Berkeley while keeping travel costs in mind.</p> <p>Visits can be scheduled to handle a list of issues or for Preventative Maintenance</p>	PCS
3.	Depot Repair (Warranty)	8 to 5 Pacific Standard, business days (Normal Working Hours).	PCS Mobile will process return to Manufacturer repair facility within one (1) business day.	Repair and return limited to manufacturer's response.
4.	Spares	8 to 5 Pacific Standard, business days (Normal Working Hours).	Spare parts may be replaced through purchase by the City of Berkeley. The spare parts will be used to supplement the extended warranty and to maximize uptime of systems.	
5.	Preventative Maintenance	8 to 5 Pacific Standard, business days (Normal Working Hours).	Preventative maintenance time frames will average 2-3 hours, depending on services offered. This service will be provided when directed exclusively by the City of Berkeley.	

3.2.2.2 SERVICE REQUESTS

In support of services outlined in this Agreement, the Customer may place service requests with PCS Mobile by phone or email. PCS Mobile will respond to service related incidents and/or requests submitted by the Customer within time frames as indicated under Service Availability/Response.

3.2.2.3 SERVICE REPORTING

Ref. No.	Report Name	Report Description	Report Interval	Recipient
1.	Support Ticket History Report	Custom reporting. Support history provided with detail for any time period as determined in agreement. Report would cover all activity as indicated in support activity: Phone Support, On-Site, Depot Repair, Spare Usage.	Monthly	
2.	Preventative Maintenance Report	Report features of work done, which can include preventative maintenance history and listing of common problems to determine failure rates.	Monthly	

3.3 ADDITIONAL SERVICES

If substantial changes in any Services are required due to reasons beyond the control of the Provider, such changed Services shall be considered Additional Services and additional fees may be required. Any such changed Services will be performed only if approved by City prior to beginning of work thereon, and will be invoiced as Additional Services at the rates indicated in the table HOURLY BILLING RATES.

City further agrees to pay PCS Mobile for any Additional Services promptly upon receipt of invoice therefore. City will also reimburse PCS Mobile, promptly upon receipt of invoice, for any and all out-of-pocket expenses incurred by PCS Mobile in the performance of Additional Services.

## HOURLY BILLING RATES

Technician Level	Hourly Billing Rate
Field Service Representative I	\$65
Field Service Representative II	\$75
Field Service Representative III	\$90
Video/LPR Specialist	\$125
Software Engineer / Database Technician	\$156.25

3.4 Integration and data storage, transmission that meets the standards of the City's Automatic Data Collection System with requirements as shown in Appendix D. City customization requests may incur additional costs that will be quoted and approved by the City prior to commencement of such project.

3.6 Provider will offer all available mLPR software upgrades, including those developed for other customers, at no additional charge to the City. City shall maintain the sole authority to determine when and where such upgrades will be implemented. Additional charges may apply for new software that requires new or upgraded hardware.

3.7 All data related to the LPR system will be maintained by the Provider and replicated on one or more duplicate servers with periodic backups. Further redundancy will be provided by replicating the data daily on a secure server located within the continental United States. Data will be archived and stored according to the standards set in Appendix H.

3.8 The Provider is responsible for maintaining data integration and communication between the Provider's system and the City's designated systems:

3.8.1 For the purposes of parking occupancy collection, the Provider is responsible for the successful transfer of parking occupancy data between the Provider and the City's designated Automatic Data Collection system as shown in Appendix D

3.8.2 For the purposes of the Police Department, the Provider is responsible for the successful transfer of citation, scofflaw and stolen vehicle information between the Provider and the City's citation, scofflaw and stolen vehicle databases as shown in Appendix D

#### 4 REPORT REQUIREMENTS

##### 4.1 DISASTER RECOVERY PLAN AND SYSTEM RECOVERY

4.1.1 Disaster Recovery/Backup Plan. It is the responsibility of the Provider to take every precaution to ensure that all systems, files, data, equipment, communications, and facilities are reliable. In the event that a natural disaster or some other unanticipated event does disrupt the system, the Provider must have a detailed, City-approved recovery plan in place, tested, and ready to be implemented for all key facilities so that services are restored quickly and in accordance with City performance standards.

#### 4.2 AUDITS, RECORDS TO BE MAINTAINED, ACCESS TO RECORDS

4.2.1 The Provider shall maintain account books, records, documents and other evidence directly pertinent to performance and billing of the work under the Contract, in accordance with generally accepted accounting practices. The Provider shall also maintain the financial information and data used by the Provider in the preparation or support of cost estimates to the City. The City, or its duly authorized representative, shall have access to such account books, records, documents, and other evidence, for the purpose of inspection, audit, and copying. The Provider shall provide proper facilities for such access. The Provider shall not charge the City for time spent assisting the City in reviewing said documents.

4.2.2 Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards. The Provider agrees to provide full access to the City all information, reports, and records pursuant to this section. Where the audit concerns the Provider, the City's representative shall afford the Provider an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the Provider.

4.2.3 The Provider shall maintain copies of the complete records of the execution of the Contract, including, but not limited to documents, as necessary to assist in the defense of any legal action claiming liability or neglect of duty which may involve the City. The City shall also have access to these records. These records shall be maintained for a period of not less than three years after the earliest date which the applicable statutes may establish for the release of potential liability for the services rendered or performed under the Contract.

4.2.4 Accounting records as above shall be maintained and made available during performance of the work under the Contract for three years from date the Contract ends. In addition, those records which relate to any appeal, contract, litigation, or the settlement of claims arising out of such performance or cost, or items to which

an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeals, litigation, claims, or exception.

**5 INSTALLATION/INSPECTION SHIPPING**

5.1 Provider shall be responsible for all shipping and delivery costs associated with original order. Future orders shall be FOB Destination – Prepay and Add Shipping

5.2 Provider shall deliver new, fully-tested equipment, at mutually agreed upon time(s) and date(s) under the supervision of the City.

**6 CITY'S RESPONSIBILITIES**

6.1 City staff, in conjunction with Provider's staff, shall inspect LPR equipment following installation to ensure proper installation and operation.

6.2 City shall evidence its acceptance of the equipment under the Agreement by delivery to the Provider of an Equipment Acceptance Certificate, similar to Appendix H of this Agreement, with respect thereto.

END OF APPENDIX B

APPENDIX C  
PAYMENT TERMS

This Appendix C is attached to and incorporated by reference with the Contract made on May 1, 2015 between the CITY OF BERKELEY ("City") and Portable Computer Systems, Inc. dba PCS Mobile, ("Provider"), providing for the licensing and services related to the License Plate Recognition Equipment and Software.

1 TOTAL CONTRACT PRICE:

Contract Price for the furnishing of all Licenses, Services and Equipment shall not exceed \$450,000. For the convenience of the parties, the Contract price includes the following expenses as noted in the price chart below:

PROPOSED COST ELEMENTS - SUMMARY	
Cost Element	Price
Mobile LPR Equipment and Install - Overtime Kit - 5 or more systems	\$ 189,260.00
Mobile Computing - Complete Kit	\$ 30,875.00
Spare Parts	\$ 19,235.00
Cellular Connection Costs (Shown as Annual Cost)	\$ 4,710.00
Miscellaneous On-call Services and Equipment	\$ 69,670.00

Costs Options - Extended Warranty and Mobile Assurance - Overtime Kit (Pricing if Purchase Five (5) or More Systems)

Item Number	Item	Item Description	Quantity	Unit Price	Extended Price
Extended Warranty and SMA Options					
	<b>SMA for Five Years</b>				
SMA-BASE-5Y		SMA Base Package = 5 years; this item replaces SMA-BASE-1Y if purchased at time of sale ** Replaces SMA-BASE-1Y if Chosen	1	\$ 1,200.00	\$ 1,200.00
	<b>Extended Warranty</b>				
AU-K-OXX-EWRR-P5		Extended Warranty for AU-K-OXX kit with Return and Repair coverage - Total warranty coverage of 5 Years when prepaid at time of system purchase (one year included in the selling price and four (4) additional years). This includes coverage of AutoVu vehicle hardware, Patroller software upgrades and Bing license renewal. Does not cover in-vehicle PC. **Option vs AU-K-OXX-EWRR-1Y purchased annually through Year 5	5	\$ 14,840.00	\$ 74,200.00
Subtotal					\$ 75,400.00
<b>Extended Warranty and SMA for total of Five (5) years of coverage</b>					<b>\$ 75,400.00</b>

Support - Mobile Assurance (annual Cost)				
MOB-MAMBaseCamp	Mobile Assurance® Mobility BaseCamp	Any service or support that requires a PCS Mobile Mobility Specialist to work with the customer via Phone, Email, Remote, and/or at the PCS Mobile Shop to resolve issues involving the AutoVu LPR solution in the vehicle.	5	\$ 100.00 \$ 500.00
MOB-SUPPORT	Mobile Assurance® BaseCamp Server	Any service or support that requires a PCS Mobile IT Specialist to work with the customer via Phone, Email, Remote, and/or at the PCS Mobile Shop to resolve issues involving the AutoVu LPR Software (i.e. Security Center or Patroller) on the server.	1	\$ 1,500.00 \$ 1,500.00
<b>Subtotal</b>				<b>\$ 2,000.00</b>
<b>Annual cost for Remote Support of Five (5) AutoVu Systems</b>				<b>\$ 2,000.00</b>

Support - Mobile Assurance Options (Per Incident Costs)				
MOB-MAPM	Preventative Maintenance	Optional Preventative Maintenance to include with any package. This visit includes checking and re-seating all connections, mounting hardware, testing and adjusting of hardware and software. (This cost will be incurred when instructed by City of Berkeley of needed service and at their sole discretion)	5	\$ 200.00 \$ 1,000.00
Travel_Zone_4	Travel Cost	Travel Cost per trip for Preventative Maintenance or On-Site Support	1	\$ 1,400.00 \$ 1,400.00
<b>Subtotal</b>				<b>\$ 2,400.00</b>
<b>Preventative Maintenance Costs for five (5) Units - Per Incident cost</b>				<b>\$ 2,400.00</b>



<b>Costs Options - Hosting and Custom Development</b>					
Item Number	Item	Item Description	Quantity	Unit Price	Extended Price
<b>Hosting Options</b>					
GSC-Av-MS-1Y	<b>Storage Server</b>	GSC AutoVu Managed Service for one (1) year. Max ten (10) Patroller connections included. No fixed camera connection supported. Max five (5) concurrent Security Desk connections. Limited functionalities (please refer to product description)	5	\$ 3,540.00	\$ 17,700.00
<b>Hosting Configuration</b>					
PS-AV-AMS-250-NA		Permit zone configuration services for AutoVu Mobile University or City with or without Wheel imaging Package (ex: Zone editor, mapping, custom enforcement rules). Maximum of 250 permit zones will be configured. (For "Autovu Managed Services" Deployment only)	1	\$ 1,250.00	\$ 1,250.00
<b>Services for Hosting</b>					
<b>Custom Development for Occupancy Functionality</b>					
PS-C-DEVELOP-NA	<b>Custom Development Services</b>	**Custom development of software for Occupancy functionality. This is an hourly cost for Genetec's Engineering Services. Time sheets will be provided for all of this work.	240	\$ 156.25	\$ 37,500.00
<b>Subtotal</b>					<b>\$ 56,450.00</b>
<b>Options and Services Cost Total</b>					<b>\$ 56,450.00</b>

\*\* Currently we provide a GPS coordinate for every read we export. What is proposed is we will include a BlockFace with every export. The Blockface will also be converted, using an excel spreadsheet from Berkeley, to the existing nomenclature used by Berkeley.  
 In essence we will be reporting the read data , and next to every read we will attach the block face. Xerox will need to convert that into a % of occupancy and possibly turnover.

**2 INVOICES**

Invoices shall contain itemized charges reflecting agreed upon unit prices or hourly billable rates as shown in this agreement with proper supporting documents.

**3 TIMING OF PAYMENTS**

**3.1 Payments Due Upon Delivery of Services.** City and Provider agree that any undisputed costs shown above shall be paid by the City upon completion of the service and acceptance by the City and within thirty (30) days of receipt of properly supported invoices from Provider.

Payment of any invoice shall not be deemed a waiver of any dispute.

City agrees that it shall promptly notify Provider in writing of any dispute with an invoice.

END OF APPENDIX C

## APPENDIX D

### SPECIFICATIONS LICENSE PLATE RECOGNITION EQUIPMENT AND SOFTWARE SYSTEM

This document is intended for the Provider of the Functional LPR system that can be used for both occupancy detection and enforcement.

The system being specified here will be used by the City to capture vehicle occupancy in both demarcated and non-demarcated areas in the City. The occupancy data will be sent to the City's Automatic Data Collection system being developed by Xerox. The format of the data and the mechanism for data transfer shall be defined by Xerox.

In addition, the LPR system will integrate with City's existing systems e.g PPEO Handheld (Xerox), to provide time limit and illegal parking enforcement. The Provider shall work with the Providers of City's existing systems for the integration. The following sections and diagram describe the overall Automated Data Collection and Enforcement System solution.

#### 1. In-vehicle System

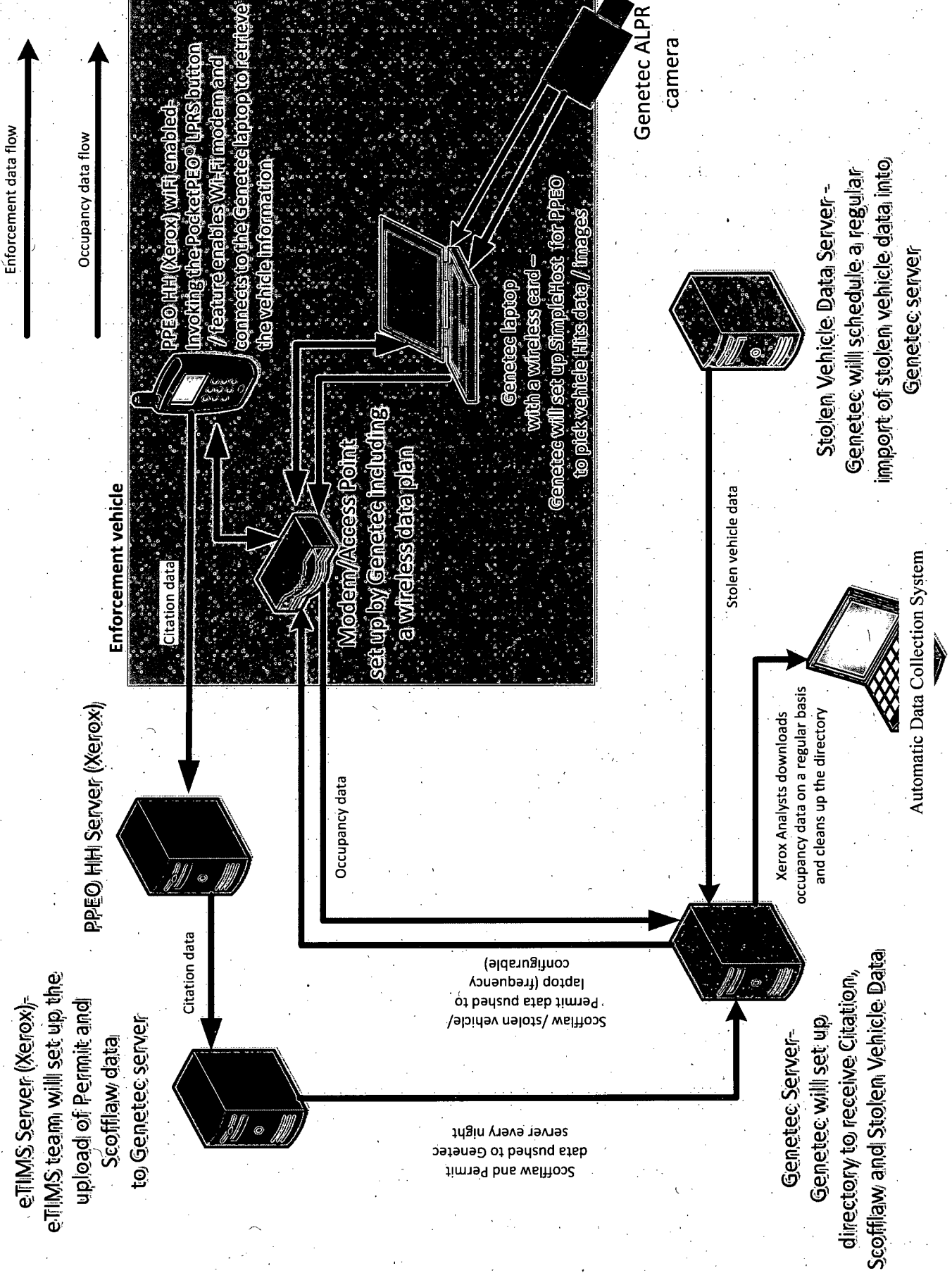
- a. ALPR system: The ALPR cameras including the license plate and wheel image cameras will capture and provide images to the in-vehicle Genetec laptop which will run the Security Desk, Patroller. Provider shall provide and install the ALPR cameras, laptop and other associated hardware/software
- b. Modem/Access point: Provider shall provide a modem/access point for wireless communication between Genetec laptop and PPEO handheld and for cellular wireless communications with the Genetec backend server. Provider shall also provide the monthly data plan with sufficient bandwidth required for real-time transfer of data from the in-vehicle laptop to the backend server.
- c. Provider shall coordinate with Xerox to set up the data transfer of vehicle "hits" data between the laptop and PPEO handheld.

#### 2. Backend system

- a. Provider shall provide hosting for goBerkeley Automated Data Collection and Enforcement System. This server may be hosted by Genetec. Provider shall coordinate with Xerox to set up directories in the host server to receive residential permits and Scofflaw data from Xerox on a mutually agreed upon and City-configurable schedule.
- b. Provider shall configure the host server to receive the latest California Stolen Vehicles data from the CA Department of Justice Stolen Vehicle System (SVS) on a mutually agreed upon and City-configurable schedule.

- c. Provider shall configure the host server to push the latest residential permit, Scofflaw and Stolen vehicle data to the in-vehicle Genetec laptop on a mutually agreed upon and City-configurable schedule.
- d. Vendor shall configure the host server and in-vehicle laptop to transfer the vehicle occupancy data from the laptop to the server in real-time
- e. Vendor shall make available to Xerox the following information for occupancy:
  - i. Occupancy data by block face
  - ii. Occupancy data for each vehicle including high precision GPS coordinates (which according to Genetec will be available in the upcoming release of their new software)

Vendor shall provide access to Xerox for a regular download the occupancy data. Xerox will download the data from Genetec server.



eTIMS Server (Xerox)-  
eTIMS team will set up the  
upload of Permit and  
Scofflaw data  
to Genetec server

PPEO HHI Server (Xerox)

Enforcement vehicle

Citation data

Citation data

Occupancy data

Modem/Access Point  
set up by Genetec including  
a wireless data plan

Scofflaw and Permit  
data pushed to Genetec  
server every night

Scofflaw /stolen vehicle/  
Permit data pushed to  
laptop (frequency  
configurable)

Genetec laptop  
with a wireless card -  
Genetec will set up SimpleHost for PPEO  
to pick vehicle Hits data / Images

Genetec ALPR  
camera

Stolen vehicle data

Genetec Server-  
Genetec will set up  
directory to receive Citation,  
Scofflaw and Stolen Vehicle Data

Xerox Analysts downloads  
occupancy data on a regular basis  
and cleans up the directory



Automatic Data Collection System

Stolen Vehicle Data Server -  
Genetec will schedule a regular  
import of stolen vehicle data into  
Genetec server

Overall Description

The LPR system being specified here includes the hardware that will be deployed in the field and its associated backend system including hardware and software. It also includes the user interfaces that will be available to City users for monitoring the system.

System Perspective

The LPR system will be used in conjunction with the following systems/data sources:

- a) For Occupancy
  - System being developed by Xerox
    - Occupancy reporting data hub
    - City web site displaying parking occupancy statistics
  
- b) For Enforcement
  - Existing systems
    - Electronic handheld ticket writer software – currently PocketPEO® (Xerox)
    - Citation database – currently eTIMS® (Xerox) through PocketPEO handheld device
    - Law Enforcement Records Management System (LERMS)
    - Residential Parking Permit database – currently eTIMS® (Xerox)

Specifications

The LPR system must meet the following specifications:

Spec #	Specifications
1	The system shall detect the presence of a parallel parked vehicle in situations where parked vehicle bumpers are at least 12 inches apart.
2	The system shall be able to detect the presence of a stationary angle parked vehicle- defined as a stationary vehicle (angled between 45 and 90 degrees to the curb)

Spec #	Specifications
3	The system shall detect the presence of a parked vehicle, notwithstanding changes in illumination (shadows, sunlight, glare, day/night lighting transition)
4	The system shall detect a vehicle, the length of the vehicle notwithstanding ("Smart" Cars to tractor-trailer trucks, bicycles are NOT defined as vehicles in these requirements). Two and three wheeled vehicles are not included
5	The system shall detect vehicles simultaneously on both sides of the street
6	The system shall report the block face (per City's block face ID) where the detected vehicle is located
7	The system shall have a unique identifier for each vehicle (such as license plate, make, model, color or other unique data points) if detected as a parked vehicle
8	The system shall incorporate existing enforcement beat areas in each record
9	The system shall generate statistical reports by enforcement beat areas
10	The system shall integrate with current parking regulations information (eTIMS, PocketPEO) to automatically detect a parking time limit violation
11	The system shall incorporate multiple time limit zones on the same enforcement run.
12	The system shall integrate with current Residential Permit Parking (RPP) regulations to determine a permit zone violation; and a parking time limit violation within an RPP zone

Spec #	Specifications
13	The system shall display recorded data to the Parking Enforcement Officer on the LPR system laptop.
14	Report violation "alarms" that result from integration of recorded data with parking regulations to the Parking Enforcement Officer's handheld Computer in real-time. Violation alarms are desired for:
15	<ul style="list-style-type: none"> <li>• Violation of time limits in the City's 30 minute, 2 hr, 3hr and 8 hr time limit zones</li> </ul>
16	<ul style="list-style-type: none"> <li>• Violation of time limits and/or non-permit parking in the City's Residential Permit Parking zones</li> </ul>
17	The system shall allow PEO ability to override an alarm and enter an "exception" note or report. Overridden alarms will be tracked by time, day and PEO. Overridden data shall be a permanent record and cannot be modified or edited.
18	The system shall have a list of pre-defined common exceptions and allow entry of freeform comment
19	The system shall generate daily, weekly, monthly and annual statistical reports detailing but not limited to:
19.1	Total number of vehicle license plate reads
19.2	Total number of parking violations issued as a result of read vehicle license plate data. The report shall separate data for each Berkeley Municipal Code (BMC).
19.3	Total of parking violations not issued
19.4	Individual PEO enforcement activity and performance



Spec #	Specifications
20	The system shall ask the officer to login using unique security PIN and badge number
21	The detection system shall be mountable with temporary mounts on the following types of vehicles: (a) GO-4 (b) Sedan (c) SUV
22	The system shall record and store the state and number of a license plate with (n-2) 98% accuracy
23	The vendor shall provide ample processing power with the ability to dynamically scale CPU resources as needed for up to 25,000 spaces Citywide
24	The vendor shall provide disk space that is in accordance with the specifications listed in this document.
25	The system shall be scalable such that when additional resources such as processing power, memory allocation, or disk space are needed; the system will dynamically scale accordingly to handle data collection and enforcement of up to 25,000 spaces Citywide.
26	The vendor shall provide the appropriate bandwidth to meet or exceed the desired level of service to handle data collection and enforcement of up to 25,000 spaces Citywide.
27	The system shall accurately detect the presence of a parked vehicle at least 90% of the time
28	The system shall report accurate GPS coordinates at the time of vehicle detection at least 90% of the time

Spec #	Specifications
29	The system shall accurately report the block face where the vehicle is physically located at least 90% of the time
30	The system shall uniquely identify each vehicle (such as license plate, make, model, color or other unique data points) at least 98% of the time
31	All data shall be in real-time and actively available on PEO handheld on site at least 98% of the time
32	The vendor systems shall provide interfaces which support TCP/IP communications. Data exchange between systems shall be implemented via XML structured data over Web Services.
33	System to system communications shall be secured using SSL or IPsec.
34	The vendors shall work with Xerox during the requirements & design phases of the project to define and document data exchange file formats via interface control documents and XML XSD definitions.
35	The system shall record and store the date, day and time of the detection of a parked vehicle in the format defined for the Xerox-built Automatic Data Collection System
36	The system shall integrate with the Pilot's parking regulation and capacity database. At a minimum, the parking regulation and capacity database will list the number of legal parking spaces per block face with a unique block face ID

Spec #	Specifications
37	<p>The system shall provide data output that is compatible with the latest versions Microsoft SQL. As the new versions of Microsoft SQL become available, the provider will ensure compatibility. The proposed system should provide a way to store custom data elements and to enforce validation and business rules for that data. The system should further support the ability to include that data in reports and dashboards.</p>
38	<p>The system shall provide a data output that is compatible with ESRI data models.</p>
39	<p>The system shall keep the captured data (license plate information) secure. Adequate information security shall be applied to protect all data collected and stored to meet or exceed the standards listed in Appendix H. Systems through which data is passed or is stored shall be protected from unauthorized access from both internal and external sources.</p>
40	<p>The system shall have the capability to specify a separate user-configurable retention period on read and hit data. The retention settings shall result in all read/hit data captured before the specified period to be automatically purged without user intervention.</p>
41	<p>The vendor shall host supporting networks and systems outside of the City of Berkeley network.</p>
42	<p>The system shall provide a system with high availability and configured according to industry standard 99.999% of uptime or less than five (5) minutes of unscheduled downtime per year.</p>

Spec #	Specifications
43	The vendor shall provide adequate disaster recovery and take routine backups of the system with a four (4) hour Recovery Point Objective (RPO) and an eight (8) hour Recovery Time Objective (RTO).
44	The vendor shall provide security in accordance with industry standard SSAE 16 Type II for hosted solutions. Provider will protect system with the appropriate industry standard security provisions including firewall protection, AES 256 bit data encryption, antivirus protection, logging access of data and manipulation of data.
45	The vendor shall provide means to authenticate City personnel to access the equipment/service management system. The solution must allow for future integration in Active Directory when the system is hosted in the City
46	Provide a way to log different activities including, but not limited to, user authentication, file modification, user activity. Additionally, the system must provide a way to turn logging up such that debugging events may be achieved.
47	The vendor shall use virtualization technology that is compatible with VMware when the system is hosted in the City
48	The vendor shall provide City staff access to the system to perform any data manipulation that may be required. Ideally, this will be administered in a web based platform.

Spec #	Specifications
49	Provide an overall architecture that is in line with industry best practices. The design should use open standards protocols.
50	The vendor shall provide maintenance of the system such that service packs and patches are applied in a timely fashion. The provider is responsible for the health of the Operating System and Core applications.
51	The vendor shall adhere to UML documentation standards for workflow improvement and technology implementation projects and provide the proposed process flow and high level technical specifications for interface assumptions/requirements, required 3rd party components/services, and data exchange mechanisms.

END OF APPENDIX D

**APPENDIX E**  
**DETAILED TRAINING OUTLINE**

Portable Computer Systems, Inc dba PCS Mobile ("Provider") shall provide the City with ongoing training to familiarize City staff with the mLPR units and the system. System training may be conducted by webinar or other remote educational methods; technical training must be conducted in person, no more than twice annually, not to exceed 10 business days annually. Additional training may be arranged as needed at a cost to the City.

The following training will be provided:

**1 Technical Training: (4 hour training sessions)**

The Provider shall provide City staff with in-depth, technical training on the functionality of the mLPR units. Training will be conducted in person, on an as needed basis no more than twice annually. Training dates will be scheduled, by mutual agreement, at least thirty days prior to the actual day. Technical training shall be divided into two sections: physical maintenance of the mLPR unit and virtual maintenance of the mLPR unit.

1.1 Physical Maintenance: At the conclusion of physical maintenance training, City staff will be able to maintain the hardware of the mLPR unit for day-to-day operation.

1.2 Virtual Maintenance: At the conclusion of virtual maintenance training, City staff will be able to operate system diagnostics and work with remote access staff to maintain the software that operates the mLPR units and interfaces with the City's Automatic Data Collection System and enforcement systems.

1.3 Manual: Provider shall provide the City with a detailed training manual, discussing the above-mentioned areas of training.

END OF APPENDIX E

APPENDIX F

**LIMITED AND EXTENDED WARRANTIES (5-YEAR) SERVICE CONTRACT AND SOFTWARE MAINTENANCE & SUPPORT AGREEMENT**

- I. Portable Computer Systems, Inc. dba PCS Mobile shall provide the City with warranties and software maintenance services for the 5 year term of this contract. The terms of these warranties and software maintenance agreements are shown in the attached document titled: Warranty Levels and Software Maintenance Agreements, Version 5.
- II. **Charged-For-Enhancements.** From time to time, at Provider's sole discretion, Provider will make available to City Charged-for-Enhancements to the Software that City may license from Provider upon payment of the license fee established by Provider.
- III. **Software Functionality Enhancement Requests (Customizations).** If software functionality as outlined on the system documentation does not meet City's requirements, City may contract Provider to provided system functionality enhancements (customizations).

Provider will evaluate customization requests and provide City with a written change order that includes a scope of work and cost estimate prior to the development of customization specifications. Upon the City's written approval of the change order, Provider will prepare detailed customization specification for City's review and written approval prior to development.

The City must notify the Provider of customization functionality deficiencies (if customization does not function as outlined in approved specifications) within 60 days of customization delivery. Provider will correct all customization functionality deficiencies at no charge if notified within 60 days of delivery.

At Provider's discretion customer customizations may be added to the software's standard feature set and provided to Provider's other customers.
- IV. **On-Site Support.** Provider, will provide City On-Site Support as needed, as PCS MOBILE / GENETEC based on the terms and unit rates described in Appendix B, at the request of the City.
- V. **Network Hardware & Software Support.** Support & Maintenance services do not include: network support, monitoring, backup, installation or warranty on or of City's

network hardware or software.

**VI. Obligations of City.**

- A. *City Contact.* City shall notify Provider of City's designee. To the maximum extent practicable, City's communications with Provider will be through the City's designee(s).
- B. *Facility and Personnel Access.* City agrees to grant Provider access to City's facilities and personnel concerned with the mLPR operation to enable Provider to provide services.

END OF APPENDIX F



Appendix G

# Warranty Levels & Software Maintenance Agreements

Version 5

Innovative Solutions

**Genetec**

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# 1 Overview

The following document describes the warranty levels, Software Maintenance Agreements (SMAs) and Hardware Extended Warranties offered by Genetec for products developed, manufactured and sold by Genetec.

## 2 Genetec's Standard Warranty Levels

### 2.1 Standard Software Warranty

#### 2.1.1 Standard Software Warranty Coverage

Genetec warrants that its software products will perform in all material respects in accordance with the accompanying user manual, and the media on which the Software Product resides will be free from defects in materials and workmanship under normal use.

The Standard Warranty covers any Technical Assistance required from Genetec as a result of a Software defect.

#### 2.1.2 Products Covered by Standard Software Warranty

All packaged software products developed by Genetec, including but not limited to, Security Center Security Center Mobile, Omnicast, Synergis and AutoVu Patroller.

All custom software applications developed by Genetec using one of Genetec's SDK.

### 2.1.3 Summary of Standard Software Warranty

GTAC Support	
GTAC Hours	GTAC business hours <sup>1</sup>
Support Cases	Optional <sup>2</sup>
On-Site Support	Optional
Priority Queuing	n/a
GTAP Access	
System Management	Included
Case Management	Included
Knowledge Base	Included
Computer Based Training Courses	Included
User Forums	Included
Monthly Minute Newsletter	Included
Software Subscription Services	
Service Releases and Hot Fixes	Included
Minor Release Upgrades	n/a
Major Release Upgrades	n/a
Value Added Services	
Technical Appointments	Included
Remote System Assessment	n/a
On-site System Assessment	n/a
Dedicated GTAC Support Engineer	n/a
Dedicated Onsite Support Engineer	n/a
Discount on Services (including training)	n/a
Warranty Period	
Length of SMA	According to product <sup>3</sup>
Warranty Start Date	30 days after license issuance

<sup>1</sup>: GTAC business hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.

<sup>2</sup>: Support cases are available for purchase on systems without SMA coverage with the exception of license related issues and product defects.

<sup>3</sup>: Product standard warranty lengths and maximum extended warranty lengths can be found in Appendix A.

## 2.2 Genetec's Standard Hardware Warranty

### 2.2.1 Standard Hardware Warranty Coverage

Genetec warrants each product it manufactures to be free from defects in materials and assembly in the course of normal use and service, and provides technical assistance related to these defects.

Genetec Hardware Warranties cover both the product Hardware and Software running on the product, with the exception of appliances running one of Genetec's software products (ex: SV-16) in which case the Software Warranty takes precedence over the hardware warranty for software related issues.

The Genetec Standard Hardware Warranty does not cover labor to send a Genetec engineer on-site to evaluate a system problem and/or determine if there is a warranty issue or not and/or replace a defective product.

**2.2.2 Products Covered by Standard Hardware Warranty**

All hardware products manufactured or resold by Genetec, including but not limited to, AutoVu Sharp, AutoVu SharpX, HID VertX, SV-16 are covered by the Standard Warranty.

**2.2.3 Summary of Standard Hardware Warranty**

GTAC Support	
GTAC Hours	GTAC business hours <sup>1</sup>
Support Cases	Unlimited
On-Site Support	Optional
Priority Queuing	n/a
In Warranty Repairs	
Product Return and Repair	Included <sup>3,4,5</sup>
Advanced Replacement of Defective Product	Included within 90 days of purchase
Unit Repair Turnaround time	10 business days between receipt by Genetec and ship date to customer
Functional Product Return	Service charge for returned product with no defect found
Product DOA (within 90 days of shipment)	Free advanced replacement of a new product
Product Software Updates/Upgrades	
Product Software Updates/Upgrades	Included
GTAP Access	
System Management	Included
Case Management	Included
Knowledge Base	Included
Computer Based Training Courses	Included
User Forums	Included
Monthly Minute Newsletter	Included
Warranty Period	
Length of Warranty	According to product <sup>6</sup>
Warranty Start Date	On the day the product is delivered

<sup>1</sup> GTAC business hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.  
<sup>2</sup> Support cases are available for purchase on systems under Standard Warranty without Extended Hardware Warranty with the exception of product defect related issues  
<sup>3</sup> Additional charges may be applied if damage is a result of using the product in a way that it is not typically intended to be used.  
<sup>4</sup> Product may be replaced by a fully functional refurbished product.  
<sup>5</sup> Customer is responsible for all shipping charges to return the product back to Genetec, and Genetec will cover the shipping charges to send the product back to the customer.  
<sup>6</sup> Product standard warranty lengths and maximum extended warranty lengths can be found in Appendix B.



#### 2.2.4 Warranty on repairs and replacement parts

All Genetec products serviced by Genetec for repairs and replacements parts are warranted against defects in workmanship and materials for a period of 90 days, or the remainder of the original warranty, whichever is the longest.

#### 2.2.5 Exclusive Warranty Remedy

During the applicable warranty period and in the event that a product is determined by Genetec to be defective in materials or assembly, Genetec will at its sole discretion either credit the customer the price paid for the defective product, or repair the defective product without charge, or replace the defective product with a new or refurbished product, or replace the defective product with a different product with identical or better specifications.

#### 2.2.6 Warranty Exclusions

The following items are not covered by Genetec's Standard Hardware Warranty:

- Any equipment not furnished by Genetec
- A product which is used with non-supported ancillary equipment or software.
- Freight cost to return a product to Genetec.
- Defects or damage resulting from customer's improper testing, operation, installation, maintenance, modification, alteration, or adjustment.
- Defects or damage from misuse, accident or neglect.
- Defects or damage resulting from use of the product in other than its normal and customary manner.
- Defects or damage resulting from drilling holes, adding decals or other adhesives, or by painting the product.
- Defects or damage due to lightning or other electrical discharge.
- Product that is disassembled or repaired in such a manner as to adversely affect performance or prevent adequate inspection and testing to verify any warranty claim.
- Modification or abuse of, or tampering with, the product.
- Normal wear and tear.

#### 2.2.7 Relocation of AutoVu Mobile Systems

Relocating a hard mounted AutoVu Mobile System from one vehicle to another will void the warranty on the cables. This does not apply to portable systems with magnetic mounts.

## 3 Software Maintenance Agreements (SMA)

### 3.1 What is an SMA?

An SMA provides customers with any new software releases, both minor and major updates, as well as unlimited access to Technical Support. The SMA protects the investment that is made in the solution by maintaining the systems up to date with the latest technological innovations developed by Genetec, by ensuring that the system operates and functions optimally and that the users leverage the system's full potential in order to generate maximum ROI of the solution.

### 3.2 Products Covered by SMA

All packaged software products developed by Genetec, including but not limited to, Security Center Security Center Mobile, Omnicast, Synergis and AutoVu Patroller.

All custom software applications developed by Genetec using one of Genetec's SDKs.

All software upgrades performed under the SMA continue to be covered by the SMA as long as it is in force.

3.3 SMA

GTAC Support	
GTAC Hours	GTAC business hours + customers business hours <sup>1</sup>
Support Cases	Unlimited
On-Site Support	Optional
Priority Queuing	Included <sup>3</sup>
GTAP Access	
System Management	Included
Case Management	Included
Knowledge Base	Included
Computer Based Training Courses	Included
User Forums	Included
Monthly Minute Newsletter	Included
Software Subscription Services	
Service Releases and Hot Fixes	Included
Minor Release Upgrades	Included
Major Release Upgrades	Included
Value Added Services	
Technical Appointments	Included
Remote System Assessment	Optional
On-site System Assessment	Optional
Dedicated GTAC Support Engineer	n/a
Dedicated Onsite Support Engineer	n/a
Discount on Services (including training)	5%
SMA Period	
Length of SMA	1-5 year terms
SMA Start Date	30 days after license issuance or on SMA anniversary date for a renewal

<sup>1</sup> GTAC business hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.  
<sup>2</sup> Done via pager if outside GTAC standard support hours with the exception of Canadian statutory holidays when the GTAC is closed.  
<sup>3</sup> Customers with a valid SMA will get priority queuing over customers without an SMA when contacting the GTAC via phone.  
<sup>4</sup> Each SMA includes 4 hours of Technical Appointments per year.

## 3.4 SMA Plus

GTAC Support	
GTAC Hours	7x24 <sup>1</sup>
Support Cases	Unlimited
On-Site Support	Optional
Priority Queuing	Included <sup>2</sup>
GTAP Access	
System Management	Included
Case Management	Included
Knowledge Base	Included
Computer Based Training Courses	Included
User Forums	Included
Monthly Minute Newsletter	Included
Software Subscription Services	
Service Releases and Hot Fixes	Included
Minor Release Upgrades	Included
Major Release Upgrades	Included
Value Added Services	
Technical Appointments	Included <sup>3</sup>
Remote System Assessment	Included <sup>4</sup>
On-site System Assessment	Optional
Dedicated GTAC Support Engineer	Optional
Dedicated Onsite Support Engineer	Optional
Discount on Services (including training)	10%
SMA Period	
Length of SMA	1-5 year terms
SMA Start Date	30 days after license issuance or on SMA anniversary date for a renewal.

<sup>1</sup> Done via pager outside GTAC standard support hours.

<sup>2</sup> Customers with a valid SMA will get priority queuing over customers without an SMA when contacting the GTAC via phone.

<sup>3</sup> Each SMA Plus includes 8 hours of Technical Appointments per year.

<sup>4</sup> Each SMA Plus includes one Remote System Assessment per year.

**3.5 SMA Value-Added Services Descriptions**

**3.5.1 Priority Queuing**

Customers with a valid SMA will get priority in the queue over customers without an SMA when calling the GTAC. When multiple customers with valid SMAs are in the queue simultaneously, priority is given on a first come first served basis.

**3.5.2 Technical Appointments**

Customers with a valid SMA may schedule technical appointments with a Genetec Technical Support Engineer. Technical appointments may be used to discuss system design, plan a system upgrade, assist during a system upgrade or used for any other product-related technical work.

Technical appointments can be booked on the GTAP. Technical appointments must be scheduled during regular GTAC hours but are also available after hours, if needed, at an extra cost.

Each SMA type includes a predefined block of hours to be used each year for technical appointments as detailed in the table below. Additional hours may be purchased if needed.

Type of SMA	Included appointment hours	Maximum number of appointments
SMA	4 hours	2
SMA Plus	8 hours	4

**3.5.3 Remote System Assessment**

A GTAC engineer will remotely connect to the customer system and perform a standard technical system assessment and provide recommendations. A report will be sent out to the customer at the end of the remote system assessment. The Remote System Assessment is a complementary service offered to SMA Plus customers once per year. This service is also available for purchase to SMA customers.

In order to provide this service, customer must provide the GTAC with a valid remote connection to their site.

**3.5.4 On-Site System Assessment**

Receive a visit from a Genetec Field Engineer onsite. During this visit, the Field Engineer can do a technical assessment of the system, perform system maintenance, discuss system design or perform various other tasks. The length of the visit will be evaluated by Genetec based on the Scope of Work.

**3.5.5 Dedicated Support Engineer**

Customers will be assigned a Dedicated Support Engineer. This Engineer will act as the main point of contact for all support related issues and will be familiar with the system design and its intricacies.

There are three different options available for this service:

**a) Shared Dedicated GTAC Support Engineer**

The assigned Dedicated GTAC Support Engineer will be responsible to support several dedicated client accounts. Therefore, customers acquiring this service will essentially be sharing the Dedicated GTAC support engineer with up to 5 other customers.

Customers with a Shared Dedicated GTAC Support Engineer will be assigned a specific 1-800 number (for North American customers only) and email address. Outside of the GTAC's business hours, customers must go through the regular support queues in order to obtain immediate assistance.

**b) Dedicated GTAC Support Engineer**

The assigned Dedicated GTAC Support Engineer will be responsible to exclusively support a single customer.

Customers with a Dedicated GTAC Support Engineer will be assigned a specific 1-800 number (for North American customers only) and email address. Outside of the GTAC's business hours, customers must go through the regular support queues in order to obtain immediate assistance.

**c) Dedicated Onsite Support Engineer**

The Dedicated Onsite Support Engineer will reside at the customer's premises and provide proactive assistance, reactive support and system management.

The Dedicated Onsite Support Engineer is generally available during business hours on business days unless otherwise agreed upon.

**3.5.6 Discount on Professional Services**

Customers with a valid SMA will benefit from discounts on all Genetec professional services, including Technical Training as detailed in the table below.

Type of SMA	Discount on Services
SMA	5%
SMA Plus	10%

## 4 Genetec's Hardware Extended Warranties

### 4.1 What is an Extended Warranty?

An Extended Warranty provides the means to extend the standard warranty length of hardware products sold by Genetec and that are eligible for a warranty extension. (See Appendix B – Hardware Warranty Lengths)

### 4.2 Summary of Extended Warranty with Return and Repair Coverage

GTAC Support	
GTAC Hours	GTAC standard support hours <sup>1</sup>
Support Case Allowance	Unlimited
On-Site Support	Optional
Priority Queuing	n/a
In Warranty Repairs	
Product Return and Repair	Included <sup>2,3,4</sup>
Advanced Replacement of Defective Product	Included within 90 days of product purchase
Unit Repair Turnaround time	10 business days between receipt by Genetec and ship date to customer
Functional Product Return	Service charge for returned product with no defect found
Product Software Updates/Upgrades	
Product Software Updates/Upgrades	Included
GTAP Access	
System Management	Included
Case Management	Included
Knowledge Base	Included
Computer Based Training Courses	Included
User Forums	Included
Monthly Minute Newsletter	Included
Warranty Period	
Length of Extended Warranty	According to product <sup>5</sup>
Warranty Start Date	On the day the product is delivered

<sup>1</sup> GTAC standard support hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.

<sup>2</sup> Additional charges may be applied if damage is a result of using the product in a way that it is not typically intended to be used.

<sup>3</sup> Product may be replaced by a fully functional refurbished product.

<sup>4</sup> Customer is responsible for all shipping charges to return the product back to Genetec, and Genetec will cover the shipping charges to send the product back to the customer.

<sup>5</sup> Product standard warranty lengths and maximum extended warranty lengths can be found in Appendix B.

### 4.3 Summary of Extended Warranty with Advanced Replacement Coverage

GTAC Support	
GTAC Hours	GTAC standard support hours <sup>1</sup>
Support Case Allowance	Unlimited
On-Site Support	Optional
Priority Queuing	n/a
In Warranty Repairs	
Product Return and Repair	n/a
Advanced Replacement of Defective Product	Included <sup>2,3,4</sup>
Unit Repair Turnaround Time	Customer is responsible for replacing and returning the defective product to Genetec <sup>3</sup> within 30 days; otherwise the MSRP of product will be invoiced to the customer
Functional Product Return	Service charge for returned product with no defect found
Product Software Updates/Upgrades	
Product Software Updates/Upgrades	Included
GTAP Access	
System Management	Included
Case Management	Included
Knowledge Base	Included
Computer Based Training Courses	Included
User Forums	Included
Monthly Minute Newsletter	Included
Warranty Period	
Length of Extended Warranty	According to Product <sup>5</sup>
Warranty Start Date	On the day the product is delivered

<sup>1</sup> GTAC standard support hours are from Monday through Friday, 8am to 8pm Eastern Time. The GTAC is closed on Canadian statutory holidays.

<sup>2</sup> Additional charges may be applied if damage is a result of using the product in a way that it is not typically intended to be used.

<sup>3</sup> Product may be replaced by a fully functional refurbished product.

<sup>4</sup> Genetec is responsible for shipping charges for both sending the replacement product to the customer and returning the defective product back to Genetec.

<sup>5</sup> Product standard warranty lengths and maximum extended warranty lengths can be found in Appendix B.

### 4.4 Exclusive Extended Warranty Remedy

See Section 2.2.5: Exclusive Warranty Remedy

### 4.5 Extended Warranty Exclusions

See Section 2.2.6: Warranty Exclusions



## 5 Pricing & Ordering

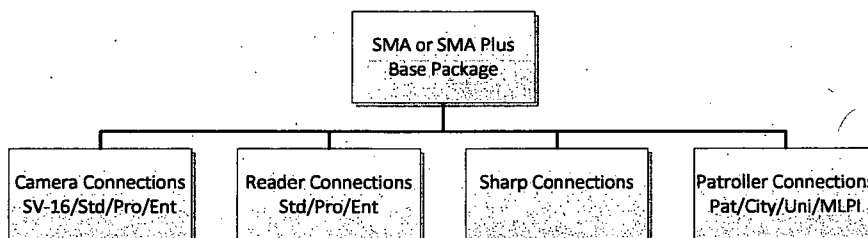
### 5.1 SMAs

#### 5.1.1 SMA Pricing Structure

SMAs are assembled in a similar fashion to Genetec software licenses, meaning that it's composed of a base package (for either an SMA or an SMA Plus) and a number of options depending on the system(s) covered by the SMA in question.

It is important to note that not all software license options have a corresponding SMA line item; in fact very few license options have that. If we take the example of Omnicast, only camera connection licenses are counted when pricing an SMA, all other license options/connections are SMA-free. It is therefore very simple to quickly assemble an SMA quote with just a few line items.

Since the difference between the SMA and the SMA Plus is taken into account in the SMA base package, all other line items that form the SMA are the same regardless what type of SMA has been selected.



#### 5.1.2 SMA Multi-Year Discount

Genetec offers multi-year SMA terms in the form of a 2-year, 3-year, 4-year or 5-year agreement. All SMA line items have their respective multi-year counterparts that are used for ordering a multi-year SMA.

Since these multi-year SMAs represent a long term commitment to Genetec, an additional discount is factored in all multi-year SMA line items. In order to benefit from this multi-year discount, the full amount for a multi-year SMA must be paid in full at the time of purchase or renewal.

#### 5.1.3 Multi System/Site SMA

An SMA can cover multiple System IDs, therefore an **end-user** with multiple system can consolidate all his systems under a single SMA for added simplicity. Since there's effectively only one SMA in this scenario, the end-user will only pay for the SMA base package once for the entire SMA and **NOT** once for every System ID covered by the SMA, therefore benefiting from a volume discount for placing all of his Genetec systems under a unique SMA.

It is important to note that a reseller **CANNOT** place multiple System IDs from multiple end-users under a single SMA.

#### 5.1.4 SMAs for License Add-ons

An SMA is mandatory for all add-ons done to an existing system that is currently under SMA. However, this applies only to software options for which Genetec charges an SMA for (Cameras, Readers, Sharps and Patrollers).

When adding a software license option that has a corresponding SMA line item, the SMA price for that add-on must be pro-rated to co-terminate with the SMA's anniversary date. This is accomplished by using a series of "1 day" SMA part numbers that are created solely to facilitate the pro-rating calculation.

In order to compute the price, simply take the appropriate SMA 1 day part number associated to the license option that is being added to the system, multiply that by the quantity of license options ordered and then multiply that again by the number of days remaining in the SMA term. Information on an SMA's anniversary date and remaining days in the agreement is readily accessible through the system management section of the GTAP.

#### 5.1.5 SMA Renewals

Renewal notices are automatically sent 90 days and 45 days prior to the anniversary date of the SMA, indicating that the SMA is about to expire. In the eventuality that the SMA is not renewed by the anniversary date, an additional notice is sent advising of the expiration of the SMA.

SMA coverage must be continuous. For example, if year two is skipped and an SMA is desired for year three, the cost of the SMA will be retroactive to include the year that was skipped, thus will cover both the second and third year.

All SMA renewals are priced according to the most recent price list in effect at the time of the renewal.

#### 5.1.6 SMA Ordering Information

SMAs must be purchased together with a new system sale or in conjunction with a system upgrade. If an SMA is purchased as an add-on to an existing system, it will be priced retroactively as if it was purchased at the same time as the system it will cover.

To order an SMA, the base package must be selected first for either an SMA or an SMA PLUS by using the following line items:

SMA-BASE-XX or SMA-PLUS-XX

Once the SMA base package has been selected, the other SMA line items are chosen based on the content of the licenses that the SMA covers. The format for all SMA part numbers follows the following standard:

SMA-0000-E-XX or SMA-0000-XX

Where:

**OOO:** License option reference: CAM (Camera Connection), RDR (Reader Connection), SHP (AutoVu Sharp Connection), PATR (AutoVu Patroller System), UNIV (AutoVu University System), CITY (AutoVu City System) and MLPI (AutoVu MLPI System)

**E:** Edition of the software if applicable: S (Standard), P (Pro), E (Enterprise)

**XX:** The term of the SMA: 1Y, 2Y, 3Y, 4Y, 5Y and 1D.

Complete SMA pricing information is found in the SMA price list.

**5.1.7 SMA Quoting Examples**

**a) Example 1: Unified Video/ACS SC5 System**

Customer purchases a unified Video/ACS SC5 system. He purchased the Enterprise version of Synergis with 50 Readers, the Pro version of Omnicast with 75 Camera, has 2 Sharp Cameras and requires a 3 year SMA.

The parts required to assemble this SMA would be as follows:

Part No	Description	Qty
SMA-BASE-3Y	SMA Base Package – 3 years	1
SMA-CAM-P-3Y	SMA for 1 Omnicast Pro Camera – 3 years	75
SMA-RDR-E-3Y	SMA for 1 Synergis Enterprise Reader – 3 years	50
SMA-SHP-3Y	SMA for 1 Sharp Camera – 3 years	2

**b) Example 2: Multiple Systems with a Single SMA**

Customer has an extensive multi-site deployment with federation, with both Video and ACS. Customer requires a 1 year agreement with round the clock access to Technical Support and has the following sites to deploy:

Site	Video	Access Control
Site A	Omnicast Enterprise 350 cams	Synergis Enterprise 40 readers
Site B	Omnicast Enterprise 120 cams	Synergis Enterprise 25 readers
Site C	Omnicast Pro 60 cams	Synergis Enterprise 10 readers
Site D	Omnicast Standard 15cams	Synergis Enterprise 5 readers
Site E	Omnicast Standard 15cams	Synergis Enterprise 5 readers

To summarize, the customer has 470 Omnicast Enterprise cameras, 60 Omnicast Pro cameras, 30 Omnicast Standard cameras and 85 Synergis Enterprise readers. The parts required to assemble this SMA would be as follows:

Part No	Description	Qty
SMA-PLUS-1Y	SMA Plus Base Package – 1 year	1
SMA-CAM-S-1Y	SMA for 1 Omnicast Standard Camera – 1 year	30
SMA-CAM-P-1Y	SMA for 1 Omnicast Pro Camera – 1 year	60
SMA-CAM-E-1Y	SMA for 1 Omnicast Enterprise Camera – 1 year	470
SMA-RDR-E-1Y	SMA for 1 Synergis Enterprise Reader – 1 year	85

**c) Example 3: Single Year SMA Add-on**

Customer has an existing unified Video/ACS SC5 system. He purchased the Enterprise version of Synergis with 50 Readers, the Pro version of Omnicast with 75 Camera, has 2 Sharp Cameras and has an SMA Plus that ends on October 12<sup>th</sup> 2012. (Information available on the GTAP)

Customer adds an extra building to his system with an additional 25 Omnicast Pro cameras and 12 Synergis Enterprise readers on July 16<sup>th</sup> 2012, which means 89 days are left on his SMA. (Information available on the GTAP)

Since the customer is adding 25 cameras and 12 readers, this means that we must compute 25 x 89 Omnicast Pro Camera 1 Day SMA parts and 12 x 89 Synergis Enterprise Reader 1 Day SMA parts as shown below:

Part No	Description	Qty
SMA-CAM-P-1D	SMA for 1 Omnicast Pro Camera – 1 day	2,225
SMA-RDR-E-1D	SMA for 1 Synergis Enterprise Reader – 1 day	1,068

**d) Example 4 : Multi-year SMA Add-on**

Customer has an existing unified Video/LPR SC5 system. The system is composed of 500 Omnicast Enterprise Cameras, 20 AutoVu Sharp Cameras, 5 AutoVu Patrollers and has an SMA that ends on March 14<sup>th</sup> 2014. (Information is available on the GTAP)

Customer expands his fleet of AutoVu Patrollers by adding 5 extra vehicles on September 4<sup>th</sup> 2012, which means there are 557 days left in the SMA. (Information available on the GTAP)

Since the customer is adding 5 patrollers, this means that we must compute 5 x 557 Patroller 1 Day SMA parts as shown below:

Part No	Description	Qty
SMA-PATR-1D	SMA for 1 AutoVu Patroller – 1 day	2,785

## 5.2 Hardware Extended Warranties

### 5.2.1 Hardware Extended Warranty Availability

Extended warranties are only available for certain hardware products and kits. In order to determine for which product line is eligible for an extended warranty, please refer to "Appendix B – Hardware Warranty Lengths".

### 5.2.2 Hardware Extended Warranty Multi-Year Discount

Genetec offers multi-year Extended Warranty terms in the form of a 2 year, 3 year, 4 year or 5 year agreement; however the maximum length of an extended warranty will vary depending on the product it is purchased for. (See Appendix B – Hardware Warranty Lengths) All Extended Warranty line items have their respective multi-year counterparts that are used for ordering a multi-year Extended Warranty.

Since these multi-year agreements represent a long term commitment to Genetec, an additional discount is factored in to all multi-year Extended Warranty line items. In order to benefit from this long term commitment discount, the full amount for a multi-year Extended Warranty must be paid in full at the time of purchase or renewal.

### 5.2.3 Hardware Warranty Renewals

Hardware Warranty renewal notices are automatically sent 90 days and 45 days prior to the anniversary date, indicating that the Warranty is about to expire. In the eventuality that the Warranty is not renewed by the anniversary date, an additional notice is sent advising of the expiration of the Warranty.

Hardware Extended Warranty coverage must be **continuous**. If the warranty is not extended/renewed prior to its expiry, it will not be extendable any more.

All Hardware Extended Warranty renewals are priced according to the most recent price list in effect at the time of the renewal.

### 5.2.4 Hardware Extended Warranty Ordering Information

Genetec's hardware extended warranty prices can be found in Genetec's price book. Different product codes have been created for each product as well as their respective list of available extended warranty options. Please use the following rule to build the product code associated to the warranty options you have selected for the product you are purchasing.

AU-K-KKK-EWLL-YY or AU-S-EWLL-YY

Where:

**KKK:** Type of AutoVu kit, according to the part number of the kit that you ordered, the warranty applies to.

**LL:** Level of Warranty: RR for Return & Repair, AS for Advanced Replacement and AP for Advanced Replacement with 7x24 support

**YY:** Term of the Warranty (Y for year and P for prepaid): Y1, Y2, Y3, Y4, Y5, P2, P3, P4 and P5

When purchasing an extended warranty on a kit, only serialized items are covered by the extended warranty. Other items such as cables and mounting hardware are only covered by the standard hardware warranty.

### 5.3 “À la carte” upgrades and GTAC support

#### 5.3.1 Software upgrade – Major Release

Customers without an SMA may upgrade to the latest major software release, provided that their current system is only 1 major release back. For example, you may upgrade from version 4.2 to 5.0, but you cannot upgrade from version 3.5 to 5.0.

The upgrade cost is 35% of total system price based on the latest software price list and comes with a limited 90 day warranty as detailed in *section 2.1*.

#### 5.3.2 Software upgrade – Minor Release

Customers without an SMA may upgrade to the latest minor software release provided that they are within the same major release. For example, you may upgrade from version 4.7 to 4.8, but you cannot upgrade from version 4.7 to 5.1.

The upgrade cost is 25% of total system price based on the latest software price list and comes with a limited 90 day warranty as detailed in *section 2.1*.

#### 5.3.3 GTAC Support

Customers without an SMA may contact the GTAC but must pay a flat fee in order to open a support case, with the exception of all license related issues. Pricing information on support cases can be found in the SMA price list.

If the product is still under warranty when the support case is opened and that the investigation reveals that the root cause of the incident is a product defect, the full amount of the purchased support case will be refunded.

#### 5.3.4 On-Site Technical Support

On-site Technical Support is available to all customers and subject to availability of the Genetec Field Engineering team. Pricing information on Genetec Field Services can be found in the Genetec Professional Services price list.

### 5.3.5 Technical Appointments

Customers with an SMA who have consumed all of their Technical Appointment hours or customers who do not have an SMA and that wish to purchase Technical Appointment hours may do so by purchasing a minimum block of 4 hours. Pricing information on Technical Appointment hours can be found in the Genetec SMA price list.

## 6 The Genetec Technical Assistance Center

### 6.1 Contacting the GTAC

#### 6.1.1 Via the Genetec Technical Assistance Portal (GTAP)

The GTAC can be contacted by opening a Support Case through the Case Management Section of the GTAP. All support cases whether opened or resolved, created through the GTAP or through other means can be consulted through the GTAP in order to get the latest status or to communicate with the GTAC Engineer assigned to the case.

GTAP URL: <http://gtap.genetec.com>

#### 6.1.2 Via Phone

The GTAC offers phone support from Monday to Friday 8am-8pm EST/EDT and is closed during Canadian Statuary Holidays. After-hour support is available to SMA and SMA Plus owners according to the terms stated in the agreement.

When calling the GTAC it is important to have the Genetec System ID and the SMA Contract number (if applicable) in order to speed up the entitlement process:

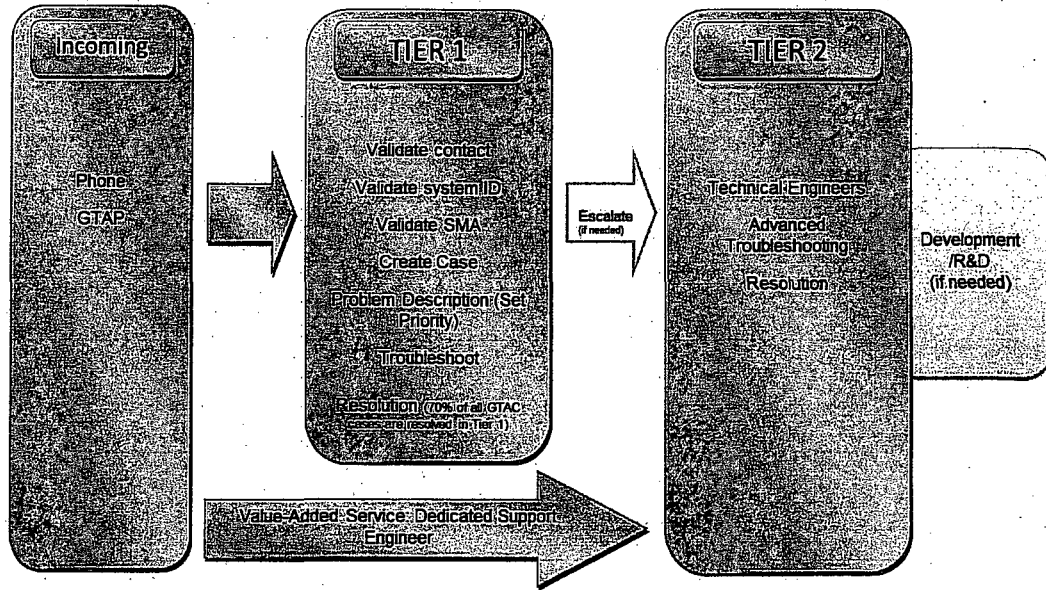
Direct Dial: 1-514-856-7100

Toll Free: 1-866-338-2988 (Canada & USA) | +800 01818200 (Europe)

### 6.2 Escalation Process

In the event a support case needs immediate attention of the GTAC's leadership team, there is a quick and simple way to ensure this will be done. Cases can be escalated via the GTAP's case management section. Clicking the "escalate" button will send a notification email to all members of the GTAC Leadership team regarding the urgency of the issue. We guarantee that the owner of the case will be contacted by a member of the GTAP leadership team within 1 business day.

### 6.3 Support Case Life-cycle





# 7 GTAC Service Levels

## 7.1 Support Case Severity Levels

### 7.1.1 Description of Severity Levels

Severity	Description
Critical	Product is not functioning or functionality is significantly impaired.
High	Major feature of product is not functioning or functionality is significantly impaired.
Medium	Minor feature of product is not functioning or functionality is significantly impaired.
Low	General question on functionality.

The priority of a case may be escalated based on current customer situation or overall satisfaction level of the customer.

### 7.1.2 Severity Level Examples

Severity	Examples
Critical	<p><u>Video Surveillance</u></p> <ul style="list-style-type: none"> <li>✓ Entire system is down and not operational</li> <li>✓ Video is not being recorded</li> </ul> <p><u>Access Control</u></p> <ul style="list-style-type: none"> <li>✓ None of the credential work</li> <li>✓ none of the doors are opening</li> <li>✓ Main doors don't open/lock</li> </ul> <p><u>License Plate Recognition</u></p> <ul style="list-style-type: none"> <li>✓ LPR System is not starting / not able to read plates / crashing frequently</li> <li>✓ Touch Screen is not functional</li> <li>✓ Autofind w/ chalking has no GPS</li> </ul>

	<ul style="list-style-type: none"> <li>✓ Right LPR / Tire camera is not working</li> <li>✓ Production database not accessible // not functional</li> <li>✓ Match process is not functional</li> <li>✓ IRWS is not functional // not able to connect to LPR Server(s)</li> <li>✓ Images are not displayed from IRWS</li> <li>✓ Not enough free space on the LPR Server(s)</li> <li>✓ LPR Server / Lane / IRWS computer is crashing frequently</li> </ul>
<p>High</p>	<p><u>General</u></p> <ul style="list-style-type: none"> <li>✓ Users unable to log in (AD)</li> <li>✓ Alarm Management not functioning</li> <li>✓ Services not being restarted by WD</li> <li>✓ Service crashes/restarts sporadically</li> <li>✓ Unable to launch client application</li> </ul> <p><u>Video Surveillance</u></p> <ul style="list-style-type: none"> <li>✓ Poor image quality</li> <li>✓ Video not recorded on a few cameras or large number of cameras not available</li> <li>✓ DFC not functioning</li> </ul> <p><u>Access Control</u></p> <ul style="list-style-type: none"> <li>✓ Secondary door does not open/lock</li> <li>✓ Synchronization problem</li> </ul> <p><u>License Plate Recognition</u></p> <ul style="list-style-type: none"> <li>✓ Hotlist not updated</li> <li>✓ Not able to offload</li> <li>✓ No wireless connection</li> <li>✓ GPS problem</li> <li>✓ Left LPR / Tire camera is not working</li> <li>✓ Mobile LPR System is working but on occasion it is crashing</li> <li>✓ Back-Office software is crashing</li> <li>✓ System is missing plates (less than 90 % read rate)</li> <li>✓ System is reading plates poorly (less than 70% perfect read)</li> </ul>

	<p>rate)</p> <ul style="list-style-type: none"> <li>✓ Review Server is not functional</li> <li>✓ Archive database is not created</li> <li>✓ Archive / Backup job is not enabled</li> <li>✓ Custom Replication is not enabled in a multi LPR Server environment</li> <li>✓ Images not pushed from lane computer to the LPR Server(s)</li> <li>✓ Lane computer is missing license plates (less than 90 % read rate)</li> <li>✓ Lane computer is reading license plates poorly (less than 70% perfect read rate)</li> <li>✓ Lane computer is not functional / able to capture license plates</li> <li>✓ Lane computer is not able to send transactions to the LPR Server(s).</li> <li>✓ Back-Office application is not functional on the IIS server</li> <li>✓ Back-Office application is unable to show open/closed transactions or to show images, with or without ActiveX control</li> <li>✓ Back-Office application unable to export to client / IIS computer</li> <li>✓ Lane computer is not able to send reviews</li> </ul>
<p>Medium</p>	<p><u>General</u></p> <ul style="list-style-type: none"> <li>✓ Licensing</li> <li>✓ PTZ functionality</li> <li>✓ USB Joystick functionality</li> <li>✓ Macros/plugin not functioning</li> <li>✓ DB problem</li> <li>✓ Unit occasionally not available</li> <li>✓ Cosmetic problems</li> <li>✓ Problem with some credential</li> </ul> <p><u>Access Control</u></p> <ul style="list-style-type: none"> <li>✓ Some controllers are offline</li> <li>✓ Badge designer issue</li> </ul> <p><u>License Plate Recognition</u></p>

	<ul style="list-style-type: none"> <li>✓ System is missing plates (more than 90% read rate)</li> <li>✓ System is reading plates poorly (more than 70% perfect read rate)</li> <li>✓ Hardware broken but system still can read plates</li> <li>✓ Missing functionality (Upgrade request)</li> <li>✓ Lane computer is missing plates (between 90% and 95% read rate)</li> <li>✓ Lane computer is reading plates poorly (between 70% and 80% perfect read rate)</li> </ul>
Low	<ul style="list-style-type: none"> <li>✓ Feature requests</li> <li>✓ General question</li> </ul>

## 7.2 Response Times

### 7.2.1 First Response

GTAC will respond to all new calls placed within the following time frames:

Call Entry Point	Response Time
Phone call	15 minutes <sup>1/2</sup>
GTAP	1 business day

<sup>1</sup>: Phone calls placed outside the scope of the customer's support agreement will be returned first thing on Genetec's next business day.  
<sup>2</sup>: GTAC objectives are 3 minutes average speed to answer and to answer 90% of calls within 10 minutes.

### 7.2.2 Status Updates

GTAC will provide continuous updates on the status of the troubleshooting based on the severity and priority of the case as detailed in the table below.

	In Progress (hours) <sup>1</sup>	Customer Action Required (days) <sup>1</sup>
Critical	4	1
High	24	1
Medium	48	3
Low	72	5

<sup>1</sup>: Status updates are provided within regular GTAC business hours.

**7.2.3 Three Strike Rule - Follow up**

The GTAC will follow up with customers for cases in the Customer Response Pending (CRP) state according to the table above in order to ensure timely resolution of issues.

For low and medium severity cases, the GTAC will follow up 3 times at intervals of 3 business days. After 3 consecutive and unsuccessful attempts, the ticket will be automatically closed.

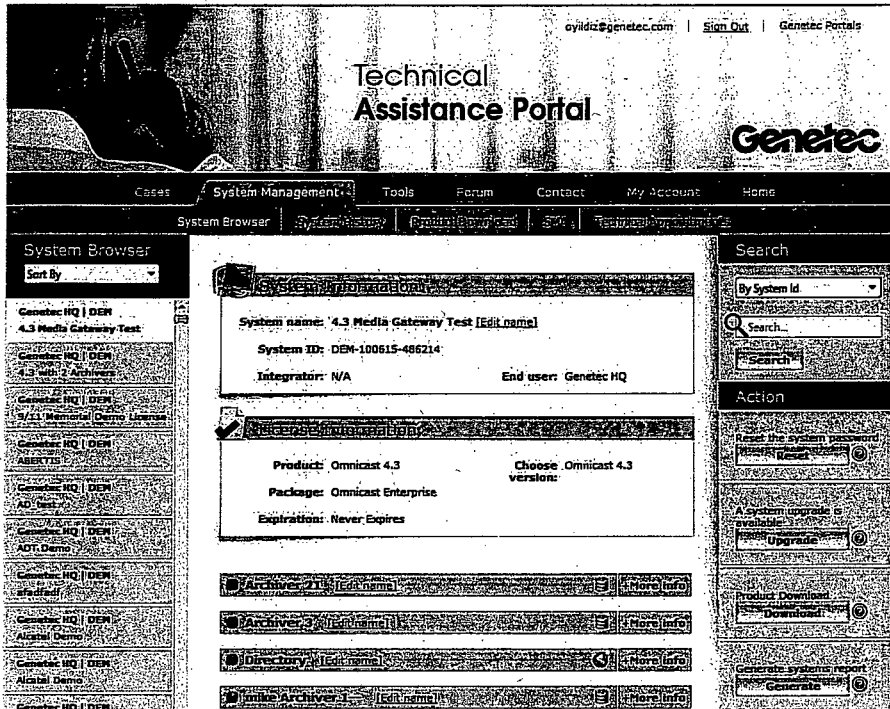
For high and critical severity cases, the GTAC will follow up 3 times at intervals of 1 business day. After 3 consecutive and unsuccessful attempts, the priority of the case will be lowered to medium severity and the cycle will start again as detailed above.

**7.3 Resource Commitment**

Genetec cannot guarantee a resolution time for issues but can guarantee resources committed to fixing the problem. The following table details the resource commitment based on the severity of the case.

Severity	Resource Commitment
Critical	Full-time resource around the clock
High	Full-time resource within business hours
Medium	Based on availability with a priority over Low
Low	No commitment

## 8 The Genetec Technical Assistance Portal



### 8.1 Accessing the GTAP

GTAP access is currently reserved to Genetec's customers and partners. In order to access the GTAP, you will need the following:

1. System ID and Password
  - This will only give access to the System Management (license) section of the portal for the provided System ID.
2. User Credential and Password
  - This will give full access to the Portal.
  - To Register use the following link: <https://gtap.genetec.com/Register.aspx>

## 8.2 Available Resources

### 8.2.1 System Management (Licenses)

The GTAP allows you to manage your system licenses without the intervention of a GTAC representative by:

- Resetting your system password
- Resetting your license
- Upgrading your system
- Downloading the newest product version
- Generating systems reports

### 8.2.2 GTAC Case Management

GTAP case management system allows you to manage your GTAC support cases by:

- Creating new support cases
- Browsing through opened and closed support cases
- Taking ownership of support cases in your organization
- Updating support cases and attaching files to them
- Escalating support cases to GTAC leadership
- Requesting call backs on support cases
- Closing/resolving open support cases

### 8.2.3 Documentation and Knowledge Base

The GTAP is also a repository for considerable amounts of documentation such as release notes, installations guides, user guides, tutorials, application notes, and much more. It is also a repository for a continuously updated knowledge base that contains hundreds of articles that will help you troubleshoot your system.

### 8.2.4 Video and Webinars

The GTAP is also a repository of other multimedia items such as videos. On the GTAP, you will find short tutorial videos (GTAC Tech Tube), monthly webinar archives (GTAC Tech Talk) and computer based training courses that will enable you to increase your knowledge on Genetec's products and solutions.

### **8.2.5 Community Forums**

GTAP users also form a community and share on the GTAP forums. A variety of topics regarding best practices, issues and installations are discussed on the community forums.

### **8.2.6 Arrange for Technical Appointments**

Planning for an upgrade and need the assistance of a GTAC representative? The GTAP allows you to arrange for technical appointments included in your SMA.

### **8.2.7 Supported Device Tool**

The GTAP's Support Devices tool gives you access to Genetec's comprehensive compatibility database that contains valuable information on which third party devices are supported on which version of Genetec software with which version of firmware. When available, the latest firmwares are published on this tool and available for download.

### **8.2.8 Known Issues**

On the GTAP, the known issues lists will provide you with insight on possible issues that may affect your system. From this list, you will know if there are any workarounds in knowledge base articles or hotfixes. You will also know in which version the known issue is fixed and you can also request a hotfix for your version.

### **8.2.9 GTAC Monthly Minute**

The GTAC Monthly Minute is your one-stop update on all that is happening in the GTAC. This monthly newsletter keeps you up to date with new product releases, GTAP updates and GTAC news. Subscribing to this newsletter is the best way to stay informed about what is new in the GTAC.



## 9 Appendix A – Software Warranty Lengths

Product Family	Standard Warranty Length
Omnicast	1 year
Omnicast (Upgrade)	90 Days
Security Center	1 years
Security Center (Upgrade)	90 days
Security Center Mobile	1 years
Security Center Mobile (Upgrade)	90 days
Plan Manager	1 year
Plan Manager (Upgrade)	90 days
SV-16	2 years
SV-16 (Upgrade)	90 Days
Custom Developed Software	60 Days

# 10 Appendix B – Hardware Warranty Lengths

Product Family	Standard Warranty Length	Maximum Extended Warranty Length (in addition to standard warranty)
AutoVu Sharp	1 year	4 years
SV-16	2 years	n/a
HID VeriX	18 Months	n/a
HID Edge	18 Months	n/a

APPENDIX *GH*

**EQUIPMENT ACCEPTANCE CERTIFICATE**

The undersigned purchaser hereby acknowledges receipt of the equipment order described below. After confirmation of order fulfillment, and on-site product testing, we are now accepting the equipment as satisfactory for all purposes in accordance with the Agreement.

Quantity	Model Number	Equipment Description

\_\_\_\_\_  
City of Berkeley Representative/Position

\_\_\_\_\_  
Date

END OF SECTION

**DEPARTMENT ORDER****ADMINISTRATIVE ORDER #001-2015****DATE ISSUED: 01/5/15****SUBJECT: AUTOMATED LICENSE PLATE READER USE****PURPOSE:**

This order establishes guidelines for the use of the Berkeley Police Department's Automated License Plate Reader (ALPR) technology and data. ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR unit). ALPRs may be used by the Berkeley Police Department Parking Enforcement and Traffic Units for official law enforcement purposes. This Administrative Order shall remain in effect until January 6, 2016, or when superseded by the issuance of a General Order governing ALPR use.

**ADMINISTRATION OF ALPR DATA:**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain through the Parking Enforcement Unit. The Investigations Division Captain will assign personnel under his/her command to administer the day-to-day operation of the ALPR equipment and data.

**ALPR OPERATION:**

Use of an ALPR is described below. Department personnel shall not use, or allow others to use the equipment or database records for any unauthorized purpose.

- a. An ALPR shall only be used for official and legitimate law enforcement business.
- b. Reasonable suspicion or probable cause is not required before using an ALPR.
- c. No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- d. No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

**ALPR DATA COLLECTION AND RETENTION:**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department, and because such data may contain confidential CLETS information, are not open to public review. ALPR information gathered and

retained by this department may be used and shared with prosecutors or others only as permitted by law.

The Parking Enforcement Manager is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by City Department of Information Technology personnel.

All ALPR data shall be stored and purged as described below in this order and thereafter shall be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data shall be downloaded from the server onto portable media and booked into evidence.

**ACCOUNTABILITY AND SAFEGUARDS:**

All saved data will be closely safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:

- a. Non-law enforcement requests for access to stored ALPR data shall be referred to the Public Safety Business Manager and processed in accordance with applicable law.
- b. Non-law enforcement requests for information regarding a specific vehicle's license plate shall be honored when the requestor is the registered owner of the vehicle in question. The requestor in such cases must provide acceptable proof of their identity and of their ownership of the vehicle in question.
- c. ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time.
- d. Berkeley Police personnel approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.
- e. ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes only in connection with specific criminal investigations.
- f. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state, or federal agency or entity without the express written consent of the City Manager.
- g. For purposes of a City of Berkeley Parking Enforcement analysis effort, ALPR data may be provided a City of Berkeley consultant on an as-needed basis, upon the specific approval of the Chief of Police or his/her designee.
- h. ALPR system audits should be conducted by personnel assigned to the Professional Standards Bureau on a regular basis, at least biennially.

- i. ALPR "read" data retention periods may vary, depending on the system using the ALPR. Regardless of system use, all ALPR "read" data shall be retained for no longer than 365 days, after which point it shall be automatically purged from the server or storage device.

**CURRENT ALPR DEPLOYMENT-SCOFFLAW ENFORCEMENT:**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for Scofflaw Enforcement. The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and checks scanned "reads" against a file of vehicles which have five or more outstanding citations. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car. This allows the city to recover outstanding citation fees and penalties. ALPR equipment is installed in the Parking Enforcement Unit's Scofflaw Enforcement vehicle and a marked Traffic Enforcement vehicle, allowing for scofflaw enforcement using both vehicles.

The contracted vendor for the City's Scofflaw Enforcement program is Paylock. Paylock stores data on a secure server, and provides access to authorized personnel Paylock's "Bootview" secure website, as described below:

- a. All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit, and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.



Michael K. Meehan  
Chief of Police

cc: All BPD Personnel



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

FOR: Equipment for Automated Parking  
Data Collection + Enforcement

Spec. # 14-10825-C

Bid Date: 8/21/14

	Bidders	Base Bid	Nuc Free	Work Force Comp	Opp. States	Living Wage	EBO	Bid Bond	Addenda
1	PCS Mobile								
2	Tannery Creek Systems		X	X	X	X	X		
3									
4									
5									
6									
7									
8									
9									
10									

Bid Recorder: Shelley Goss 8/21

Bid Opener: STB 8/21/14

Project Manager: [Signature] 8/25/14

2180 McKia Street, Berkeley, CA 94704 Tel: 510.981.7320 TDD: 510.981.6903 Fax: 510.981.7390  
E-mail: [finance@ci.berkeley.ca.us](mailto:finance@ci.berkeley.ca.us)

**NON-DISCRIMINATION/WORKFORCE COMPOSITION**

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

To assist the City of Berkeley in implementing its Non-Discrimination policy, you're requested to furnish information regarding your personnel, as indicated below, and return this form to the City Department handling your contract.

**ORGANIZATION** Portable Computer Systems, Inc dba PCS Mobile  
**ADDRESS** 1200 W. Mississippi Ave, Denver, CO 80223  
**BUSINESS LICENSE #** \_\_\_\_\_

*You may complete this online & make entries in these cells, they will be automatically totaled at the bottom; or print the form & complete by hand/typewriter.*

Occupational Category (see page 2 for definitions)	ALL EMPLOYEES		WHITE		BLACK		ASIAN		HISPANIC		OTHER (specify)**	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials/Administrators	1	1	1	1								
Professionals	2	0	0	0								
Technicians	15	0	6	0	1		2	0	6	0	0	0
Protective Service Workers	0	0										
Para-professionals	0	0										
Office/Clerical	0	0			3						3	
Skilled Craft Workers	0	0										
Service/Maintenance	0	0										
Other Occupation: Specify*	8	3	7	3							1	
<b>Totals</b>	<b>24</b>	<b>10</b>	<b>14</b>	<b>7</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>7</b>	<b>3</b>	<b>0</b>	<b>0</b>

\*Specify other occupation: FRST / MTS - CELL MGMT @ SALES WORKERS  
 \*\*Specify other ethnicity: \_\_\_\_\_

Is your business MBE/WBE/DBE certified?  **YES** If Yes, by what agency? The Supplier Clearinghouse for the Utility Supplier Diversity Program  
 Do you have a policy of non-discrimination?  **YES** If Yes, please specify: WBE of the California Public Utilities Commission  
 or ethnic identification: \_\_\_\_\_

Signature Steven McKay Date 4.2.15  
 Print/Type Name of Signer Steven McKay  
 Verified by \_\_\_\_\_ Date \_\_\_\_\_  
 City of Berkeley Contract Administrator



**CITY OF BERKELEY**  
**Nuclear Free Zone Disclosure Form**

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:  
  

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).
4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: Steven McKay Title: Treasurer

Signature: *Steven McKay* Date: 4.2.2015

Business Entity: Portable Computer Systems, Inc dba PCS Mobile

Contract Description/Specification No. License Plate Recognition System & Services  
Attachment C

**CITY OF BERKELEY**  
**Oppressive States Compliance Statement for Personal Services**

The undersigned, an authorized agent of Portable Computer Systems, Inc dba PCS Mobile (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Oppressive State" means: **Tibet Autonomous Region and the Provinces of Abo, Kham, and U-Tsang.**

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: Steven McKay Title: Treasurer

Signature: *Steven McKay* Date: 4-2-2015

Business Entity: Portable Computer Systems, Inc dba PCS Mobile

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Contract Description/Specification No.: License Plate Recognition System & Services

Attachment D

CITY OF BERKELEY
Living Wage Certification for Providers of Personal Services

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance.

Section I.

1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?

YES [checked] NO [ ]

If no, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 1(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES [ ] NO [ ]

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please continue to Section II.

2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?

YES [ ] NO [ ]

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES [ ] NO [ ]

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II.

Section II

Please read, complete, and sign the following:

THIS CONTRACT IS SUBJECT TO THE LIVING WAGE ORDINANCE.

[checked box]

THIS CONTRACT IS NOT SUBJECT TO THE LIVING WAGE ORDINANCE.

[ ]

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: Steven McKay Title: Treasurer

Signature: [Handwritten Signature] Date: 4.2.15

Business Entity: Portable Computer Systems, Inc dba PCS Mobile

Contract Description/Specification No: License Plate Recognition System and Services

Section III

• \*\* FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY \*\* •

I have reviewed this Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

Department Name

Department Representative

To be completed by  
Contractor/Vendor

Form EBO-1  
CITY OF BERKELEY



CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

If you are a contractor, return this form to the originating department/project manager. If you are a vendor (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Name: Portable Computer Systems, Inc dba PCS Mobile Vendor No.:  
Address: 1200 W. Mississippi Ave City: Denver State: CO ZIP: 80223  
Contact Person: Steve McKay Telephone: 303-346-2487  
E-mail Address: stevem@pcsmobile.com Fax No.: 303-346-4274

SECTION 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.
B. Does your company provide (or make available at the employees' expense) any employee benefits?
C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee?
D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee?
E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee?

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent?

\* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

SECTION 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

**SECTION 5. CERTIFICATION**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this 2nd day of April, in the year 2015, at Denver, CO  
(City) (State)

Steven McKay  
Name (please print)

Steven McKay  
Signature

Treasurer  
Title

[Redacted]  
Federal ID or Social Security Number

**FOR CITY OF BERKELEY USE ONLY**

- Non-Compliant (The City may not do business with this contractor/vendor)
- One-Person Contractor/Vendor       Full Compliance       Reasonable Measures
- Provisional Compliance Category, Full Compliance by Date: \_\_\_\_\_

Staff Name (Sign and Print): \_\_\_\_\_ Date: \_\_\_\_\_



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/9/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Blue Sky Ins 9090 South Ridgeline Blvd. #206 Highlands Ranch CO 80129	<b>CONTACT NAME:</b> Joel Walker <b>PHONE (A/C No. Ext.):</b> (303) 647-5477 <b>FAX (A/C No.):</b>	
	<b>E-MAIL ADDRESS:</b> jwalker@bskyins.com	
<b>INSURED</b> PCS Mobile / Portable Computer Systems / Western Sky, LLC 1200 W. Mississippi Denver CO 80223	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Travelers Insurance Company	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	

**COVERAGES** **CERTIFICATE NUMBER:** CL1552507311 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR   WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b>		630-0C067499-TCT-15	6/1/2015	6/1/2016	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> Per Project Aggregate					PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY	<input type="checkbox"/> PRO-JECT				PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> LOC					\$
A	<b>AUTOMOBILE LIABILITY</b>		BA-0C067499-15-TEC	6/1/2015	6/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
						\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input type="checkbox"/> OCCUR	HSM-CUP-0C067499-TIL-15	6/1/2015	6/1/2016	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 5,000,000
	<input type="checkbox"/> DED	<input checked="" type="checkbox"/> RETENTION \$ 10,000				\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>		JB0C067499	06/01/2015	06/01/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Prof/E&O/incl Technology		ZPL-14R69260-14-15	6/1/2015	6/1/2016	\$1,000,000
A	Crime		106281355	04/13/2015	04/13/2016	\$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
City of Pasadena, its City Council, officers, officials, agents, employees, and volunteers are named as additional insured's with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished with such work or operations. A waiver of subrogation applies. Coverages are primary and non-contributory. 30 Days notice of cancellation applies (10 days for non-payment).

**CERTIFICATE HOLDER**

City of Pasadena  
Liability Division  
100 North Garfield  
PO Box 7115  
Pasadena, CA 91109

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  
  
AUTHORIZED REPRESENTATIVE  
  
Joel Walker/ADMIN *[Signature]*



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 00 03 13 (00)**

POLICY NUMBER: UB0CO67499

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:** City of Pasadena, its City Council, officers, officials, agents, employees, and volunteers.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>A. Reasonable Force Property Damage – Exception To Expected Or Intended Injury Exclusion</li> <li>B. Non-Owned Watercraft Less Than 75 Feet</li> <li>C. Aircraft Chartered With Pilot</li> <li>D. Damage To Premises Rented To You</li> <li>E. Increased Supplementary Payments</li> <li>F. Who Is An Insured – Employees And Volunteer Workers – First Aid</li> <li>G. Who Is An Insured – Employees – Supervisory Positions</li> <li>H. Who Is An Insured – Newly Acquired Or Formed Organizations</li> <li>I. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises</li> </ul> | <ul style="list-style-type: none"> <li>J. Blanket Additional Insured – Lessors Of Leased Equipment</li> <li>K. Blanket Additional Insured – Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement</li> <li>L. Blanket Additional Insured – Broad Form Vendors</li> <li>M. Who Is An Insured – Unnamed Subsidiaries</li> <li>N. Who Is An Insured – Liability For Conduct Of Unnamed Partnerships Or Joint Ventures</li> <li>O. Contractual Liability – Railroads</li> <li>P. Knowledge And Notice Of Occurrence Or Offense</li> <li>Q. Unintentional Omission</li> <li>R. Blanket Waiver Of Subrogation</li> </ul> |
|---|--|

### PROVISIONS

#### A. REASONABLE FORCE PROPERTY DAMAGE – EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION

The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2., of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

##### a. Expected Or Intended Injury Or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

#### B. NON-OWNED WATERCRAFT LESS THAN 75 FEET

The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2.

#### of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

(2) A watercraft you do not own that is:

- (a) Less than 75 feet long; and
- (b) Not being used to carry any person or property for a charge.

#### C. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED:**

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the **DEFINITIONS** Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

**G. WHO IS AN INSURED – EMPLOYEES – SUPERVISORY POSITIONS**

The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED:**

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

**H. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED:**

4. Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner

or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

**I. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES**

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

dient, part or container entering into, accompanying or containing such products; or

- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

**M. WHO IS AN INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

**N. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES**

The following replaces the last paragraph of **SECTION II – WHO IS AN INSURED**:

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II – Who Is An Insured.

**O. CONTRACTUAL LIABILITY – RAILROADS**

1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:
  - c. Any easement or license agreement;
2. Paragraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

**P. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:

- (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.
- (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
  - (a) Any individual who is:
    - (i) A partner or member of any partnership or joint venture;
    - (ii) A manager of any limited liability company;
    - (iii) A trustee of any trust; or
    - (iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or
  - (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

RESOLUTION NO. 66,917-N.S.

CONTRACT: PCS MOBILE FOR EQUIPMENT PROVIDER OF AUTOMATED DATA COLLECTION AND ENFORCEMENT SYSTEM

WHEREAS, Public Works determined that an equipment vendor would be needed to test an alternative method of parking data collection for the Automated Data Collection and Enforcement system to support the goBerkeley pilot program; and

WHEREAS, in July 2014, the City of Berkeley released a Request for Qualifications for Specification No. 14-10875-C for an equipment vendor for the Automated Data Collection and Enforcement System, and received two valid proposals by the posted deadline; and

WHEREAS, after a thorough review and scoring according to the RFQ's criteria, as well as an on-site test and evaluation, the submission from PCS Mobile received a high overall score; and

WHEREAS, funding for this contract is available in the FY 2015 budget in the Federal Highway Administration Value Pricing Pilot Program (VPPP) Grant Fund (Fund 674), goBerkeley/FHWA restricted revenue portion of the Parking Meter Fund (Fund 840), and the remaining contract balance will be recommended for appropriation through the AAO No. 2 in the goBerkeley/FHWA restricted revenue portion of the Parking Meter Fund (Fund 840); the contract has been entered in the contract management database with CMS No. XUHAL.

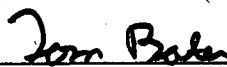
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with PCS Mobile to provide equipment for the Automated Data Collection and Enforcement pilot portion of the goBerkeley program, for an amount not to exceed \$450,000 for the period March 1, 2015 through March 30, 2020. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

The foregoing Resolution was adopted by the Berkeley City Council on January 27, 2015 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, Worthington and Bates.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk

CONSULTANTS APPENDIX<sup>1</sup>

Designated Employees

Disclosure Categories

Consultants who make (not just recommend) governmental decisions, such as whether to approve a rate, rule, or regulation, whether to issue, deny, suspend, or revoke any permit, license, application, certificate or similar authorization, adopt or grant City approval to a plan, design, report, study, or adopt or grant City approval of policies, standards, or guidelines for the City or any subdivision thereof

1

Consultants who act in a staff capacity with the City, and in that capacity perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a designated position in the City's Conflict of Interest Code.

Disclosure required at the same level as the comparable designated position identified elsewhere in this Code.

Category 1

Designated consultants assigned to this category shall disclose:

- (a) All business entities or non-profit corporations in which they are a director, officer, partner, trustee, employee or hold a position of management; interests in real property, investments; and income, including gifts, loans and travel payments.<sup>2</sup>
- (b) When the consultant is a corporation or partnership, only individuals from the firm that participate in City decisions or act in a staff capacity must file disclosure statements.

<sup>1</sup> Only consultants who make a governmental decision or act in a staff capacity as defined in 2 Cal. Code Regs. Section 18701, as amended from time to time, shall be subject to economic disclosure requirements.

<sup>2</sup> Consultants who make governmental decisions shall disclose pursuant to the broadest disclosure category in the Code subject to the following limitation:

The chief executive officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The chief executive officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

EXHIBIT C

G:\CLERK\CONFLICT CODE\Code Updates\2014 Code\Report\Exhibit C\Consult.doc  
09/14

[View assistance for Search Results](#)

# Search Results

**Current Search Terms: personal\* computer\* systems\***

Your search for "Personal* Computer* Systems*" returned the following results...			
<small>Notice: This printed document represents only the first page of your SAM search results. More results may be available. To print your complete search results, you can download the PDF and print it.</small>			
Entity	<b>PERSONAL COMPUTER SYSTEMS, INC.</b>	Status: <b>Active</b>	<a href="#">View Details</a>
DUNS: 965216914	CAGE Code: 1GHM3		
Has Active Exclusion?: No	DoDAAC:		
Expiration Date: 12/09/2015	Delinquent Federal Debt? Yes	<a href="#">What is this?</a>	
Purpose of Registration: All Awards			

### Glossary

#### Search Results

Entity

Exclusion

#### Search Filters

By Record Status

By Functional Area - Entity Management

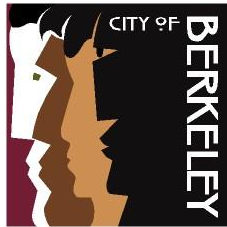
By Functional Area - Performance Information

SAM | System for Award Management 1.0

IBM v1.P.27.20150327-1711

**Note to all Users:** This is a Federal Government computer system. Use of this system constitutes consent to monitoring at all times.





Office of the City Manager

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 12, 2019

**Item Number:** 30

**Item Description:** Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

**Submitted by:** Dee Williams-Ridley, City Manager

Attached is the originally published staff report with updated attachments. The staff report that was published did not include the surveillance technology reports. The following has been incorporated into the attachments:

- Surveillance Technology Report for Body Worn Cameras incorporated into Attachment 2.
- Surveillance Technology Report for Global Positioning System Tracking Devices incorporated into Attachment 3.
- Surveillance Technology Report for Automated License Plate Readers incorporated into Attachment 4.



Office of the City Manager

ACTION CALENDAR

November 12, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police  
David White, Deputy City Manager

Subject: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy annual reporting requirements as outlined in sections 2.99.050 and 2.99.070. The attached Surveillance Technology Reports, Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras are for technologies that were acquired by the City prior to the adoption of the Ordinance.



Section 2.99.050 of the Ordinance required the City Manager to submit a Surveillance Acquisition Report and Surveillance Use Policy for each surveillance technology that has been possessed or used prior to the effective date of the Ordinance. The requirements of this section were not satisfied due to a multitude of factors, and the Police Department opted to submit the attached acquisition reports and use policies to the Police Review Commission prior to their review by the City Council. The Police Review Commission underwent an extensive engagement process and the full Commission discussed the attached use policies and reports at scheduled meetings from May to October 2019. In all cases, the Police Review Commission approved the attached acquisition reports and use policies and conveyed any concerns or suggested modifications to the Police Chief. In addition to the technologies covered by the attached resolution, City staff continues to evaluate whether or not there is any other technology that is used or possessed that is subject to the Ordinance.

Finally, Section 2.99.040 of the Ordinance allows the City Manager to borrow, acquire, or temporarily use surveillance technology in exigent circumstances without having to obtain the approval of City Council. Since the adoption of the ordinance, the City is reporting two instances in which the City Manager has made use of Section 2.99.040. In preparation for the potentially violent August 5, 2018 demonstration in downtown Berkeley, the City borrowed remote accessible cameras from the Northern California Regional Intelligence Center (NCRIC) in order to have the ability to remotely monitor intersections in real time. The cameras did not have face recognition technology. Signage was posted in the areas of the cameras, informing people that the area may be under video surveillance. Using cameras to monitor intersections is at times preferable to physically placing officers in those locations. In addition, as a mutual aid resource, the Police Department requested the Alameda County Sheriff's Office Small Unmanned Aerial System (sUAS) team as a mutual aid resource. The purpose of the request was to support the identification and apprehension of any felony suspects, should a felony occur. Following the felony vandalism of over ten City of Berkeley vehicles, the sUAS team deployed a drone, but no suspects were apprehended.

## BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. The Ordinance contains various reporting requirements including the following:

- Section 2.99.050, which requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

- Section 2.99.070 of the Ordinance, which requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the three technologies, the Surveillance Technology Report, Surveillance Acquisition Report and Surveillance Use Policies were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. It should be noted that substantial policies already existed for Body Worn Cameras and License Plate Readers. Those policies—also reviewed by the Police Review Commission for purposes of this report—are also attached. The existing policies will continue to remain in effect upon Council’s approval. Henceforth, all new Surveillance Use Policies and Surveillance Acquisition Reports will be listed in Chapter 13 of the Berkeley Police Department Policy Manual, which is being created to provide easy access to all policies relating to BMC 2.99. All BPD policies are available to the public on BPD’s website.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

City Council is being asked to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution or could direct staff to revise the attached policies.

CONTACT PERSON

Andrew Greenwood, Chief of Police, (510) 981-7017  
David White, Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Proposed Resolution

2. Body Worn Cameras

Surveillance Technology Report: Body Worn Cameras

Policy 1300 Body Worn Camera Use Policy

Policy 1300(a) Appendix: Body Worn Camera Acquisition Report

Policy 425 Body Worn Camera Policy (Existing Policy)

3. Global Positioning System Tracking Devices

Surveillance Technology Report

Policy 1301 Global Positioning System Tracking Devices Use Policy

Policy 1301(a) Appendix: Global Positioning System Tracking Devices Acquisition Report

4. Automated License Plate Readers

Surveillance Technology Report: Automated License Plate Readers

Policy 1302 Automated License Plate Reader Use Policy

Policy 1302(a) Appendix: Automated License Plate Reader Acquisition Report

Policy 422 Automated License Plate Reader (Latest version of existing Policy)

5. Police Review Commission Memorandum Regarding Automatic License Plate Readers

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

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT, SURVEILLANCE ACQUISITION REPORT, AND SURVEILLANCE USE POLICY FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, AND BODY WORN CAMERAS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”); and

WHEREAS, Section 2.99.050 of the Ordinance requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each piece of technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

Section 1. Pursuant to Section 2.99.060, as it pertains to the use of Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras, the City Council hereby finds and determines the following:

- a. The benefits of using the technologies outweigh the costs;
- b. The policies attached to this resolution safeguard civil liberties; and
- c. No feasible alternatives exist with similar utility that will have a lesser impact on civil rights or liberties.

Section 2. The City Council hereby accepts the Surveillance Technology Reports, Surveillance Acquisition Reports, and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras.

ATTACHMENT 2:  
BODY WORN CAMERAS

**Surveillance Technology Report: Body Worn Cameras**

**March 1, 2018 – Sept. 30, 2019**

<p><b>Description</b></p>	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, increase transparency and enhance professionalism and accountability in the delivery of police services to the community.</p> <p>Body Worn Camera files are shared with the Alameda County District Attorney’s office in support of prosecution for crime, and may be shared with other law enforcement agencies to support criminal investigations.</p> <p style="text-align: center;">Summary of Body Worn Camera Videos Uploaded March 1, 2018 to Sept. 30, 2019</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Total Number of Videos</td> <td style="text-align: right;">42,677</td> </tr> <tr> <td>Total Hours of Videos</td> <td style="text-align: right;">10,681.93</td> </tr> <tr> <td>Total GB of Videos</td> <td style="text-align: right;">20,669.11</td> </tr> </table> <p style="text-align: center;">Summary of All Evidence Created March 1, 2018 to Sept. 30, 2019</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th><u>Type</u></th> <th>Count of files</th> <th>Size (in Mb)</th> <th>GBs Storage</th> </tr> </thead> <tbody> <tr> <td>Audio</td> <td style="text-align: right;">2,315</td> <td style="text-align: right;">23,855.82</td> <td style="text-align: right;">23.86</td> </tr> <tr> <td>Document</td> <td style="text-align: right;">125</td> <td style="text-align: right;">17.56</td> <td style="text-align: right;">0.02</td> </tr> <tr> <td>Image</td> <td style="text-align: right;">64,931</td> <td style="text-align: right;">270,329.62</td> <td style="text-align: right;">270.33</td> </tr> <tr> <td>Other</td> <td style="text-align: right;">896</td> <td style="text-align: right;">118,080.19</td> <td style="text-align: right;">118.08</td> </tr> <tr> <td>Videos*</td> <td style="text-align: right;">70,670</td> <td style="text-align: right;">32,489,190.50</td> <td style="text-align: right;">32,489.19</td> </tr> <tr> <td><b>Grand Totals</b></td> <td style="text-align: right;"><b>138,937</b></td> <td style="text-align: right;"><b>32,901,473.69</b></td> <td style="text-align: right;"><b>32,901.47</b></td> </tr> </tbody> </table> <p>* Includes all uploaded BWC videos <i>and</i> all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.</p>	Total Number of Videos	42,677	Total Hours of Videos	10,681.93	Total GB of Videos	20,669.11	<u>Type</u>	Count of files	Size (in Mb)	GBs Storage	Audio	2,315	23,855.82	23.86	Document	125	17.56	0.02	Image	64,931	270,329.62	270.33	Other	896	118,080.19	118.08	Videos*	70,670	32,489,190.50	32,489.19	<b>Grand Totals</b>	<b>138,937</b>	<b>32,901,473.69</b>	<b>32,901.47</b>
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<p><b>Geographic Deployment</b></p>	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWCs are not deployed based on geographic considerations.</p>																																		
<p><b>Complaints</b></p>	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Body Worn Cameras.</p>																																		

<p><b>Audits and Violations</b></p>	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>File meta-data are routinely reviewed by our BWC manager, to ensure required meta-data fields are completed. There have been no complaints with regards to violations of the Surveillance Use Policy.</p>
<p><b>Data Breaches</b></p>	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to BWC data.</p>
<p><b>Effectiveness</b></p>	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Body Worn Cameras have proven effective in supporting criminal prosecutions, as video footage is available for all criminal prosecutions.</p> <p>Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs.</p> <p>Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.</p>
<p><b>Costs</b></p>	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is approx. \$204,000 per year over a five-year, \$1,218,000 contract. The systems cost for the 19 month period of this initial report was \$385,700.</p> <p>There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of \$168,940 per year, including benefits.</p>

## Surveillance Use Policy - Body Worn Cameras

### 1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425 and adds elements as required by BMC 2.99.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

### 1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.



At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

#### 1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

#### 1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

#### 1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

##### 1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files.

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It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

#### 1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

#### 1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

- (a) Recorded files may also be reviewed:
  - 1. Upon approval by a supervisor, by any member of the Department who is participating

in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.

2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

(b) Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

#### 1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4)

#### 1300.4.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee. (Ref. policy 425.17.5)

### 1300.5 DATA PROTECTION

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. (Ref. policy 425.14)

### **1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### **1300.7 DATA RETENTION**

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

### **1300.8 PUBLIC ACCESS**

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy. (Ref. policy 425.18)

### **1300.9 THIRD-PARTY DATA-SHARING**

#### **1300.9.1 CITY ATTORNEY**

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18)

#### 1300.9.2 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

#### 1300.10 TRAINING

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

#### 1300.11 AUDITING AND OVERSIGHT

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

#### 1300.12 MAINTENANCE

The BWC system will be maintained by the Applications Programmer Analyst and assigned

Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

## 1300 APPENDIX A

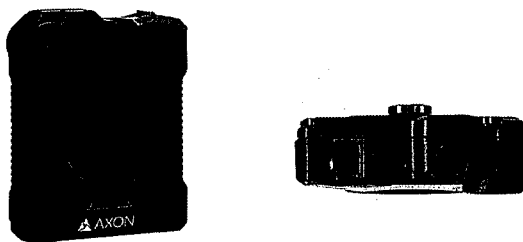
BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS

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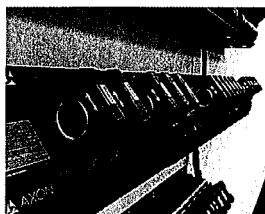
**BODY WORN CAMERAS (BWCs)****A. DESCRIPTION**

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.



The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.



The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add

**1300 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

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metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannot be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

**B. PURPOSE**

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

1. The BWC shall be activated in any of the following situations:
  - i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
  - ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
  - iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
  - iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.



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- v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

2. Prohibited uses of the BWC system include:

- i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
- ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
- iii. Officers are prohibited from retaining BWC recordings.
- iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

**C. LOCATION**

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

**D. IMPACT**

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

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strictest requirements of both state and federal law concerning release of audio/video recordings.

**E. MITIGATION**

In order to minimize violations of privacy, BWC policy provides that:

1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
3. BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy"

**F. DATA TYPES AND SOURCES**

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

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The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

1. Category of contact (from Department's defined list)
2. Disposition of contact (arrest, citation, etc.)
3. Associated case number

**G. DATA SECURITY**

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for transferring the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

1. Establishing a system for uploading, storing and security of recordings.
2. Designating persons responsible for uploading recorded data.
3. Establishing a maintenance system to ensure availability of BWCs.
4. Establishing a system for tagging and categorizing data according to the type of incident captured.
5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

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thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

**H. FISCAL COST**

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed \$1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately \$250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

**J. ALTERNATIVES**

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

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**K. EXPERIENCE OF OTHER ENTITIES**

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, [https://www.bja.gov/bwc/pdfs/14-005\\_Report\\_BODY\\_WORN\\_CAMERAS.pdf](https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf) - pages 6-8, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, <https://www.bwccscorecard.org/>, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.

## Body Worn Cameras

### 425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

### 425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

### 425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

### 425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.

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- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

**425.5 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

**425.6 SUPERVISOR RESPONSIBILITIES**

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

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(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

**425.7 ACTIVATION OF THE BODY WORN CAMERA**

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.



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**425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS**

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
- (b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
  - 1. **Domestic Violence Victims:** Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
  - 2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
- (c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

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**425.9 ACTIVATION IN CROWD CONTROL SITUATIONS**

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

**425.10 SURREPTITIOUS USE OF THE BWC**

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

**425.11 CESSATION OF RECORDING**

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

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Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

**425.12 EXPLOSIVE DEVICE**

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

**425.13 PROHIBITED USE OF BODY WORN CAMERAS**

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

**425.14 PROCESSING AND HANDLING OF RECORDINGS**

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

#### **425.15 RETENTION REQUIREMENTS**

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

#### **425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION**

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

#### **425.17 REVIEW OF RECORDINGS BY A MEMBER**

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

##### **425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH**

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

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the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officer(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

#### 425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

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#### 425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

#### 425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

#### 425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

#### 425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

## 425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

## 425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

## Berkeley Police Department

Law Enforcement Services Manual

*Body Worn Cameras*

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**425.18.3 MEDIA**

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

**425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY**

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

**425.20 TRAINING REQUIRED**

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.



**ATTACHMENT 3:**  
**Global Positioning System Tracking Devices**

## Surveillance Technology Report: Global Positioning System Tracking Devices

March 1, 2018 – Sept. 30, 2019

Description	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals for the purpose of investigating criminal activity.</p> <p>Global Positioning System (GPS) “Electronic Stake Out” (ESO) devices were deployed on “bait” bicycles eighty-five (85) times during this reporting period, resulting in forty-nine (49) arrests.</p> <p>GPS “Slap-N-Track” (SNT) devices were used in two investigations during this reporting period: (1) a robbery and laptop snatch series involving multiple cases and suspects in Berkeley and in the region, with all suspects ultimately arrested; and (2) a currently-active case involving a series of auto burglaries in Berkeley and in the region.</p> <p>Data may be shared with the District Attorney’s Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement personnel as a part of an active criminal investigations; and other third parties, pursuant to a court order.</p>
Geographic Deployment	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>GPS ESO-equipped bikes were deployed primarily in commercial districts across the city where bikes are frequently stolen.</p> <p>GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.</p>
Complaints	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There were no complaints made regarding GPS Trackers.</p>
Audits and Violations	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There were no audits and no known violations relating to GPS Trackers.</p>
Data Breaches	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There were no known data breaches relating to GPS Trackers.</p>

<p>Effectiveness</p>	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>GPS Trackers continue to be very effective in apprehending bicycle thieves, many of whom are repeat offenders who've committed not only bike thefts, but other crimes as well. SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.</p> <p>GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).</p>
<p>Costs</p>	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the GPS Trackers' data service is \$1,920; the total cost for the 19 month period of this initial report was \$3,040. Further information regarding costs is contained in Policy 1301a, the Surveillance Acquisition Report.</p> <p>There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours is a fraction of the time it would take to do a full surveillance operation involving numerous officers.</p> <p>There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.</p>

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## Surveillance Use Policy - GPS Tracking Devices

### 1301.1 PURPOSE

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals. GPS trackers electronically relay their precise location in real time, and thereby assist BPD in the recovery of evidence and arrest of suspects.

### 1301.2 AUTHORIZED USE

GPS trackers shall only be used during active criminal investigations. GPS trackers shall only be used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

GPS trackers shall only be utilized for law enforcement purposes.

### 1301.3 DATA COLLECTION

Location data may be obtained through the use of a GPS Tracker.

### 1301.4 DATA ACCESS

Access to GPS tracker data shall be limited to Berkeley Police Department (BPD) personnel utilizing the GPS Tracker(s) for active criminal investigations. Information may be shared in accordance with 1301.9 below.

In support of active criminal investigations, BPD personnel may receive GPS tracker data from probation or parole agencies which utilize GPS trackers (e.g. ankle monitors) as a condition of probation or parole.

### 1301.5 DATA PROTECTION

The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.

### 1301.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1301.4 Data Access, 1301.5 Data Protection, 1301.7 Data Retention, 1301.8 Public Access and 1301.9 Third Party Data Sharing serve to protect against any unauthorized use of GPS tracker data. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### 1301.7 DATA RETENTION

A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker

identification label. This data is stored indefinitely by the vendor. The data does not contain any images, names of subjects, vehicle information, etc.

Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.

**1301.8 PUBLIC ACCESS**

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

**1301.9 THIRD-PARTY DATA-SHARING**

Data collected from the GPS trackers may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Other third parties, pursuant to a Court Order.

**1301.10 TRAINING**

Training for the operation of the GPS trackers shall be provided by BPD personnel. All BPD personnel shall be provided with this Surveillance Use Policy.

**1301.11 AUDITING AND OVERSIGHT**

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

**1301.12 MAINTENANCE**

GPS trackers shall only be obtained with the permission of the Investigations Division Captain or his/her designee. The Investigations Division Captain or his/her designee will ensure the trackers are returned when the mission/investigation is completed.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

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**GPS TRACKING DEVICES**

**A. DESCRIPTION**

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals.

The Berkeley Police Department currently uses two types of GPS Tracking Devices to track the movements of vehicles, bicycles, or other kinds of property. The manufacturer, 3SI Security Systems, describes them as follows:

1. The "Slap-n-Track" (SNT) tracker tracks vehicles, cargo, and other large assets for long deployments. Offers extended battery life, rugged and weatherproof housing, and optional magnets.
2. The "Electronic Stake Out" (ESO) tracker offers Law Enforcement miniaturized and covertly packaged GPS Tracking Solutions to target property crimes, especially pattern crimes, in their local jurisdictions.

**B. PURPOSE**

Global Positioning System (GPS) tracking devices provide precise, real-time location information during the conduct of active criminal investigations. GPS trackers are only used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

**C. LOCATION**

GPS tracking devices shall be deployed in locations consistent with the authority granted by consent or a lawfully issued search warrant or court order.

**D. IMPACT**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. GPS Trackers are used in place of expensive, resource-intensive surveillance operations which typically involve multiple officers, often over long periods of time. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with GPS trackers help to ensure no unauthorized use of of GPS tracker data occurs. BPD Policy 1301 Surveillance Use Policy – GPS Tracking Devices ensure the use of GPS trackers and the resulting data are not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

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**E. MITIGATION**

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access, thereby safeguarding the public from any impacts identified in subsection (D).

**F. DATA TYPES AND SOURCES**

A GPS tracker data record consists of date, time, latitude, longitude, map address (derived by using latitude, longitude and Google maps), and tracker identification label. The data does not contain any images, names of subjects, vehicle information, etc.

**G. DATA SECURITY**

Data from a GPS tracker is encrypted by the vendor on secure servers. The data is only accessible through a secure website to BPD personnel who have been granted security access. Captains whose Divisions utilize GPS trackers are responsible for ensuring compliance with the procedures for utilizing GPS Trackers.

**H. FISCAL COST**

The initial cost of the GPS trackers totaled \$4,335.

- Between 2015-present BPD purchased 5 GPS "ESO" trackers for \$2,250 (\$450 each).
- In 2017 BPD purchased 3 GPS "SNT" trackers for \$2,085 (\$695 each).

The annual cost for the GPS data service totals \$1,920.

- The annual data service for the five ESO trackers is \$1,020 (\$204 each).
- The annual data service for the three SNT trackers is \$900 (\$300 each).

Personnel costs are minimal in that the GPS trackers are used as a resource during normal working hours.

GPS trackers are funded through the Investigations Division's general budget.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

Data collected from the GPS trackers may be shared with the following:

- a. The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- b. Other law enforcement offices as part of a criminal investigation;
- c. Other third parties, pursuant to a Court Order.

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**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES**

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**J. ALTERNATIVES**

An alternative to the use of GPS trackers is to conduct resource-intensive surveillance operations utilizing numerous personnel over extended periods of time.

**K. EXPERIENCE OF OTHER ENTITIES**

The use of GPS tracker technology is common amongst law enforcement agencies throughout the country.



**ATTACHMENT 4:**  
**Automated License Plate Readers**

**Surveillance Technology Report: Automated License Plate Readers**

**March 1, 2018 – Sept. 30, 2019**

<p>Description</p>	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City’s Transportation Division uses anonymized information for purposes of supporting the City’s GoBerkeley parking management program. ALPR use replaced the practice of physically “chalking” tires.</p> <p style="text-align: center;"><b>Summary of ALPR Time Zone Enforcement Data</b></p> <p style="text-align: center;">Read Data</p> <p style="text-align: center;">There were an average of 9,075 “Reads” per working day (Based on one month’s data: 9/9/19-10/9/19)</p> <p style="text-align: center;">Hit Data</p> <p style="text-align: center;">There were 69,738 “Hits” 18,410 “Enforced Hits” resulted in citation issuance. 51,328 “Not Enforced” Hits resulted in no citation issuance. (Based on one year’s data: 10/9/18-10/9/19)</p> <p>Genetec is the vendor for the ALPR Time Zone enforcement system. A “read” indicates the ALPR system successfully read a license plate. A “hit” indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. In many cases, hits are “rejected” or “not enforced” because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information which precludes citation.</p> <p style="text-align: center;"><b>Summary of ALPR Booting Scofflaw Enforcement Data</b></p> <p style="text-align: center;">255 vehicles booted from 9/1/18-6/30/19</p> <p>Paylock is the vendor for the ALPR Booting Scofflaw Enforcement Program. A single parking enforcement vehicle is equipped with the Paylock system ALPR. The Paylock ALPR system provides the operator a “hit” when a plate is recognized as having five or more unpaid parking tickets. The operator then further assesses the vehicle, confirms the citation data, and, if confirmed, creates a boot entry in Paylock, and boots the car.</p> <p>Paylock uploads and retains information to their secure server solely on <i>confirmed</i> boots or tows. Hits and reads are not retained in the Paylock server. Booting Scofflaw enforcement has been temporarily suspended due to the transition to a different citation management vendor.</p>
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	<p>All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.</p>
Geographic Deployment	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.</p>
Complaints	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Automated License Plate Readers.</p>
Audits and Violations	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints of violations of the ALPR Surveillance Use Policy.</p>
Data Breaches	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.</p>
Effectiveness	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>ALPRs have proven effective in parking enforcement for time zone enforcement.</p> <p>ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.</p>
Costs	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual system maintenance cost for Genetec is \$47,000. This cost is borne by the Transportation Division, which also purchased the ALPR units used in Time Zone Enforcement.</p> <p>No Genetec LPR units were purchased during the period covered by this report.</p> <p>Genetec ALPR units are in use on 20 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.</p>

The cost of Paylock is \$140 per boot.

One Parking Enforcement Officer is assigned to scofflaw enforcement and abandoned auto enforcement on a full time basis. Assuming the Officer works approximately half their day on scofflaw enforcement, the annual personnel cost would be approximately one half a fulltime Parking Enforcement Officer's pay with benefits, or \$65,000.

## Surveillance Use Policy - ALPR

### 1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

### 1302.2 AUTHORIZED AND PROHIBITED USES USE

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

### 1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

### 1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

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### 1302.5 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

### 1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### 1302.7 DATA RETENTION

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

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- (a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

### **1302.8 PUBLIC ACCESS**

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

### **1302.9 THIRD-PARTY DATA-SHARING**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

### **1302.10 TRAINING**

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

### **1302.11 AUDITING AND OVERSIGHT**

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

### **1302.12 MAINTENANCE**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

#### **1302.12.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref.

policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.



## AUTOMATED LICENSE PLATE READER (ALPR) DEVICES

### A. DESCRIPTION

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement Vehicles.

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

### B. PURPOSE

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

### C. LOCATION

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

### D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

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**E. MITIGATION**

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

**F. DATA TYPES AND SOURCES**

Photographs of license plates and location data may be obtained through the use of ALPR Units.

**G. DATA SECURITY**

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

**H. FISCAL COST**

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.

## 1302 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

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Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
  - a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
  - b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.
  - a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.
  - b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.
3. Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who

**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

4. **Other Law Enforcement Agency Access:** ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
5. **Member Access:** No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.
6. **Public Access:** Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

**J. ALTERNATIVES**

None.

**K. EXPERIENCE OF OTHER ENTITIES**

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

## Automated License Plate Readers (ALPRs)

### 422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### 422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

### 422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### 422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

### 422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

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or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert

#### **422.5 .DATA COLLECTION AND RETENTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not

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showing violations will not be transferred to the server.

#### **422.6 ACCOUNTABILITY**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

#### **422.7 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
  - 1. The name of the agency.
  - 2. The name of the person requesting.
  - 3. The intended purpose of obtaining the information.

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4. The related case number.
  - (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
  - (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

#### **422.8 SCOFFLAW ENFORCEMENT**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

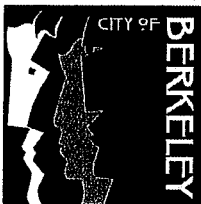
The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking



enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

**ATTACHMENT 5:**  
**Police Review Commission Communication**



Police Review Commission (PRC)

September 11, 2019

To: Honorable Mayor and Members of the City Council  
From: George Perezvelez, <sup>PRC 0449</sup> Chairperson, Police Review Commission  
Re: Proposed Berkeley Police Department Policy 422, Automated License Plate Readers

Summary: This memo is to inform you of the Police Review Commission's qualified approval of the BPD's proposed policy for the use of Automated License Plate Readers (ALPRs).

Background: The BPD submitted the ALPR policy, Policy 422, to the PRC for review, along with the Surveillance Use Policy and the Surveillance Acquisition Report (Policy 1302 and Appendix A) for these devices. This process was undertaken in advance of BPD submitting these items to the City Council as required by the Surveillance Technology Use and Community Safety Ordinance (B.M.C. Ch. 2.99).

These policies were first considered by the full Commission, which then referred them to its Lexipol Policies Subcommittee. In response to feedback from the PRC and the Subcommittee, the BPD revised the proposed policy, which was reviewed by both bodies. At various stages, the PRC and the subcommittee had the opportunity to hear from and ask questions of Police Chief Greenwood and other members of the BPD, and Deputy City Attorney Chris Jensen. The PRC also heard input from representatives of Media Alliance and Oakland Privacy.

Final action: At its September 4, 2019 meeting, the PRC voted to approve for submission to the City Council for your review and discussion the version of Policy 422 that is attached here, with two caveats. First, there was concern among some commissioners that the ALPR was originally acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the Council had in mind, then this policy should be modified accordingly. Second, Section 422.4(c) of the policy does not adequately define what constitutes a "crime scene."

Finally, the Commission wishes to remind the Council that they will see actual use of the ALPR technology under the reporting mechanism in place in the Surveillance Technology Use and Community Safety Ordinance.

Honorable Mayor and Members of the City Council  
Proposed Berkeley Police Department Policy 422, Automated License Plate Readers  
September 11, 2019  
p. 2

The above action was approved by the following vote: Moved/Seconded  
(Perezvelez/Mikiten) -- Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez,  
Ramsey; Noes: Earnest, Mizell; Abstain: Allamby; Absent: None.

Attachment: Revised Policy 422

cc: Dee Williams-Ridley, City Manager  
Andrew Greenwood, Chief of Police  
David White, Deputy City Manager  
PRC Commissioners

## Automated License Plate Readers (ALPRs)

### 422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### 422.2 POLICY

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All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

### 422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### 422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
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- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
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### 422.4 USE OF THE ALPR

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#### **422.5 DATA COLLECTION AND RETENTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ~~ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.~~

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

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  1. The name of the agency.

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2. The name of the person requesting.
  3. The intended purpose of obtaining the information.
  4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
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The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:

- (a) All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated



with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



Office of the City Manager

ACTION CALENDAR  
September 13, 2022  
(Continued from July 26, 2022)

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Andrew Greenwood, Chief of Police  
David White, Deputy City Manager  
Subject: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy annual reporting requirements as outlined in sections 2.99.050 and 2.99.070. The attached Surveillance Technology Reports, Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras are for technologies that were acquired by the City prior to the adoption of the Ordinance.

Section 2.99.050 of the Ordinance required the City Manager to submit a Surveillance Acquisition Report and Surveillance Use Policy for each surveillance technology that has been possessed or used prior to the effective date of the Ordinance. The requirements of this section were not satisfied due to a multitude of factors, and the Police Department opted to submit the attached acquisition reports and use policies to the Police Review Commission prior to their review by the City Council. The Police Review Commission underwent an extensive engagement process and the full Commission discussed the attached use policies and reports at scheduled meetings from May to October 2019. In all cases, the Police Review Commission approved the attached acquisition reports and use policies and conveyed any concerns or suggested modifications to the Police Chief. In addition to the technologies covered by the attached resolution, City staff continues to evaluate whether or not there is any other technology that is used or possessed that is subject to the Ordinance.

Finally, Section 2.99.040 of the Ordinance allows the City Manager to borrow, acquire, or temporarily use surveillance technology in exigent circumstances without having to obtain the approval of City Council. Since the adoption of the ordinance, the City is reporting two instances in which the City Manager has made use of Section 2.99.040. In preparation for the potentially violent August 5, 2018 demonstration in downtown Berkeley, the City borrowed remote accessible cameras from the Northern California Regional Intelligence Center (NCRIC) in order to have the ability to remotely monitor intersections in real time. The cameras did not have face recognition technology. Signage was posted in the areas of the cameras, informing people that the area may be under video surveillance. Using cameras to monitor intersections is at times preferable to physically placing officers in those locations. In addition, as a mutual aid resource, the Police Department requested the Alameda County Sheriff's Office Small Unmanned Aerial System (sUAS) team as a mutual aid resource. The purpose of the request was to support the identification and apprehension of any felony suspects, should a felony occur. Following the felony vandalism of over ten City of Berkeley vehicles, the sUAS team deployed a drone, but no suspects were apprehended.

## BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. The Ordinance contains various reporting requirements including the following:

- Section 2.99.050, which requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

- Section 2.99.070 of the Ordinance, which requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the three technologies, the Surveillance Technology Report, Surveillance Acquisition Report and Surveillance Use Policies were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. It should be noted that substantial policies already existed for Body Worn Cameras and License Plate Readers. Those policies—also reviewed by the Police Review Commission for purposes of this report—are also attached. The existing policies will continue to remain in effect upon Council’s approval. Henceforth, all new Surveillance Use Policies and Surveillance Acquisition Reports will be listed in Chapter 13 of the Berkeley Police Department Policy Manual, which is being created to provide easy access to all policies relating to BMC 2.99. All BPD policies are available to the public on BPD’s website.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

City Council is being asked to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution or could direct staff to revise the attached policies.

CONTACT PERSON

Andrew Greenwood, Chief of Police, (510) 981-7017  
David White, Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Proposed Resolution

2. Body Worn Cameras

Surveillance Technology Report: Body Worn Cameras

Policy 1300 Body Worn Camera Use Policy

Policy 1300(a) Appendix: Body Worn Camera Acquisition Report

Policy 425 Body Worn Camera Policy (Existing Policy)

3. Global Positioning System Tracking Devices

Surveillance Technology Report

Policy 1301 Global Positioning System Tracking Devices Use Policy

Policy 1301(a) Appendix: Global Positioning System Tracking Devices Acquisition Report

4. Automated License Plate Readers

Surveillance Technology Report: Automated License Plate Readers

Policy 1302 Automated License Plate Reader Use Policy

Policy 1302(a) Appendix: Automated License Plate Reader Acquisition Report

Policy 422 Automated License Plate Reader (Latest version of existing Policy)

5. Police Review Commission Memorandum Regarding Automatic License Plate Readers

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

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT, SURVEILLANCE ACQUISITION REPORT, AND SURVEILLANCE USE POLICY FOR AUTOMATIC LICENSE PLATE READERS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”); and

WHEREAS, Section 2.99.050 of the Ordinance requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each piece of technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Acquisition Report and Surveillance Use Policy for Automatic License Plate Readers satisfies the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

Section 1. Pursuant to Section 2.99.060, as it pertains to the use of Automatic License Plater Readers, the City Council hereby finds and determines the following:

- a. The benefits of using the technology outweighs the costs;
- b. The policies attached to this resolution safeguard civil liberties; and
- c. No feasible alternatives exist with similar utility that will have a lesser impact on civil rights or liberties.

Section 2. The City Council hereby accepts the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers.

ATTACHMENT 2:  
BODY WORN CAMERAS

Surveillance Technology Report Body Worn Cameras  
To be provided as part of supplemental communications



## Surveillance Use Policy - Body Worn Cameras

### 1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425 and adds elements as required by BMC 2.99.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

### 1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

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At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

#### 1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

#### 1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

#### 1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

##### 1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files.

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It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

#### 1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

#### 1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

- (a) Recorded files may also be reviewed:
  1. Upon approval by a supervisor, by any member of the Department who is participating

in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.

2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
  3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
  4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.
- (b) Investigators conducting criminal or internal investigations shall:
1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
  2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
  3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

#### 1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4)

#### 1300.4.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee. (Ref. policy 425.17.5)

### 1300.5 DATA PROTECTION

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. (Ref. policy 425.14)

### **1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### **1300.7 DATA RETENTION**

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

### **1300.8 PUBLIC ACCESS**

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy. (Ref. policy 425.18)

### **1300.9 THIRD-PARTY DATA-SHARING**

#### **1300.9.1 CITY ATTORNEY**

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18)

#### 1300.9.2 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

#### 1300.10 TRAINING

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

#### 1300.11 AUDITING AND OVERSIGHT

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

#### 1300.12 MAINTENANCE

The BWC system will be maintained by the Applications Programmer Analyst and assigned

Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

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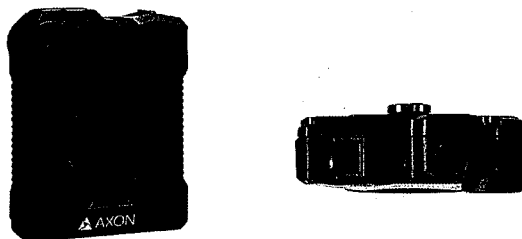
BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS

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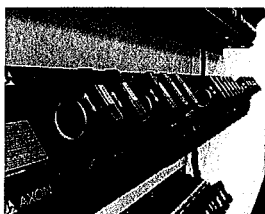
**BODY WORN CAMERAS (BWCs)****A. DESCRIPTION**

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.



The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.



The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add



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metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannot be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

**B. PURPOSE**

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

1. The BWC shall be activated in any of the following situations:
  - i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
  - ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
  - iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
  - iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

**1300 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

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- v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

2. Prohibited uses of the BWC system include:

- i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
- ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
- iii. Officers are prohibited from retaining BWC recordings.
- iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

**C. LOCATION**

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

**D. IMPACT**

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

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strictest requirements of both state and federal law concerning release of audio/video recordings.

**E. MITIGATION**

In order to minimize violations of privacy, BWC policy provides that:

1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
3. BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy"

**F. DATA TYPES AND SOURCES**

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

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The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

1. Category of contact (from Department's defined list)
2. Disposition of contact (arrest, citation, etc.)
3. Associated case number

**G. DATA SECURITY**

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for transferring the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

1. Establishing a system for uploading, storing and security of recordings.
2. Designating persons responsible for uploading recorded data.
3. Establishing a maintenance system to ensure availability of BWCs.
4. Establishing a system for tagging and categorizing data according to the type of incident captured.
5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS

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thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

**H. FISCAL COST**

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed \$1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately \$250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

**J. ALTERNATIVES**

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS

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**K. EXPERIENCE OF OTHER ENTITIES**

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, [https://www.bja.gov/bwc/pdfs/14-005\\_Report\\_BODY\\_WORN\\_CAMERAS.pdf](https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf) - pages 6-8, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, <https://www.bwccscorecard.org/>, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.

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## Body Worn Cameras

### 425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

### 425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

### 425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

### 425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.

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- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

#### **425.5 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

#### **425.6 SUPERVISOR RESPONSIBILITIES**

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy



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(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

**425.7 ACTIVATION OF THE BODY WORN CAMERA**

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

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Body Worn Cameras**425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS**

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
- (b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
  - 1. **Domestic Violence Victims:** Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
  - 2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
- (c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

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**425.9 ACTIVATION IN CROWD CONTROL SITUATIONS**

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

**425.10 SURREPTITIOUS USE OF THE BWC**

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

**425.11 CESSATION OF RECORDING**

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

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Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

#### **425.12 EXPLOSIVE DEVICE**

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

#### **425.13 PROHIBITED USE OF BODY WORN CAMERAS**

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

#### **425.14 PROCESSING AND HANDLING OF RECORDINGS**

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

**425.15 RETENTION REQUIREMENTS**

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

**425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION**

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

**425.17 REVIEW OF RECORDINGS BY A MEMBER**

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

**425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH**

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

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the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

#### 425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

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#### 425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

#### 425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

#### 425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

#### 425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

#### 425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

#### 425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."



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**425.18.3 MEDIA**

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

**425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY**

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

**425.20 TRAINING REQUIRED**

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.

ATTACHMENT 3:  
Global Positioning System Tracking Devices

Surveillance Technology Report GPS Tracker  
To be provided as part of supplemental communications

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## Surveillance Use Policy - GPS Tracking Devices

### 1301.1 PURPOSE

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals. GPS trackers electronically relay their precise location in real time, and thereby assist BPD in the recovery of evidence and arrest of suspects.

### 1301.2 AUTHORIZED USE

GPS trackers shall only be used during active criminal investigations. GPS trackers shall only be used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

GPS trackers shall only be utilized for law enforcement purposes.

### 1301.3 DATA COLLECTION

Location data may be obtained through the use of a GPS Tracker.

### 1301.4 DATA ACCESS

Access to GPS tracker data shall be limited to Berkeley Police Department (BPD) personnel utilizing the GPS Tracker(s) for active criminal investigations. Information may be shared in accordance with 1301.9 below.

In support of active criminal investigations, BPD personnel may receive GPS tracker data from probation or parole agencies which utilize GPS trackers (e.g. ankle monitors) as a condition of probation or parole.

### 1301.5 DATA PROTECTION

The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.

### 1301.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1301.4 Data Access, 1301.5 Data Protection, 1301.7 Data Retention, 1301.8 Public Access and 1301.9 Third Party Data Sharing serve to protect against any unauthorized use of GPS tracker data. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### 1301.7 DATA RETENTION

A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker

identification label. This data is stored indefinitely by the vendor. The data does not contain any images, names of subjects, vehicle information, etc.

Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.

**1301.8 PUBLIC ACCESS**

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

**1301.9 THIRD-PARTY DATA-SHARING**

Data collected from the GPS trackers may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Other third parties, pursuant to a Court Order.

**1301.10 TRAINING**

Training for the operation of the GPS trackers shall be provided by BPD personnel. All BPD personnel shall be provided with this Surveillance Use Policy.

**1301.11 AUDITING AND OVERSIGHT**

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

**1301.12 MAINTENANCE**

GPS trackers shall only be obtained with the permission of the Investigations Division Captain or his/her designee. The Investigations Division Captain or his/her designee will ensure the trackers are returned when the mission/investigation is completed.

## GPS TRACKING DEVICES

### A. DESCRIPTION

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals.

The Berkeley Police Department currently uses two types of GPS Tracking Devices to track the movements of vehicles, bicycles, or other kinds of property. The manufacturer, 3SI Security Systems, describes them as follows:

1. The "Slap-n-Track" (SNT) tracker tracks vehicles, cargo, and other large assets for long deployments. Offers extended battery life, rugged and weatherproof housing, and optional magnets.
2. The "Electronic Stake Out" (ESO) tracker offers Law Enforcement miniaturized and covertly packaged GPS Tracking Solutions to target property crimes, especially pattern crimes, in their local jurisdictions.

### B. PURPOSE

Global Positioning System (GPS) tracking devices provide precise, real-time location information during the conduct of active criminal investigations. GPS trackers are only used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

### C. LOCATION

GPS tracking devices shall be deployed in locations consistent with the authority granted by consent or a lawfully issued search warrant or court order.

### D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. GPS Trackers are used in place of expensive, resource-intensive surveillance operations which typically involve multiple officers, often over long periods of time. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with GPS trackers help to ensure no unauthorized use of of GPS tracker data occurs. BPD Policy 1301 Surveillance Use Policy – GPS Tracking Devices ensure the use of GPS trackers and the resulting data are not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

## 1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

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**E. MITIGATION**

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access, thereby safeguarding the public from any impacts identified in subsection (D).

**F. DATA TYPES AND SOURCES**

A GPS tracker data record consists of date, time, latitude, longitude, map address (derived by using latitude, longitude and Google maps), and tracker identification label. The data does not contain any images, names of subjects, vehicle information, etc.

**G. DATA SECURITY**

Data from a GPS tracker is encrypted by the vendor on secure servers. The data is only accessible through a secure website to BPD personnel who have been granted security access. Captains whose Divisions utilize GPS trackers are responsible for ensuring compliance with the procedures for utilizing GPS Trackers.

**H. FISCAL COST**

The initial cost of the GPS trackers totaled \$4,335.

- Between 2015-present BPD purchased 5 GPS "ESO" trackers for \$2,250 (\$450 each).
- In 2017 BPD purchased 3 GPS "SNT" trackers for \$2,085 (\$695 each).

The annual cost for the GPS data service totals \$1,920.

- The annual data service for the five ESO trackers is \$1,020 (\$204 each).
- The annual data service for the three SNT trackers is \$900 (\$300 each).

Personnel costs are minimal in that the GPS trackers are used as a resource during normal working hours.

GPS trackers are funded through the Investigations Division's general budget.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

Data collected from the GPS trackers may be shared with the following:

- a. The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- b. Other law enforcement offices as part of a criminal investigation;
- c. Other third parties, pursuant to a Court Order.

**1301 APPENDIX A**

**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES**

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**J. ALTERNATIVES**

An alternative to the use of GPS trackers is to conduct resource-intensive surveillance operations utilizing numerous personnel over extended periods of time.

**K. EXPERIENCE OF OTHER ENTITIES**

The use of GPS tracker technology is common amongst law enforcement agencies throughout the country.



ATTACHMENT 4:  
Automated License Plate Readers

Surveillance Technology Report Automated License Plate Reader  
To be provided as part of supplemental communications

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## Surveillance Use Policy - ALPR

### 1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

### 1302.2 AUTHORIZED AND PROHIBITED USES USE

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

### 1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

### 1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

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### 1302.5 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

### 1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

### 1302.7 DATA RETENTION

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

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- (a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

### **1302.8 PUBLIC ACCESS**

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

### **1302.9 THIRD-PARTY DATA-SHARING**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

### **1302.10 TRAINING**

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

### **1302.11 AUDITING AND OVERSIGHT**

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

### **1302.12 MAINTENANCE**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

#### **1302.12.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref.

policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

## AUTOMATED LICENSE PLATE READER (ALPR) DEVICES

### A. DESCRIPTION

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement Vehicles.

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

### B. PURPOSE

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

### C. LOCATION

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

### D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

## 1302 APPENDIX A

**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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**E. MITIGATION**

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

**F. DATA TYPES AND SOURCES**

Photographs of license plates and location data may be obtained through the use of ALPR Units.

**G. DATA SECURITY**

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

**H. FISCAL COST**

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.



## 1302 APPENDIX A

**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

**I. THIRD PARTY DEPENDENCE AND ACCESS**

1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
  - a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
  - b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.
  - a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.
  - b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.
3. Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who

**1302 APPENDIX A****BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

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do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

4. Other Law Enforcement Agency Access: ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
5. Member Access: No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.
6. Public Access: Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

**J. ALTERNATIVES**

None.

**K. EXPERIENCE OF OTHER ENTITIES**

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

## Automated License Plate Readers (ALPRs)

### 422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### 422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

### 422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### 422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

### 422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

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or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert

#### **422.5 .DATA COLLECTION AND RETENTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not

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showing violations will not be transferred to the server.

#### **422.6 ACCOUNTABILITY**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

#### **422.7 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
  - 1. The name of the agency.
  - 2. The name of the person requesting.
  - 3. The intended purpose of obtaining the information.

4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

#### **422.8 SCOFFLAW ENFORCEMENT**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

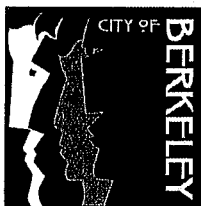
The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking

enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

**ATTACHMENT 5:**  
**Police Review Commission Communication**





Police Review Commission (PRC)

September 11, 2019

To: Honorable Mayor and Members of the City Council  
From: George Perezvelez, Chairperson, Police Review Commission  
Re: Proposed Berkeley Police Department Policy 422, Automated License Plate Readers

Summary: This memo is to inform you of the Police Review Commission's qualified approval of the BPD's proposed policy for the use of Automated License Plate Readers (ALPRs).

Background: The BPD submitted the ALPR policy, Policy 422, to the PRC for review, along with the Surveillance Use Policy and the Surveillance Acquisition Report (Policy 1302 and Appendix A) for these devices. This process was undertaken in advance of BPD submitting these items to the City Council as required by the Surveillance Technology Use and Community Safety Ordinance (B.M.C. Ch. 2.99).

These policies were first considered by the full Commission, which then referred them to its Lexipol Policies Subcommittee. In response to feedback from the PRC and the Subcommittee, the BPD revised the proposed policy, which was reviewed by both bodies. At various stages, the PRC and the subcommittee had the opportunity to hear from and ask questions of Police Chief Greenwood and other members of the BPD, and Deputy City Attorney Chris Jensen. The PRC also heard input from representatives of Media Alliance and Oakland Privacy.

Final action: At its September 4, 2019 meeting, the PRC voted to approve for submission to the City Council for your review and discussion the version of Policy 422 that is attached here, with two caveats. First, there was concern among some commissioners that the ALPR was originally acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the Council had in mind, then this policy should be modified accordingly. Second, Section 422.4(c) of the policy does not adequately define what constitutes a "crime scene."

Finally, the Commission wishes to remind the Council that they will see actual use of the ALPR technology under the reporting mechanism in place in the Surveillance Technology Use and Community Safety Ordinance.

Honorable Mayor and Members of the City Council  
Proposed Berkeley Police Department Policy 422, Automated License Plate Readers  
September 11, 2019  
p. 2

The above action was approved by the following vote: Moved/Seconded  
(Perezvelez/Mikiten) -- Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez,  
Ramsey; Noes: Earnest, Mizell; Abstain: Allamby; Absent: None.

Attachment: Revised Policy 422

cc: Dee Williams-Ridley, City Manager  
Andrew Greenwood, Chief of Police  
David White, Deputy City Manager  
PRC Commissioners

## Automated License Plate Readers (ALPRs)

### 422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### 422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

### 422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### 422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

### 422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

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or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

#### **422.5 DATA COLLECTION AND RETENTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ~~ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.~~

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.

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- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not showing violations will not be transferred to the server.

#### **422.6 ACCOUNTABILITY**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

#### **422.7 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
  1. The name of the agency.

2. The name of the person requesting.
  3. The intended purpose of obtaining the information.
  4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

#### **422.8 SCOFFLAW ENFORCEMENT**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:

- (a) All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated

with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.







Office of the City Manager

ACTION CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager  
Farimah Faiz Brown, City Attorney

Submitted by: Bren Darrow, Assistant City Attorney

Subject: An Ordinance Repealing Chapter 12.76 of the Berkeley Municipal Code and Repealing Ordinance 7643-NS.

RECOMMENDATION

Adopt first reading of an ordinance repealing Chapter 12.76 of the Berkeley Municipal Code and repealing Ordinance 7643-NS.

FISCAL IMPACTS OF RECOMMENDATION

There are no identifiable fiscal impacts associated with this recommendation.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has two ordinances that prohibit the use of motor vehicles for shelter. Neither has been enforced in recent years. First, the House Cars Ordinance (BMC Chapter 12.76), enacted in 1970, prohibits anyone from residing in a vehicle within the City limits. This ordinance has not been enforced in Berkeley since 2014, when a similar ordinance was invalidated in the City of Los Angeles.

Second, the City's oversize vehicle overnight parking ban (BMC 14.40.120) was amended in 2019 to prohibit overnight parking of RVs or campers. Prior to 2019, the OSV ban applied only to heavy duty commercial vehicles, such as semi-tractor trailers and other vehicles with more than two axles. This amendment has never been enforced, because upon its adoption (Ordinance 7643-NS, March 26, 2019) Council directed the City Manager not to enforce it until a citywide overnight RV parking permit process has been established.

On November 4, 2021, a lawsuit (*Dominguez et al. v. City of Berkeley*, United States District Court Case No. 3:21-cv-08599-SI) was filed by a group of people using vehicles as shelter in the Harrison Corridor. Among other claims, the plaintiffs sought to invalidate the vehicle shelter ordinances discussed above.

If this proposed ordinance is enacted, Chapter 12.76 (House Cars) would be completely repealed and stricken from the Berkeley Municipal Code. Ordinance 7643-NS would be

repealed and BMC section 14.40.120 would read as it did prior to March 26, 2019, as shown in strikethrough below:

14.40.120

A. It is unlawful for any person to park any ~~oversize or~~ heavy duty commercial vehicle on any street between the hours of two a.m. and five a.m. for a greater length of time than one hour.

B. For the purpose of this section, ~~oversize or~~ heavy duty commercial vehicle shall mean a single vehicle or combination of vehicles having more than two axles, a single vehicle or combination of vehicles 20 feet or more in length, or a single vehicle or combination of vehicles six feet six inches or more in width, and shall include, but shall not be limited to dump trucks, moving vans, tractors, pole or pipe dollies, ~~recreational vehicles (RVs), campers.~~

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report. Further, it has been determined that there are no opportunities to reduce greenhouse gas emissions or advance a just transition away from fossil fuels for this project.

RATIONALE FOR RECOMMENDATION

The vehicle shelter ordinances that would be repealed by this proposed ordinance have not been implemented since 2014 and 2019, respectively. The United States Constitution grants certain rights to people experiencing homelessness. See, e.g., *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019). The repeal of the vehicle shelter ordinances would not enlarge those rights or otherwise authorize the use of vehicles as shelter in a manner that violates other laws. The repeal of the vehicle shelter ordinances would not immunize people who reside in vehicles from the enforcement of generally applicable laws, including parking and traffic laws.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Paul Buddenhagen, Deputy City Manager, (510) 981-7000

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

REPEALING CHAPTER 12.76 OF THE BERKELEY MUNICIPAL CODE, REPEALING ORDINANCE 7643-NS, AND AMENDING SECTION 14.40.120

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

Section 1. That Berkeley Municipal Code Chapter 12.76 is hereby repealed.

Section 2. That Ordinance 7,643-NS is hereby repealed, and Berkeley Municipal Code Section 14.40.120 is amended to read as follows:

**14.40.120**

A. It is unlawful for any person to park any ~~oversize or~~ heavy duty commercial vehicle on any street between the hours of two a.m. and five a.m. for a greater length of time than one hour.

B. For the purpose of this section, ~~oversize or~~ heavy duty commercial vehicle shall mean a single vehicle or combination of vehicles having more than two axles, a single vehicle or combination of vehicles 20 feet or more in length, or a single vehicle or combination of vehicles six feet six inches or more in width, and shall include, but shall not be limited to dump trucks, moving vans, tractors, pole or pipe dollies, ~~recreational vehicles (RVs), campers.~~

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.





ACTION CALENDAR  
09/13/2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin  
Subject: Equitable Safe Streets and Climate Justice Resolution

#### RECOMMENDATION

Adopt a resolution committing the expenditure of City and state/federal matching/recurring funds on city-maintained roads, sidewalks, and bike lanes to accelerate safety improvements in a manner consistent with City, State, and Federal policy on street safety, equity, accessibility, and climate change; refer to the City Manager fully integrate Complete Streets design as defined by the NACTO Urban Street Design Guide in the default engineering standard for city streets; restrict city use of the Manual on Uniform Traffic Control Devices (MUTCD) to only documented cases that require its use for compliance with Federal/State regulations; in all other cases, restrict use of the MUTCD to “engineering judgment.”

#### POLICY COMMITTEE RECOMMENDATION

On June 1, 2022, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Robinson/Taplin) to send the item to Council with a positive recommendation. Vote: Ayes – Taplin, Robinson; Noes – None; Abstain – None; Absent – Harrison.

#### FINANCIAL IMPLICATIONS

According to the Federal Highway Administration:

“It is generally significantly less expensive to install safety improvements as part of a resurfacing project than to build it as a standalone project ... The cost for adding bike lanes during a resurfacing project costs approximately 40 percent of the cost of adding the lanes as a standalone project.”<sup>1</sup>

<sup>1</sup> [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/publications/resurfacing/page04.cfm#cost\\_a2](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/page04.cfm#cost_a2)

This resolution calls for the full integration of safety features at the time of re-paving of all streets in the city, in a manner consistent with City, State,<sup>2</sup> and Federal<sup>3</sup> policy, which will result in substantial material and staff time savings, while also saving the lives of Berkeley residents.

### CURRENT SITUATION AND ITS EFFECTS

Under current practices in Berkeley, safe streets interventions like bikeways, separated lanes, raised pedestrian crossings, and corner bulb-outs are often implemented only after a pedestrian or cyclist has been injured or killed by a driver. Many examples exist of streets that had been recently re-paved without safety features that were then re-designed after residents expressed their anger over pedestrians and cyclists being severely injured or killed by a driver.

According to the Federal Highway Administration, implementing safe streets features at the time of re-paving, rather than as stand-alone, post-facto projects, can significantly cut the costs of these safety interventions.<sup>4</sup> This resolution calls for the full integration of safety features at the time of re-paving of all streets in the city, which will result in substantial material and staff time savings, while also saving the lives of Berkeley residents.

The Equitable Safe Streets and Climate Justice Resolution is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

### BACKGROUND

Personal cars and trucks are the leading source of climate pollution in the City of Berkeley, causing 59% of all greenhouse gasses within city limits – more than all residential and commercial energy use, combined.<sup>5</sup> They are also among the leading causes of violent injury and death in the city, with a growing number of deadly and injurious conflicts between people driving cars and vulnerable road users including pedestrians, the elderly, residents who use mobility devices, and bicyclists. Lower income Berkeley residents and people of color are disproportionately impacted by the risk of traffic injuries and fatalities.<sup>6</sup>

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<sup>2</sup> “Caltrans to Require ‘Complete Streets’ Features in Planning and Design of All New Projects” <https://dot.ca.gov/news-releases/news-release-2021-039>

<sup>3</sup> Under the Infrastructure Investment and Jobs Act of 2021, “MPOs must use 2.5 percent of their overall funding to develop and adopt complete streets policies, active transportation plans, transit access plans, transit-oriented development plans, or regional intercity rail plans.” <https://nacto.org/program/state-and-federal-policy/>

<sup>4</sup> [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/publications/resurfacing/page04.cfm#cost\\_a2](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/page04.cfm#cost_a2)

<sup>5</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-21\\_Presentations\\_Item\\_5\\_\(6pm\)\\_Pres\\_CMO\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Presentations_Item_5_(6pm)_Pres_CMO_pdf.aspx)

<sup>6</sup> Berkeley Vision Zero Action Plan, March 10, 2019, page 13.

Berkeley also has among the highest percentages of people who take transit, walk, and ride bicycles of any city of its size in the United States.<sup>7</sup> In spite of this fact, most of our streets are designed in such a way that makes them unsafe for pedestrians, transit users, or for use by people who use mobility devices or bicycles.

This disparity can be resolved through better engineering and design of our city streets, which will save lives and often result in substantial savings for the city. In addition, new state legislation (AB-43, 2021) recognizes that high vehicle speeds are a primary factor in deadly and dangerous street conditions, and empowers California cities to lower speed limits on certain city streets to reduce traffic collisions and protect vulnerable road users.<sup>8</sup>

### Recent History: Safety Measures Follow Tragedy, Increase Costs

According to the Federal Highway Administration:

“It is generally significantly less expensive to install safety improvements as part of a resurfacing project than to build it as a standalone project ... The cost for adding bike lanes during a resurfacing project costs approximately 40 percent of the cost of adding the lanes as a standalone project.”<sup>9</sup>

Over the past several years, safety conditions for Berkeley residents and visitors who do not drive have deteriorated, as evidenced by the growing number of crashes in Berkeley that have resulted in pedestrian and cyclist injury or death.<sup>10</sup> In spite of the deaths and injuries on our streets, these crashes often do not result in safety improvements.

However, when local residents express sufficient outrage to City Hall over deadly conditions, the City sometimes rapidly responds with permanent or semi-permanent safety features – but had these features preceded, rather than followed, the crashes, they would have resulted in both lower costs to the city, and fewer traumatic injuries and deaths.

Examples of recent Berkeley street re-paving projects that led to increased costs due to a lack of safety features include:

- **Fulton (Oxford):** In 2015, Berkeley Public Works repaved Fulton/Oxford Street between Bancroft Way and Dwight, but did not add a safe bikeway as called for in Berkeley’s 2000 Bicycle Plan. Shortly afterward, Megan Schwarzman was hit

<sup>7</sup> <https://www.vitalsigns.mtc.ca.gov/commute-mode-choice>

<sup>8</sup> Assembly Bill 43, Traffic Safety, 2021  
[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB43](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB43)

<sup>9</sup> [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/publications/resurfacing/page04.cfm#cost\\_a2](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/page04.cfm#cost_a2)

<sup>10</sup> <https://www.sfchronicle.com/local/article/Berkeley-bicycle-activist-struck-by-car-hours-16037329.php>

and severely injured by a driver while bicycling.<sup>11</sup> After being pressured by the community to act, the City Council directed staff to re-stripe the roadway with a safer bikeway, adding 3 months of unplanned work and staff time. Costs would have been lower if the bikeway had been planned and implemented in a manner more consistent with existing city policy, and concurrent with re-paving.

- **Hearst:** After adoption of the 2000 Berkeley Bicycle Plan, Berkeley Public Works repaved Hearst Avenue, but did not include a safe bikeway, as called for in the Bicycle Plan. After years of pressure from residents concerned about street safety, Berkeley finally rebuilt and repaved the street in 2016 with safer facilities, and at significant cost. Costs would have been lower if the bikeway had been planned and implemented in a manner consistent with existing city policy, and concurrent with re-paving.
- **Milvia Street:** Berkeley repaved Milvia Street downtown using Measure BB funds (2014), and then in 2019, repaved Milvia Street in south Berkeley. But neither repaving included safe streets interventions called for in the then-approved bike plans. Berkeley then added extensive safe bicycling facilities in 2021/2022. Costs would have been lower if the bikeway had been planned and implemented in a manner consistent with existing city policy, and concurrent with re-paving.
- **Dwight/California:** In 2021, Berkeley embarked on safety improvements at the corner of Dwight and California, a “bicycle boulevard” and a “safe route to school,” after local residents expressed outrage over two children who were struck by drivers on their way to school. California and Dwight Streets were re-surfaced in 2015, but did not include enhancements to improve pedestrian and cyclist crossing conditions at this intersection.
- **Concrete diagonal diverters:** Berkeley installed many concrete diagonal diverters back in the 1970’s, and had to come back later with separate concrete work to make bicycle cut-throughs in these diverters for bikes to access neighborhood streets. Costs would have been lower if the cut-throughs had been included in the original design.

### Street Safety First: Berkeley City Policy

In recent years, the traffic engineering profession has developed extensive tools and engineering guidelines for cities that seek to safely meet the mobility needs of all residents, including those who drive cars, walk, use mobility devices, ride bicycles, and/or use transit.

Many of these new tools, such as the Urban Streets Design Guide by the National Association of City Transportation Officials (NACTO), provide turnkey solutions for cities seeking to design and engineer roads to improve street safety for all road users. The Design Guide was developed in part to help cities seeking to enhance safety, and in part out of growing concern over the proven inadequacy of the Federal Highway

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<sup>11</sup> Raguso, E. (2016). Bike lane opens by near-fatal crash site. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2016/05/12/bike-lane-opens-in-berkeley-by-near-fatal-crash-site-no-charges-filed-yet-against-driver-who-police-say-was-high>



Administration's Manual on Uniform Traffic Control Devices (MUTCD), which has led to dangerous and deadly conditions for vulnerable road users.<sup>121314</sup>

In fact, in several cases, the proscriptions of the MUTCD have delayed or precluded street safety improvements in Berkeley.<sup>15</sup> Part of the reason may be that, under current case law, engineers may sometimes be held personally liable for deaths or injuries that can be proven to be the result of street engineering and design.

Over the past year, both the Federal Highway Administration<sup>1617</sup> and Caltrans<sup>18</sup> have issued guidance that allows city traffic engineers to use NACTO's Urban Streets Design Guide in place of the MUTCD for projects that use Federal or State transportation funds. In addition, FHWA has issued guidance that, in states where vulnerable road users make up 15% or more of the total number of fatalities in a state in a given year, the state is required to dedicate at least 15% of its Highway Safety Improvement Program funds the following fiscal year to projects that address the safety of these road users. Additionally, the new guidance incorporates legislative changes to permit 100% Federal funding for certain pedestrian and bicyclist projects.<sup>19</sup>

### **Adopt New Complete Streets Engineering Guidelines**

This resolution directs all City departments with a role in the design, engineering, maintenance, and administration of Berkeley surface streets to formally adopt the NACTO Urban Streets Design Guide as the primary design and engineering manual for Berkeley city streets.

The resolution further directs all City departments to restrict use of the MUTCD, which has been proven to lead to unsafe street designs,<sup>20</sup> to only those projects where the Public Works Director certifies, in writing, that the MUTCD is better suited to achieving the City's goal of reducing vehicle speeds, enhancing safety features for pedestrians,

<sup>12</sup> Schmitt, A. (2021). Let's Throw Away These Rules of the Road. *Bloomberg*. Retrieved from <https://www.bloomberg.com/news/articles/2021-05-05/it-s-time-to-rewrite-the-road-builders-rule-book>

<sup>13</sup> National Association of City Transportation Officials. (2021). 25,000 Comments Calling for Safety and Equity Reforms to Once-Obscure Federal Street Manual. *NACTO*. Retrieved from <https://nacto.org/2021/05/20/25000-comments-call-for-reforming-mutcd/>

<sup>14</sup> Shill, G. & Bronin, S. (2021). Rewriting Our Nation's Deadly Traffic Manual. *Harvard Law Review*. Retrieved from <https://harvardlawreview.org/2021/10/rewriting-our-nations-deadly-traffic-manual/>

<sup>15</sup> Harrington, T. (2021). Berkeley's plans to make Dwight and California safer get mixed reviews. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/05/16/berkeleys-plans-to-make-dwight-and-california-safer-get-mixed-reviews>

<sup>16</sup> "National Roadway Safety Strategy," US Department of Transportation, Jan 2022 <https://www.transportation.gov/NRSS>

<sup>17</sup> "Bicycle and Pedestrian Facility Design Flexibility," US Department of Transportation - FHWA, Aug 2013 [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/guidance/design\\_flexibility.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_flexibility.cfm)

<sup>18</sup> "Caltrans to Require 'Complete Streets' Features in Planning and Design of All New Projects," Dec 20, 2021 <https://dot.ca.gov/news-releases/news-release-2021-039>

<sup>19</sup> [https://safety.fhwa.dot.gov/hsip/rulemaking/docs/BIL\\_HSIP\\_Eligibility\\_Guidance.pdf](https://safety.fhwa.dot.gov/hsip/rulemaking/docs/BIL_HSIP_Eligibility_Guidance.pdf)

<sup>20</sup> See footnote 12.

cyclists, and people who use mobility devices, and ending traffic conflicts between cars and other road users.

In all cases where the MUTCD must be used, all City departments shall first exercise “engineering judgment,” as defined in the MUTCD, to ensure safe street designs, including such judgment as may result in modification or overruling of MUTCD standards. In cases where “engineering judgment” can not be used to reduce vehicle speeds or otherwise enhance street safety conditions for all road users, all City departments shall issue formal findings, approved by the Public Works director, that document why a street can not be made safe for all road users, and vehicle speed and throughput must be prioritized.

The resolution directs city departments to ensure that all requests for funding related to any project, on any surface street, sidewalk, bicycle facility, or other transportation infrastructure within city borders, prioritize and implement designs that ensure the safety of vulnerable users who are not in private automobiles, as established in numerous past policy directives of the Berkeley City Council.<sup>21</sup>

This resolution further prohibits all City departments from spending any city financial resources on any street that does not include the “best in class” design for Complete Streets unless the safety benefits are outweighed by other considerations.

It further prohibits City departments from requiring traffic studies or other measurements related to impacts on “Level of Service” (vehicle speed/throughput) in consideration of street safety improvements, if such improvements will either a) improve safe travel conditions for vulnerable road users, or b) reduce Vehicle Miles Traveled, as established by State of California<sup>22</sup> and City of Berkeley climate and land use policies, or c) if such improvements are otherwise consistent with guidance in the Complete Streets provisions of NACTO and Caltrans.

It further directs all departments to maintain the priority of street safety interventions in situations where budget is a limiting factor in street repair/improvements, by prioritizing the use of “quick build”<sup>23</sup> approaches which improve street safety via rapidly-deployed, lower-cost, temporary measures.

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<sup>21</sup> e.g. Berkeley Bicycle Plan, 2017; Berkeley Pedestrian Plan, 2020; BIBIMBAP [[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/10\\_Oct/Documents/2019-10-29\\_Item\\_31\\_Referral\\_Develop\\_a\\_Bicycle\\_Lane\\_-\\_Rev\\_\(2\).aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-29_Item_31_Referral_Develop_a_Bicycle_Lane_-_Rev_(2).aspx)]; Berkeley Pedestrian Safety Report 1998; Downtown Area Plan, 2012; West Berkeley Plan, 1993; Adeline Corridor Specific Plan (in progress); University Avenue Plan, 1996.

<sup>22</sup> California Senate Bill 743, passed in 2013, mandates that jurisdictions can no longer use automobile delay – commonly measured by Level of Service (LOS) – in transportation analysis under the California Environmental Quality Act (CEQA). Full implementation was delayed until 2019. [<https://www.vta.org/projects/level-service-los-vehicle-miles-traveled-vmt-transition>]

<sup>23</sup>“Quick build” projects are reversible, adjustable traffic safety improvements that can be installed relatively quickly. Unlike major capital projects that may take years to plan, design, bid and construct, quick-build projects are constructed within weeks or months and are intended to be evaluated and

## Definitions:

- **Complete Streets:** On December 11, 2012, Berkeley City Council adopted a Complete Streets Policy (Resolution 65,978-N.S.) to guide future street design and repair activities. “Complete Streets,” describes a comprehensive, integrated transportation network with infrastructure and design that allows safe and convenient travel along and across streets for all users, including pedestrians, bicyclists, persons with disabilities, motorists, movers of commercial goods, users and operators of public transportation, emergency vehicles, seniors, children, youth, and families.<sup>24</sup>
- **NACTO Urban Street Design Guide:** An engineering manual for cities that adopt Complete Streets policies.
- **Level of Service (LOS):** A discontinued method of evaluating transportation infrastructure projects based on vehicle speed and throughput; SB 743, passed in 2013, prohibited LOS in CEQA analysis in the State of California, but the law is under-enforced and LOS is still commonly used.
- **Vehicle Miles Traveled (VMT):** A measure of the impact of car use on air quality and street safety based on the number of miles traveled by car. It is long-standing policy of the City of Berkeley and the State of California to reduce VMT to achieve climate and safe streets policies.
- **MUTCD:** The Manual on Uniform Traffic Control Devices. This controversial manual has been blamed for dangerous street designs throughout the United States. Federal and State transportation authorities are in the process of revising it, and have encouraged jurisdictions that seek to accelerate progress on safe streets to use other engineering and street design guidelines.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

While cars represent the majority of the climate pollution within the city at 59%, Berkeley also has a very high mode share<sup>25</sup> among residents and visitors who walk, ride transit, use mobility devices, and ride bicycles. These modes of travel are the lowest-carbon options available, and the City has many policies focused on incentivizing and increasing their use.

However, abundant research about mode choice shows that people hesitate to shift to more sustainable forms of mobility in areas with deadly and dangerous car traffic – which describes most of the City of Berkeley.<sup>26</sup>

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reviewed within the initial 24 months of construction. <https://www.sfmta.com/vision-zero-quick-build-projects>

<sup>24</sup> <https://www.cityofberkeley.info/completestreetspolicy/>

<sup>25</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf)

<sup>26</sup> Raguso, E. (2020). Berkeleyside interactive maps: Cyclist and pedestrian injury crashes in 2019. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2020/01/28/berkeleyside-interactive-maps-cyclist-and-pedestrian-injury-crashes-in-2019>

In addition to having a high mode share for non-car modes, Berkeley also has among the highest rates, per capita, of traffic violence involving people not in cars. The correlation is direct: Our unsafe streets are harming people, and preventing the city from achieving its goals on both climate action, and safe mobility.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

ATTACHMENTS

1. Resolution
2. City of Palo Alto resolution adopting the NACTO Urban Bikeway Design Guide
3. City of Oakland Public Works Director letter of endorsement of NACTO Urban Street Design Guide
4. Assembly Bill 43 (2021)

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

EQUITABLE SAFE STREETS AND CLIMATE JUSTICE RESOLUTION

WHEREAS, Berkeley's climate action plan calls for an 80% reduction in climate pollution by 2050, and private automobiles represent 59% of the City's climate pollution; and

WHEREAS, progress on Berkeley's climate action plan will depend in large part on reducing "vehicle miles traveled," or the amount people drive private cars within city limits; and

WHEREAS, Berkeley's bicycle plan proposed in 1971 called for a city-wide network of safe bicycle routes; and

WHEREAS, Berkeley adopted an action plan for Vision Zero in 2019; and

WHEREAS, Berkeley's existing policy on street engineering and safety calls for "Complete Streets" as defined by the National Association of City Transportation Officials (NACTO);

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that any and all funds that are to be used for the design of major roadway projects such as roadway reconstruction/repaving of more than one city block of city streets and related facilities shall only be disbursed for projects that fully integrate Complete Streets (as defined by NACTO) and all feasible safety interventions designed to reduce automobile speed and protect the lives of people outside of automobiles;

BE IT FURTHER RESOLVED that in all cases where Complete Streets can not be fully implemented, or in cases where the MUTCD must be used in place of the NACTO Urban Streets Design Guide, City Staff shall use "engineering judgment" to prioritize the safety of vulnerable road users, and not rely on MUTCD "warrants" and other proscriptions;

BE IT FURTHER RESOLVED that pursuant to AB-43 (2021), no city official shall apply the "85th percentile" rule in the process of setting speed limits on city streets, but rather, determine via safety studies and other documented engineering findings by the Public Works Director, when higher speeds are appropriate and are the safest option for all road users, provided however, that all criteria for setting local speed limits set forth in the California Vehicle Code, including Sections 22358.6 to 22358.9, are complied with in setting speed limits, even if inconsistent with this clause.



## City of Palo Alto City Council Staff Report

(ID # 6222)

**Report Type: Consent Calendar****Meeting Date: 10/26/2015****Summary Title: Adoption of NACTO Design Guidelines****Title: Adoption of a Resolution to Adopt the National Association of City Transportation Officials (NACTO) Design Guidelines****From: City Manager****Lead Department: Planning and Community Environment****Recommendation**

Adopt the proposed Resolution (Attachment A) to adopt the National Association of City Transportation Officials (NACTO) Urban Street Design Guide and Urban Bikeway Design Guide as supplements to the City of Palo Alto Bicycle and Pedestrian Plan.

**Executive Summary**

Adopting the National Association of City Transportation Officials (NACTO) street design guides will provide additional support in the City's efforts to introduce complete street ideas into the design and operation of streets by providing design guidance on transportation infrastructure. City staff will continue to work proactively with the community to provide convenient, safe, and context-sensitive facilities that promote increased use by people who walk and bicycle. When NACTO guidance or other design guidance is used, the City will continue to utilize sound planning and engineering judgment when determining the best solution for a local need.

**Background**

Streets often fail to provide their surrounding communities with a space where people can safely walk, bicycle, drive, take transit, and socialize. Complete Streets integrates people and place in the planning, design, construction, operation, and maintenance of our transportation networks. Cities are leading the movement to redesign and reinvest in our streets as cherished public spaces for people, as well as critical arteries for traffic.

The National Association of City Transportation Officials (NACTO) facilitates the exchange of transportation ideas, insights and best practices among cities, while fostering a cooperative approach to key issues facing cities and metropolitan areas. The NACTO Urban Street Design Guide and Urban Bikeway Design Guide offer a vision for improving the safety and livability of our streets for people who walk, bicycle, drive, and ride transit. The guidance and flexibility

articulated in these guides serve as an additional tool for planning modern city streets to safely accommodate current and future residents, workers and visitors within limited space.

In September 2014, Governor Jerry Brown signed Assembly Bill 1193, the Protected Bikeways Act. AB 1193 eliminates a requirement previously imposed on local agencies to follow Caltrans bikeway design rules on local streets and roads. AB 1193 grants cities flexibility to use alternative design standards, such as those published by the National Association of City Transportation Officials (NACTO), on locally-owned streets and roads. Prior to utilizing alternative designs, the law requires all of the following conditions be met:

- (1) The alternative criteria have been reviewed and approved by a qualified engineer with consideration for the unique characteristics and features of the proposed bikeway and surrounding environs.
- (2) The alternative criteria, or the description of the project with reference to the alternative criteria, are adopted by resolution at a public meeting, after having provided proper notice of the public meeting and opportunity for public comment.
- (3) The alternative criteria adhere to guidelines established by a national association of public agency transportation officials.

## Discussion

The City of Palo Alto Comprehensive Plan, Climate Action Plan, and Bicycle and Pedestrian Transportation Plan establish clear support and priority for investing in non-motorized transportation, improving access to transit, and reducing dependence on single-occupant vehicles to improve the overall efficiency of the transportation system.

The passage of the Protected Bikeways Act in September 2014 requires that if a local agency wishes to use an alternative design standard, that this design standard be adopted by resolution at a public meeting.

Adopting the NACTO street design guides will provide additional support in the City's efforts to introduce complete street ideas into the design and operation of streets by providing design guidance on transportation infrastructure. City staff will continue to work proactively with the community to provide convenient, safe, and context-sensitive facilities that promote increased use by people who walk and bicycle. When NACTO guidance or other design guidance is used, the City will continue to utilize sound planning and engineering judgment when determining the best solution for a local need.

Attachment A provides a proposed Resolution to adopt the NACTO Design Guidelines.

The NACTO Guides may be reviewed or ordered online as outlined in Attachment B. A hardcopy is available *for review only* at the City of Palo Alto Transportation Division, 250 Hamilton Avenue, 5<sup>th</sup> floor.

### NACTO Urban Bikeway Design Guide

The NACTO Urban Bikeway Design Guide is based on the experience of the best cycling cities in the world. To create the guide, the authors conducted a worldwide literature search of design guidelines and real-life experience and worked closely with a panel of planning professionals from NACTO member cities, as well as traffic engineers, planners, and academics.

Most of these treatments are not directly referenced in the current version of the AASHTO Guide to Bikeway Facilities, although they are virtually all (with two exceptions) permitted under the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is published by the Federal Highway Administration (FHWA) to define the standards used by road managers nationwide to install and maintain traffic control devices on all public streets, highways, bikeways, and private roads open to public travel. The MUTCD, which has been administered by the FHWA since 1971, is a compilation of national standards for all traffic control devices, including road markings, highway signs, and traffic signals. It is updated periodically to accommodate the nation's changing transportation needs and address new safety technologies, traffic control tools and traffic management techniques.

In August 2013, the Federal Highway Administration issued a memorandum officially supporting use of the NACTO Urban Bikeway Design Guide. All of the NACTO Urban Bikeway Design Guide treatments are in use internationally and in many cities around the United States.

For each treatment in the Urban Bikeway Design Guide, NACTO provides three levels of guidance:

- Required: elements for which there is a strong consensus that the treatment cannot be implemented without.
- Recommended: elements for which there is a strong consensus of added value.
- Optional: elements that vary across cities and may add value depending on the situation.

NACTO emphasizes that treatments must be tailored to the individual situation with thorough documentation of decisions. To assist with this, the NACTO Urban Bikeway Design Guide links to companion reference material and studies.

### Palo Alto Pedestrian and Bicycle Advisory Committee Review

Staff brought a draft proposed Resolution to the Palo Alto Pedestrian and Bicycle Advisory Committee (PABAC) for input on August 4, 2015. PABAC members suggested minor edits to the Resolution which have been incorporated by staff. On September 1, 2015, PABAC reviewed the revised Resolution and passed a unanimous motion recommending adoption of the NACTO guidelines by the City Council.



Planning and Transportation Commission Review

On September 9, 2015, the Planning and Transportation Commission unanimously recommended the City Council adopt the Resolution adopting the NACTO guidelines.

**Resource Impact**

Adopting the NACTO Design Guidelines will give the City flexibility in designing bicycle and pedestrian facilities. There is no definable impact on the cost of future capital projects.

**Policy Implications**

Adoption of the NACTO Design Guides as supplementary guidelines is consistent with the Comprehensive Plan, Bicycle + Pedestrian Transportation Plan, and Climate Action Plan.

**Environmental Review**

Adoption of this resolution does not meet the definition of a project, therefore no environmental review is required.

**Attachments:**

- Attachment A: Resolution to Adopt NACTO Urban Street and Bikeway Design Guidelines (PDF)
- Attachment B: Design Guides (PDF)

NOT YET APPROVED

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Adopting the National Association of City Transportation Officials Urban Street Design and Bikeway Design Guidelines

**RECITALS**

- A. The City of Palo Alto Comprehensive Plan, Climate Action Plan, and Bicycle and Pedestrian Plan establish clear support and priority for investing in non-motorized transportation, improving access to transit, and reducing dependence on single-occupant vehicles to improve the overall efficiency of the transportation system.
- B. The National Association of City Transportation Officials (NACTO) Urban Street Design Guide available at <http://nacto.org/publication/urban-street-design-guide> and Urban Bikeway Design Guide available at <http://nacto.org/publication/urban-bikeway-design-guide/> offers supplementary guidance on complete streets to cities nationally.
- C. The NACTO Urban Street Design Guide and Urban Bikeway Design Guide offer a vision for improving the safety and livability of our streets for people who walk, bicycle, drive, and ride transit. The guidance and flexibility articulated in these guides serve as an additional tool for planning modern city streets to safely accommodate current and future residents, workers and visitors within limited space.
- D. The State Department of Transportation (Caltrans) has endorsed NACTO guides to “put additional tools in the tool box for both Caltrans staff and local agencies to reference when making project decisions on facilities for which they are responsible.”
- E. The NACTO Urban Street Design Guide and Urban Bikeway Design Guide are intended as supplemental guidelines and do not create mandatory requirements.
- F. The City of Palo Alto will work proactively with the community to provide convenient, safe, and context-sensitive facilities that promote increased use by people who walk and bicycle.
- G. When NACTO guidance or other design guidance is utilized, the City of Palo Alto will continue to utilize sound planning and engineering judgment when determining the best solution for a local need.
- H. The Palo Alto Pedestrian and Bicycle Advisory Committee and Planning and Transportation Commission have transmitted their recommendations.

NOT YET APPROVED

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The Council hereby adopts the NACTO Urban Street Design Guide and Urban Bikeway Design Guide referenced in Paragraph B above, and as amended from time to time, as supplements to the City of Palo Alto Bicycle Plan.

SECTION 2. The Council finds that the adoption of this resolution does not meet the definition of a project under Public Resources Code Section 21065, thus, no environmental assessment under the California Environmental Quality Act is required.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Assistant City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning and Community  
Environment

\_\_\_\_\_  
Director of Administrative Services

## NACTO Urban Street Design Guide

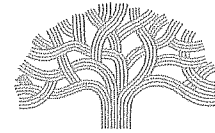
Please visit:

<http://nacto.org/publication/urban-street-design-guide/>

## NACTO Urban Bikeway Design Guide

Please visit:

<http://nacto.org/publication/urban-bikeway-design-guide/>



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA OAKLAND, CALIFORNIA 94612-2033

Public Works Agency  
Brooke A. Levin  
Interim Agency Director

(510) 238-3961  
FAX (510) 238-6428  
TDD (510) 238-7644

December 16, 2013

Janette Sadik-Khan  
National Association of City Transportation Officials (NACTO)  
55 Water Street, Floor 9  
New York, NY 10041

**RE: Letter of Endorsement for the NACTO Urban Street Design Guide**

Dear Ms. Sadik-Khan:

On behalf of the City of Oakland, I am writing to express support for the National Association of City Transportation Officials (NACTO) *Urban Street Design Guide*, and endorse the Guide's use in the design of Oakland streets.

The Guide represents a vision for world-class city street design that matches Oakland's leadership goals and community desires. Urban transportation is in the midst of unprecedented change as the demands placed upon our streets and the needs of our citizens require an increasingly multimodal transportation network. Pressures, from public health to climate change to mobile technology, are redefining urban streets and opening opportunities for innovation.

The *Urban Street Design Guide* offers concrete guidance to meet these challenges and improve the safety and livability of our streets for pedestrians, bicyclists, drivers, and transit users. City streets demand a unique approach that are often not adequately addressed by conventional design guidelines. In Oakland, we value NACTO's role in developing targeted national guidance that allows local agencies to design and implement more successful projects. The *Urban Street Design Guide* provides a new and important direction for cities, and will be an indispensable tool in planning and designing Oakland's streets.

As such, the City of Oakland officially adopts the NACTO *Urban Street Design Guide* as an integral and effective tool for designing streets and public spaces.

Sincerely,

Brooke A. Levin  
Interim Director, Public Works Agency

cc: Michael J. Neary, Assistant Director, Department of Engineering and Construction

**Assembly Bill No. 43**

CHAPTER 690

An act to amend Sections 627, 21400, 22352, 22354, 22358, and 40802 of, and to add Sections 22358.6, 22358.7, 22358.8, and 22358.9 to, the Vehicle Code, relating to traffic safety.

[Approved by Governor October 8, 2021. Filed with Secretary of State October 8, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 43, Friedman. Traffic safety.

(1) Existing law establishes various default speed limits for vehicles upon highways, as specified. Existing law authorizes state and local authorities to adjust these default speed limits, as specified, based upon certain findings determined by an engineering and traffic survey. Existing law defines an engineering and traffic survey and prescribes specified factors that must be included in the survey, including prevailing speeds and road conditions. Existing law authorizes local authorities to consider additional factors, including pedestrian and bicyclist safety.

This bill would authorize local authorities to consider the safety of vulnerable pedestrian groups, as specified.

(2) Existing law establishes a prima facie speed limit of 25 miles per hour on any highway, other than a state highway, located in any business or residence district, as defined. Existing law authorizes a local authority to change the speed limit on any such highway, as prescribed, including erecting signs to give notice thereof.

This bill would establish a prima facie speed limit of 25 miles per hour on state highways located in any business or residence district and would authorize the Department of Transportation (Caltrans) to change the speed limit on any such highway, as prescribed, including erecting signs to give notice thereof.

(3) Existing law establishes a speed limit of 65 miles per hour on state highways, as specified. Existing law authorizes Caltrans to declare a speed limit on any such highway, as prescribed, of 60, 55, 50, 45, 40, 35, 30, or 25 miles per hour, including erecting signs to give notice thereof. Existing law also authorizes a local authority, on a section of highway, other than a state highway, where the speed limit is 65 miles per hour to declare a lower speed limit, as specified.

This bill would additionally authorize Caltrans and a local authority to declare a speed limit of 20 or 15 miles per hour, as specified, on these highways.

(4) Existing law authorizes a local authority, without an engineering and traffic survey, to declare a lowered speed limit on portions of highway, as

specified, approaching a school building or school grounds. Existing law limits this authority to sections of highway meeting specified requirements relating to the number of lanes and the speed limit of the highway before the school zone.

This bill would similarly authorize a lowered speed limit on a section of highway contiguous to a business activity district, as defined, and would require that certain violations be subject to a warning citation, for the first 30 days of implementation.

(5) Existing law requires Caltrans, by regulation, to provide for the rounding up or down to the nearest 5 miles per hour increment of the 85th percentile speed of free-flowing traffic on a portion of highway as determined by a traffic and engineering survey. Existing law requires the Judicial Council to create and implement an online tool by June 30, 2024, for the adjudication of traffic infractions, among other things.

This bill would authorize a local authority to further reduce the speed limit, as specified, and require that certain violations be subject to a warning citation, for the first 30 days of implementation. The bill would, in some circumstances, authorize the reduction of a speed limit beginning June 30, 2024, or when the Judicial Council has developed an online tool for adjudicating traffic infraction violations, whichever is sooner. The bill would require Caltrans to accordingly revise the California Manual on Uniform Traffic Control Devices, as specified.

(6) Existing law defines a speed trap and prohibits evidence of a driver's speed obtained through a speed trap from being admissible in court in any prosecution against a driver for a speed-related offense. Existing law deems a road where the speed limit is not justified by a traffic and engineering survey conducted within the previous 7 years to be a speed trap, unless the roadway has been evaluated by a registered engineer, as specified, in which case the speed limit remains enforceable for a period of 10 years. Existing law exempts a school zone, as defined, from certain provisions relating to defining a speed trap.

This bill would extend the period that a speed limit justified by a traffic and engineering survey conducted more the 7 years ago remains valid, for purposes of speed enforcement, if evaluated by a registered engineer, as specified, to 14 years.

This bill would also exempt a senior zone and business activity district, as defined, from those provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 627 of the Vehicle Code is amended to read:

627. (a) "Engineering and traffic survey," as used in this code, means a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by state and local authorities.

(b) An engineering and traffic survey shall include, among other requirements deemed necessary by the department, consideration of all of the following:

- (1) Prevailing speeds as determined by traffic engineering measurements.
- (2) Accident records.
- (3) Highway, traffic, and roadside conditions not readily apparent to the driver.

(c) When conducting an engineering and traffic survey, local authorities, in addition to the factors set forth in paragraphs (1) to (3), inclusive, of subdivision (b) may consider all of the following:

(1) Residential density, if any of the following conditions exist on the particular portion of highway and the property contiguous thereto, other than a business district:

(A) Upon one side of the highway, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 13 or more separate dwelling houses or business structures.

(B) Upon both sides of the highway, collectively, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 16 or more separate dwelling houses or business structures.

(C) The portion of highway is longer than one-quarter of a mile but has the ratio of separate dwelling houses or business structures to the length of the highway described in either subparagraph (A) or (B).

(2) Safety of bicyclists and pedestrians, with increased consideration for vulnerable pedestrian groups including children, seniors, persons with disabilities, users of personal assistive mobility devices, and the unhoused.

SEC. 2. Section 21400 of the Vehicle Code is amended to read:

21400. (a) The Department of Transportation shall, after consultation with local agencies and public hearings, adopt rules and regulations prescribing uniform standards and specifications for all official traffic control devices placed pursuant to this code, including, but not limited to, stop signs, yield right-of-way signs, speed restriction signs, railroad warning approach signs, street name signs, lines and markings on the roadway, and stock crossing signs placed pursuant to Section 21364.

(b) The Department of Transportation shall, after notice and public hearing, determine and publicize the specifications for uniform types of warning signs, lights, and devices to be placed upon a highway by a person engaged in performing work that interferes with or endangers the safe movement of traffic upon that highway.

(c) Only those signs, lights, and devices as are provided for in this section shall be placed upon a highway to warn traffic of work that is being performed on the highway.

(d) Control devices or markings installed upon traffic barriers on or after January 1, 1984, shall conform to the uniform standards and specifications required by this section.

SEC. 3. Section 22352 of the Vehicle Code is amended to read:



22352. The prima facie limits are as follows and shall be applicable unless changed as authorized in this code and, if so changed, only when signs have been erected giving notice thereof:

(a) Fifteen miles per hour:

(1) When traversing a railway grade crossing, if during the last 100 feet of the approach to the crossing the driver does not have a clear and unobstructed view of the crossing and of any traffic on the railway for a distance of 400 feet in both directions along the railway. This subdivision does not apply in the case of any railway grade crossing where a human flagperson is on duty or a clearly visible electrical or mechanical railway crossing signal device is installed but does not then indicate the immediate approach of a railway train or car.

(2) When traversing any intersection of highways if during the last 100 feet of the driver's approach to the intersection the driver does not have a clear and unobstructed view of the intersection and of any traffic upon all of the highways entering the intersection for a distance of 100 feet along all those highways, except at an intersection protected by stop signs or yield right-of-way signs or controlled by official traffic control signals.

(3) On any alley.

(b) Twenty-five miles per hour:

(1) On any highway, in any business or residence district unless a different speed is determined by local authority or the Department of Transportation under procedures set forth in this code.

(2) When approaching or passing a school building or the grounds thereof, contiguous to a highway and posted with a standard "SCHOOL" warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. The prima facie limit shall also apply when approaching or passing any school grounds which are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children and the highway is posted with a standard "SCHOOL" warning sign. For purposes of this subparagraph, standard "SCHOOL" warning signs may be placed at any distance up to 500 feet away from school grounds.

(3) When passing a senior center or other facility primarily used by senior citizens, contiguous to a street other than a state highway and posted with a standard "SENIOR" warning sign. A local authority may erect a sign pursuant to this paragraph when the local agency makes a determination that the proposed signing should be implemented. A local authority may request grant funding from the Active Transportation Program pursuant to Chapter 8 (commencing with Section 2380) of Division 3 of the Streets and Highways Code, or any other grant funding available to it, and use that grant funding to pay for the erection of those signs, or may utilize any other funds available to it to pay for the erection of those signs, including, but not limited to, donations from private sources.

SEC. 4. Section 22354 of the Vehicle Code is amended to read:

22354. (a) Whenever the Department of Transportation determines upon the basis of an engineering and traffic survey that the limit of 65 miles

per hour is more than is reasonable or safe upon any portion of a state highway where the limit of 65 miles is applicable, the department may determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30, 25, 20, or 15 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie speed limit shall be effective when appropriate signs giving notice thereof are erected upon the highway.

(b) This section shall become operative on the date specified in subdivision (c) of Section 22366.

SEC. 5. Section 22358 of the Vehicle Code is amended to read:

22358. (a) Whenever a local authority determines upon the basis of an engineering and traffic survey that the limit of 65 miles per hour is more than is reasonable or safe upon any portion of any street other than a state highway where the limit of 65 miles per hour is applicable, the local authority may by ordinance determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30, 25, 20, or 15 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie limit shall be effective when appropriate signs giving notice thereof are erected upon the street.

(b) This section shall become operative on the date specified in subdivision (c) of Section 22366.

SEC. 6. Section 22358.6 is added to the Vehicle Code, to read:

22358.6. The Department of Transportation shall, in the next scheduled revision, revise and thereafter maintain the California Manual on Uniform Traffic Control Devices to require the Department of Transportation or a local authority to round speed limits to the nearest five miles per hour of the 85th percentile of the free-flowing traffic. However, in cases in which the speed limit needs to be rounded up to the nearest five miles per hour increment of the 85th-percentile speed, the Department of Transportation or a local authority may decide to instead round down the speed limit to the lower five miles per hour increment. A local authority may additionally lower the speed limit as provided in Sections 22358.7 and 22358.8.

SEC. 7. Section 22358.7 is added to the Vehicle Code, to read:

22358.7. (a) If a local authority, after completing an engineering and traffic survey, finds that the speed limit is still more than is reasonable or safe, the local authority may, by ordinance, determine and declare a prima facie speed limit that has been reduced an additional five miles per hour for either of the following reasons:

(1) The portion of highway has been designated as a safety corridor. A local authority shall not deem more than one-fifth of their streets as safety corridors.

(2) The portion of highway is adjacent to any land or facility that generates high concentrations of bicyclists or pedestrians, especially those from vulnerable groups such as children, seniors, persons with disabilities, and the unhoused.

(b) (1) As used in this section, “safety corridor” shall be defined by the Department of Transportation in the next revision of the California Manual

on Uniform Traffic Control Devices. In making this determination, the department shall consider highways that have the highest number of serious injuries and fatalities based on collision data that may be derived from, but not limited to, the Statewide Integrated Traffic Records System.

(2) The Department of Transportation shall, in the next revision of the California Manual on Uniform Traffic Control Devices, determine what constitutes land or facilities that generate high concentrations of bicyclists and pedestrians, as used in paragraph (2) of subdivision (a). In making this determination, the department shall consider density, road use type, and bicycle and pedestrian infrastructure present on a section of highway.

(c) A local authority may not lower a speed limit as authorized by this section until June 30, 2024, or until the Judicial Council has developed an online tool for adjudicating infraction violations statewide as specified in Article 7 (commencing with Section 68645) of Chapter 2 of Title 8 of the Government Code, whichever is sooner.

(d) A local authority shall issue only warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that a lower speed limit is in effect as authorized by this section.

SEC. 8. Section 22358.8 is added to the Vehicle Code, to read:

22358.8. (a) If a local authority, after completing an engineering and traffic survey, finds that the speed limit is still more than is reasonable or safe, the local authority may, by ordinance, retain the current speed limit or restore the immediately prior speed limit if that speed limit was established with an engineering and traffic survey and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit.

(b) This section does not authorize a speed limit to be reduced by any more than five miles per hour from the current speed limit nor below the immediately prior speed limit.

(c) A local authority shall issue only warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that a lower speed limit is in effect as authorized by this section.

SEC. 9. Section 22358.9 is added to the Vehicle Code, to read:

22358.9. (a) (1) Notwithstanding any other law, a local authority may, by ordinance, determine and declare a 25 or 20 miles per hour prima facie speed limit on a highway contiguous to a business activity district when posted with a sign that indicates a speed limit of 25 or 20 miles per hour.

(2) The prima facie limits established under paragraph (1) apply only to highways that meet all of the following conditions:

(A) A maximum of four traffic lanes.

(B) A maximum posted 30 miles per hour prima facie speed limit immediately prior to and after the business activity district, if establishing a 25 miles per hour speed limit.

(C) A maximum posted 25 miles per hour prima facie speed limit immediately prior to and after the business activity district, if establishing a 20 miles per hour speed limit.

(b) As used in this section, a “business activity district” is that portion of a highway and the property contiguous thereto that includes central or neighborhood downtowns, urban villages, or zoning designations that prioritize commercial land uses at the downtown or neighborhood scale and meets at least three of the following requirements in paragraphs (1) to (4), inclusive:

(1) No less than 50 percent of the contiguous property fronting the highway consists of retail or dining commercial uses, including outdoor dining, that open directly onto sidewalks adjacent to the highway.

(2) Parking, including parallel, diagonal, or perpendicular spaces located alongside the highway.

(3) Traffic control signals or stop signs regulating traffic flow on the highway, located at intervals of no more than 600 feet.

(4) Marked crosswalks not controlled by a traffic control device.

(c) A local authority shall not declare a prima facie speed limit under this section on a portion of a highway where the local authority has already lowered the speed limit as permitted under Sections 22358.7 and 22358.8.

(d) A local authority shall issue only warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that a lower speed limit is in effect as authorized by this section.

SEC. 10. Section 40802 of the Vehicle Code is amended to read:

40802. (a) A “speed trap” is either of the following:

(1) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(2) A particular section of a highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects. This paragraph does not apply to a local street, road, school zone, senior zone, or business activity district.

(b) (1) For purposes of this section, a local street or road is one that is functionally classified as “local” on the “California Road System Maps,” that are approved by the Federal Highway Administration and maintained by the Department of Transportation. It may also be defined as a “local street or road” if it primarily provides access to abutting residential property and meets the following three conditions:

(A) Roadway width of not more than 40 feet.

(B) Not more than one-half of a mile of uninterrupted length. Interruptions shall include official traffic control signals as defined in Section 445.

(C) Not more than one traffic lane in each direction.

(2) For purposes of this section, “school zone” means that area approaching or passing a school building or the grounds thereof that is

contiguous to a highway and on which is posted a standard “SCHOOL” warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. “School zone” also includes the area approaching or passing any school grounds that are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children if that highway is posted with a standard “SCHOOL” warning sign.

(3) For purposes of this section, “senior zone” means that area approaching or passing a senior center building or other facility primarily used by senior citizens, or the grounds thereof that is contiguous to a highway and on which is posted a standard “SENIOR” warning sign, pursuant to Section 22352.

(4) For purposes of this section, “business activity district” means a section of highway described in subdivision (b) of Section 22358.9 in which a standard 25 miles per hour or 20 miles per hour speed limit sign has been posted pursuant to paragraph (1) of subdivision (a) of that section.

(c) (1) When all of the following criteria are met, paragraph (2) of this subdivision shall be applicable and subdivision (a) shall not be applicable:

(A) When radar is used, the arresting officer has successfully completed a radar operator course of not less than 24 hours on the use of police traffic radar, and the course was approved and certified by the Commission on Peace Officer Standards and Training.

(B) When laser or any other electronic device is used to measure the speed of moving objects, the arresting officer has successfully completed the training required in subparagraph (A) and an additional training course of not less than two hours approved and certified by the Commission on Peace Officer Standards and Training.

(C) (i) The prosecution proved that the arresting officer complied with subparagraphs (A) and (B) and that an engineering and traffic survey has been conducted in accordance with subparagraph (B) of paragraph (2). The prosecution proved that, prior to the officer issuing the notice to appear, the arresting officer established that the radar, laser, or other electronic device conformed to the requirements of subparagraph (D).

(ii) The prosecution proved the speed of the accused was unsafe for the conditions present at the time of alleged violation unless the citation was for a violation of Section 22349, 22356, or 22406.

(D) The radar, laser, or other electronic device used to measure the speed of the accused meets or exceeds the minimal operational standards of the National Highway Traffic Safety Administration, and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility.

(2) A “speed trap” is either of the following:

(A) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(B) (i) A particular section of a highway or state highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within one of the following time periods, prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects:

(I) Except as specified in subclause (II), seven years.

(II) If an engineering and traffic survey was conducted more than seven years prior to the date of the alleged violation, and a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred, including, but not limited to, changes in adjoining property or land use, roadway width, or traffic volume, 14 years.

(ii) This subparagraph does not apply to a local street, road, or school zone, senior zone, or business activity district.

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ACTION CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin, Councilmember Robinson (co-sponsor)  
Subject: Efficiency Unit Ordinance

#### RECOMMENDATION

Refer to the City Manager and Planning Commission to adopt objective standards for Efficiency Units pursuant to California Housing and Safety Code § 17958.1, developing an ordinance to amend the Berkeley Municipal Code modeled after standards implemented in the City of Davis, the City of Santa Barbara and other cities.

#### POLICY COMMITTEE RECOMMENDATION

On July 7, 2022, the Land Use, Housing, & Economic Development Committee adopted the following action: M/S/C (Droste/Robinson) to approve the item with a positive recommendation. Vote: Ayes – Droste, Robinson; Noes – None; Abstain – None; Absent – Bartlett.

#### FINANCIAL IMPLICATIONS

Staff time.

#### CURRENT SITUATION AND ITS EFFECTS

Establishing standards for Efficiency Units is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

BMC Chapter 23F.04 defines Group Living Accommodations (GLAs) as a “building or portion of a building designed for or accommodating a residential use by persons not living together as a household.” This broad category includes several distinct housing types, such as Dormitories and Residential Hotels. While this definition rests on cohabitation by multiple persons not constituting a “household,” state law provides a legal framework for establishing positive efficiency unit standards for one- or two-person households. California Housing and Safety Code § 17958.1 allows local governments to “permit efficiency units for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities, as specified by the ordinance.” The City of Berkeley currently lacks such an ordinance.

Berkeley’s current standards for Residential Hotels disincentivizes their production, limiting the supply of lower-cost housing that could be built without limited or no public subsidies. Development standards in Commercial districts are equivalent to those in R-3

zones, requiring a minimum of 350 square feet of total lot area per occupant, inclusive of 90 square feet of open space per occupant. This effectively permits fewer residents by area than other residential uses and reduces financial feasibility. For example, a proposed multifamily apartment development at 2720 San Pablo Ave. in the C-W district is on a 9,576 square-foot project site, with 25 dwelling units and a total of 97 bedrooms. If it were a GLA project such as a residential hotel, it would only be permitted a maximum of 27 bedrooms.

### BACKGROUND

Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the 2014-2022 RHNA cycle. As recently as the city's 2020 Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units as the previous cycle's total of 2,959 units across all income tiers. In 2019, development costs in the San Francisco Bay Area averaged \$600,000 for new housing funded by 9% Low Income Housing Tax Credits.<sup>1</sup>

According to an October 2014 report on affordable housing development by several state housing agencies, "for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent."<sup>2</sup> A 2020 study by UC Berkeley's Terner Center on affordable housing projects funded by 9% Low Income Housing Tax Credits reported: "On average, efficiencies of scale translate into a reduction of about \$1,162 for every additional unit in a project."<sup>3</sup>

Because GLAs typically offer lower market rents for smaller dwelling units, certain types of GLAs including Residential Hotels are exempted from Berkeley's Affordable Housing Mitigation Fee requirements pursuant to BMC 23C.12.020.B. With the exception of Dormitories, GLA units also count toward Berkeley's RHNA housing production targets for low- and moderate-income households if rents meet household affordability thresholds. Lower-cost housing forms with smaller dwelling units such as Single Room Occupancy (SRO) hotels have historically provided a significant portion of affordable housing for cities in the San Francisco Bay Area and nationwide without public subsidies for construction, but current zoning has made projects with this type of cost-

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<sup>1</sup> Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program. *UC Berkeley Terner Center for Housing Innovation*. Retrieved from [https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC\\_Construction\\_Costs\\_March\\_2020.pdf](https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf)

<sup>2</sup> California Department of Housing and Community Development, et al. (2014). Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California. Retrieved from [https://www.treasurer.ca.gov/ctcac/affordable\\_housing.pdf](https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf)

<sup>3</sup> See footnote 1.



effective unit size practically infeasible throughout much of Berkeley's transit-rich corridors.

The lack of Efficiency Unit standards has contributed to some consternation in the community with respect to recent GLA projects. For instance, an appeal of Use Permit # ZP2018-0229 for a Residential Hotel project at 2435 San Pablo Avenue—a permit that the City Council upheld in 2021—criticized the project as “neither fish nor fowl” because the project was designated as a Residential Hotel but resembled an Efficiency Unit project.<sup>4</sup> If the project were an Efficiency Unit, the individual efficiency kitchens and bathrooms would be subject to State standards (or local standards if the City were to adopt them), and the communal kitchens would be an amenity for residents rather than a requisite feature of a Residential Hotel.

Other jurisdictions in California have availed themselves of state authority to establish local standards. For example, the City of Davis establishes a definition of Efficiency Units pursuant to CHSC § 17958.1 with “a minimum floor area of two hundred twenty square feet and shall have a bathroom facility and a partial kitchen or kitchenette.”<sup>5</sup> Davis Municipal Code § 40.01.010(e) and Santa Barbara Municipal Code § 30.185.040 establish standards for Efficiency Units consistent with state law.<sup>67</sup> Santa Barbara's standards also enable a minimum floor area of 150 square feet for “Affordable Efficiency Units” subject to deed restrictions for low- and very-low income households.

Notably, both Davis and Santa Barbara, like Berkeley, are host cities to campuses in the University of California system. There is a dire shortage of student housing in the neighborhoods adjacent to campus such as Southside, and moreover, a dire shortage of affordable units available to students without overcrowding apartments. Partial kitchen or bathroom facilities, as allowed for efficiency units as now laid out by state law, will not always be ideal for all tenants, but may be a highly attractive option for students. Establishing an efficiency unit ordinance would be an important pathway to permitting denser, student-oriented housing in neighborhoods adjacent to campus and on key transit corridors connecting to campus.

In 2014, the City of Seattle enacted strict limitations on new “congregate” micro-housing projects, and saw a corresponding increase in production of Small Efficiency Dwelling Units (SEDUs) following this change. However, due to increases in minimum floor area

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[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/01\\_Jan/Admin\\_Record\\_ZAB\\_Appeal\\_0\\_\(2435\)\\_San\\_Pablo\\_Ave.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/01_Jan/Admin_Record_ZAB_Appeal_0_(2435)_San_Pablo_Ave.aspx)

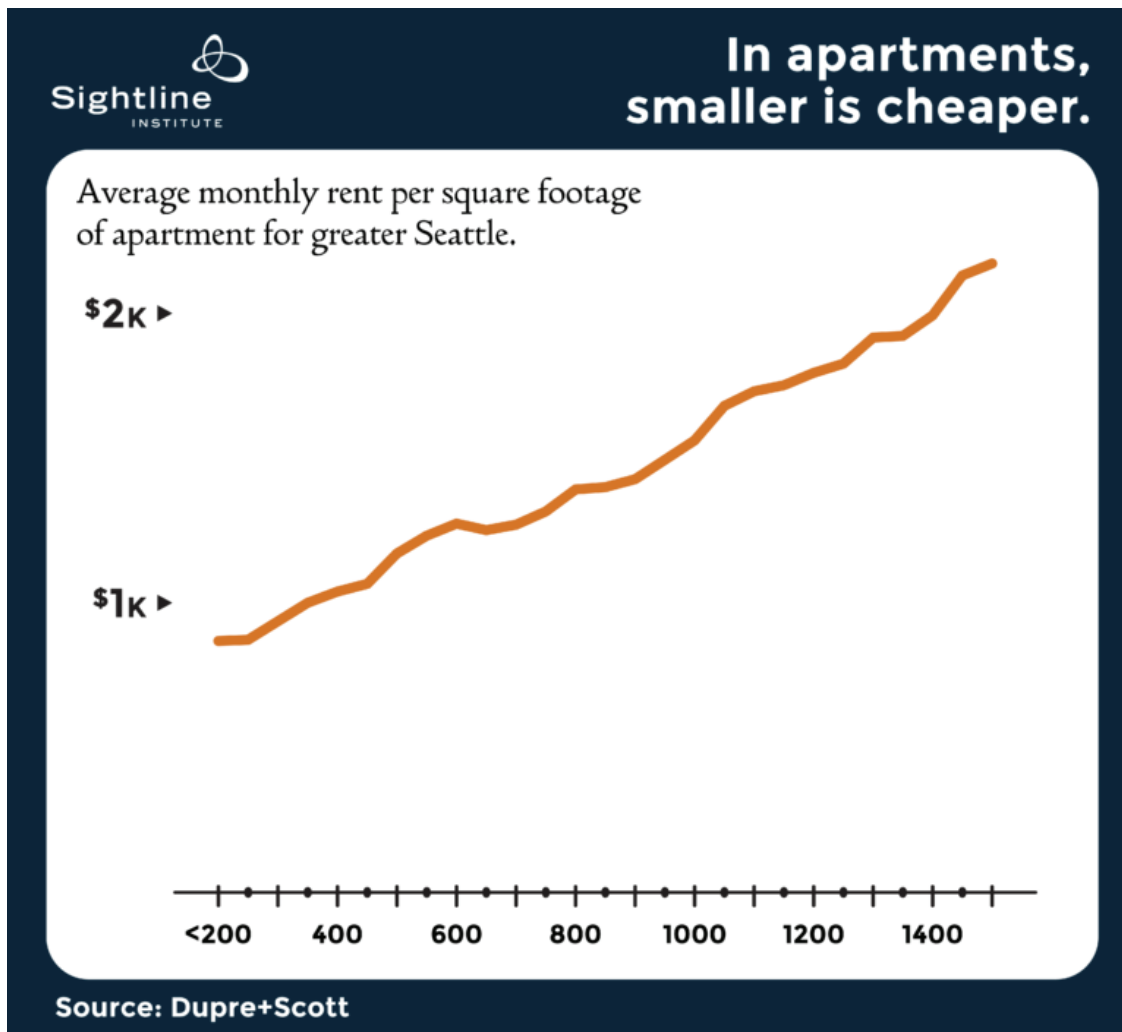
<sup>5</sup> [http://qcode.us/codes/davis/?view=desktop&topic=40-40\\_01-40\\_01\\_010#:~:text=Efficiency%20unit%20has%20the%20meaning,a%20partial%20kitchen%20or%20kitchenette](http://qcode.us/codes/davis/?view=desktop&topic=40-40_01-40_01_010#:~:text=Efficiency%20unit%20has%20the%20meaning,a%20partial%20kitchen%20or%20kitchenette)

<sup>6</sup> [http://qcode.us/codes/davis/?view=desktop&topic=40-40\\_26-40\\_26\\_450](http://qcode.us/codes/davis/?view=desktop&topic=40-40_26-40_26_450)

<sup>7</sup> [https://qcode.us/codes/santabarbara/view.php?topic=30-iii-30\\_185-30\\_185\\_040&frames=on](https://qcode.us/codes/santabarbara/view.php?topic=30-iii-30_185-30_185_040&frames=on)

requirements and inability to access affordable housing incentives, the number of new SEDUs completed per year in Seattle has declined.<sup>8</sup>

Nevertheless, the data from Seattle shows a clear marginal benefit to housing affordability. A 2021 study of Seattle's microhousing market by the firm Kidder Matthews found that the average monthly rent of SEDUs was \$277 or 18% lower than comparable market-rate studio apartments.<sup>9</sup>



*Sightline Institute, 2017*<sup>10</sup>

<sup>8</sup> Neiman, D. (2021). When is Seattle Going to Fix Microhousing? *Sightline Institute*. Retrieved from <https://www.sightline.org/2021/02/04/when-is-seattle-going-to-fix-microhousing/>

<sup>9</sup> Anderson, J. & Simon, D. (2021). 2021 Micro Report. *Kidder Matthews*. Retrieved from [https://secureservercdn.net/72.167.230.230/qjx.818.myftpupload.com/wp-content/uploads/2021/12/2021-Micro-Report\\_Simon-Anderson-Team.pdf?time=1649887261](https://secureservercdn.net/72.167.230.230/qjx.818.myftpupload.com/wp-content/uploads/2021/12/2021-Micro-Report_Simon-Anderson-Team.pdf?time=1649887261)

<sup>10</sup> Neiman, D. (2017). How Seattle Killed Microhousing Again. *Sightline Institute*. Retrieved from <https://www.sightline.org/2017/03/20/how-seattle-killed-micro-housing-again/>

In Berkeley, the 39-unit “Step Up Housing”<sup>11</sup> project at 1367 University Ave. will lease 180 square foot furnished studio units to the nonprofit Building Opportunities for Self Sufficiency (BOSS) for \$1,400 per month, roughly \$600 or 30% lower than local studio apartment rents. The City will be supporting the leasing and operations of the project with Measure P funds to provide permanent supportive housing.

Irrespective of subsidies, this cost is also \$195 below the “fair market rent” for SRO/studio units in Alameda County set by the U.S. Department of Housing and Urban Development (HUD), and roughly the same as Alameda County’s rent limit for deed-restricted studio units for a household earning 60% of Area Median Income.<sup>12</sup>

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Incentives for affordable housing offer potential to reduce Vehicle Miles Traveled Per Capita by increasing housing options in Berkeley and shortening commute times for a greater share of the local workforce. In an analysis of 252 California Cities, Durst (2021) finds that “each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes.”<sup>13</sup> With transportation accounting for 60% of Berkeley’s carbon footprint, per capita VMT reduction is critical for emissions reductions. Research from UC Berkeley scholars and the CoolClimate Network finds that urban infill offers one of the greatest potential policy levers for municipalities to reduce their greenhouse gas emissions.<sup>14</sup> Notably, this study predates the City of Berkeley’s 2019 prohibition on natural gas in new buildings,<sup>15</sup> which would further reduce the carbon footprint of future Berkeley residents relative to the regional average.

### CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

### ATTACHMENTS

1. City of Santa Barbara Ordinance 5794
2. City of Davis Ordinance 2602

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<sup>11</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/02\\_Feb/Documents/2021-02-23\\_Item\\_26\\_Step\\_Up\\_Housing\\_Initiative.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/02_Feb/Documents/2021-02-23_Item_26_Step_Up_Housing_Initiative.aspx)

<sup>12</sup> <https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf>

<sup>13</sup> Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *Terner Center for Housing Innovation*. Retrieved from <http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf>

<sup>14</sup> Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). doi:10.17645/up.v3i2.1218.

<sup>15</sup> Cagle, C. (2019). Berkeley became first US city to ban natural gas. Here's what that may mean for the future. *The Guardian*. Retrieved from <https://www.theguardian.com/environment/2019/jul/23/berkeley-natural-gas-ban-environment>

ORDINANCE NO. 5794

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING THE SANTA BARBARA MUNICIPAL CODE BY AMENDING SECTIONS 30.185.040 AND 30.295.020 TO REGULATE ACCESSORY DWELLING UNITS IN THE NON-COASTAL ZONE OF THE CITY, AND REPEAL INTERIM URGENCY ORDINANCE NO. 5930

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 30.185.040 of Chapter 30.185 of Title 30 of the Santa Barbara Municipal Code is amended to read as follows:

**30.185.040 Accessory Dwelling Units**

Accessory dwelling units and junior accessory dwelling units shall be located, developed, and occupied subject to the following provisions:

**A. Purpose.** The purpose of this section is to:

1. Expand opportunities in the City to create additional housing to suit the spectrum of individual lifestyles and space needs, allow more efficient use of existing housing stock and public infrastructure, and provide a range of housing opportunities.
2. Allow accessory dwelling units or junior accessory dwelling units as an accessory use to a primary residential unit, consistent with California Government Code Section 65852.2 or 65852.22, as applicable.
3. Promote accessory dwelling units or junior accessory dwelling units with high-quality designs that are compatible with the surrounding neighborhood, historic resources, and historic districts; preserve the City's visual resources; promote long-term sustainability; and contribute to a desirable living environment.

**B. Definitions.** For the purposes of this section, the following words and phrases shall have the following meanings:

1. ***Accessory Dwelling Unit.*** An attached or a detached residential unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residential unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and be located on the same parcel that the primary residential unit is or will be situated. The following

categories of accessory dwelling units are subject to specific development standards:

- a. ***Special Accessory Dwelling Unit.*** These are specific types of smaller accessory dwelling units and junior accessory dwelling units with certain size, height, and setback standards described in subsection L. Development Standards for Special Accessory Dwelling Units. Special accessory dwelling units allow for more than one accessory dwelling unit on a lot.
- b. ***Standard Accessory Dwelling Unit.*** These are typically larger accessory dwelling units with size, height, and setback standards generally described in subsection G. Development Standards for Standard Accessory Dwelling Units. Standard accessory dwelling units do not allow for more than one accessory dwelling unit on a lot.

An accessory dwelling unit also includes the following:

- a. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
  - b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
2. ***Efficiency Kitchen.*** A kitchen that includes at a minimum:
    - a. Appliances for cooking food and refrigeration, either built-in or countertop.
    - b. A sink for food preparation greater than 12 inches by 12 inches, excluding the sink located in the bathroom.
    - c. A food preparation counter.
  3. ***Existing Floor Area.*** A legally permitted building constructed on the site with a final inspection or certificate of occupancy as of the date of application submittal, that conforms to current zoning standards or is legal nonconforming as to current zoning standards.
  4. ***Junior Accessory Dwelling Unit.*** A unit that is no more than 500 square feet in size and contained entirely within the structure of an existing or proposed single residential unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing or proposed single residential unit and includes an efficiency kitchen.
  5. ***Passageway.*** A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
  6. ***Primary Residential Unit.*** The existing or proposed residential unit on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted. The primary residential unit shall comprise one of the residential housing types described in Section 30.295.020.A (i.e., single-unit residential, two-unit residential, multi-unit residential) or mixed-use development.
  7. ***Principal Place of Residence.*** The residence where a property owner actually lives for the greater part of time, or the place where the property owner remains when not called elsewhere for some special or temporary purpose and to which the

property owner returns frequently and periodically, as from work or vacation. There may be only one “principal place of residence,” and where more than one residence is maintained or owned, the burden shall be on the property owner to show that the primary residential unit, or accessory dwelling unit, or junior accessory dwelling unit is the property owner’s principal place of residence as evidenced by qualifying for the homeowner’s tax exemption, voter registration, vehicle registration, or similar methods that demonstrate owner-occupancy. If multiple persons own the property as tenants in common or some other form of common ownership, a person or persons representing at least 50% of the ownership interest in the property shall reside on the property and maintain the property as a principal place of residence. Any person or persons who qualify for the homeowner’s tax exemption under the California State Board of Equalization rules, may qualify as an owner occupant.

**C. Where Permitted.**

1. ***Accessory Dwelling Unit.*** An accessory dwelling unit may be permitted in any zone that allows residential use, located on a lot developed or proposed to be developed with one or more residential units, except as prohibited below.
2. ***Junior Accessory Dwelling Unit.*** A junior accessory dwelling unit may be permitted in any zone that allows residential use, and shall be located on a lot developed with an existing or proposed single residential unit.
3. ***Prohibited Locations.*** No standard accessory dwelling unit shall be permitted on a lot located within the Fire Hazard Area (Extreme Foothill and Foothill), or as may be subsequently retitled in the future as the “Very High Fire Hazard Severity Zone,” as defined in the City’s Community Wildfire Protection Plan adopted by City Council.
  - a. ***Exception for Special Accessory Dwelling Units.*** Accessory dwelling units permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units, may be permitted on any lot, including lots located within any Fire Hazard Area (Extreme Foothill and Foothill), or as may be subsequently retitled in the future as the “Very High Fire Hazard Severity Zone,” as defined in the City’s Community Wildfire Protection Plan adopted by City Council, if the lot is zoned to allow for residential use and contains an existing or proposed primary residential unit.

**D. Unit Configuration.**

1. Only one accessory dwelling unit or junior accessory dwelling unit shall be permitted on a lot in addition to the primary residential unit in the configuration set forth in subsections D.2 and 3, below. However, multiple accessory units may be permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units.
2. An accessory dwelling unit may be permitted in the following configurations:

- a. Incorporated entirely within an existing or proposed primary residential unit;
  - b. Incorporated entirely within an existing accessory building, including garages, located on the same lot as the primary residential unit;
  - c. Attached to or increasing the size of an existing primary residential unit or accessory building located on the same lot as the primary residential unit; or
  - d. Detached from and located on the same lot as the existing or proposed primary residential unit. An accessory dwelling unit that is attached to another detached accessory building, but not the primary residential unit, or is attached by a breezeway or porch, is considered detached.
3. A junior accessory dwelling unit must be incorporated entirely within the existing floor area of an existing or proposed single residential unit or attached garage.
- E. Sale, Rental, and Occupancy Terms.** All accessory dwelling units and junior accessory dwelling units shall be subject to the following sale, rental, and occupancy terms:
1. ***Not to Be Sold Separately.*** An accessory dwelling unit or junior accessory dwelling unit shall not be sold separately from the primary residential unit.
  2. ***Rental Terms.*** The accessory dwelling unit or junior accessory dwelling unit may be rented separately from the primary residential unit, however rental terms shall not be less than 31 consecutive days, nor shall rental terms allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant.
  3. ***Owner Occupancy.*** The following types of projects are subject to an owner occupancy requirement:
    - a. All lots developed with junior accessory dwelling units; except that owner occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
    - b. Any accessory dwelling unit located in an RS zone submitted on or after January 1, 2025, unless otherwise prohibited by state law, or upon repeal of Government Code 65852.2 (a)(6)(B) removing the state-imposed prohibition of an owner occupancy requirement, whichever occurs first.
  4. ***Owner's Unit.*** If owner occupancy is required, the property owner shall reside in and maintain either the primary residential unit or the accessory dwelling unit/junior accessory dwelling unit, as the property owner's principal place of residence ("owner's unit"). Owners of lots developed with an accessory dwelling unit/junior accessory dwelling unit shall live on the lot as long as the lot is developed with an accessory dwelling unit/junior accessory dwelling unit. Owners may re-designate the primary residential unit or the accessory dwelling unit/junior accessory dwelling unit as the owner's unit upon written notice to the Community Development Director and written approval of the re-designation by the Community Development Director, which approval shall not be denied unreasonably. The property owner shall not rent or lease both the primary

residential unit and the accessory dwelling unit/junior accessory dwelling unit simultaneously.

5. **Hardship Waiver.** If owner occupancy is required, in the event of a hardship, such as the death or disability of the property owner, job transfer, or similar significant personal situation which prevents the property owner from occupying one of the units as the owner's unit, a property owner or estate representative may apply for a temporary waiver of the owner-occupation requirement for a specific time period to allow the owner's unit to be occupied by a non-property owner pending disposition of the property through probate or non-probate transfer to a new owner, or the cessation of the circumstances preventing the property owner from occupying the owner's unit on the property. The Community Development Director shall review applications for a hardship waiver. Any such waiver shall specify the period of time for which it is granted, provided that no such waiver may be granted for a period longer than three years.
6. **Removal of Recorded Owner Occupancy Requirement.** With the exception of owner occupancy covenants required to permit a junior accessory dwelling unit, the Community Development Director will, in a form acceptable to the City Attorney, release an owner occupancy requirement recorded against the property prior to adoption of this ordinance upon the request of the property owner. No other covenants required pursuant to this section, and contained in the agreement recorded against the property, shall be released.

F. **Required Features.** Each accessory dwelling unit and junior accessory dwelling unit shall contain, at a minimum, the following features:

1. **Residential Elements.** Permanent provisions for separate residential occupancy must be provided as follows within the contiguous livable floor space of the accessory dwelling unit or junior accessory dwelling unit and must be independent from the primary residential unit:
  - a. A kitchen, consisting of a sink, cooking appliance, and refrigeration facilities. A junior accessory dwelling unit may utilize an efficiency kitchen.
  - b. A bathroom consisting of a toilet, sink, and bathtub or shower. A junior accessory dwelling unit may share sanitation facilities with the existing or proposed single residential unit.
  - c. A separate living room.
  - d. A separate sleeping room, except in studio residential units, where a living room is considered a sleeping room.
2. **Minimum Floor Area.** Notwithstanding the dwelling unit minimum described in Section 30.140.150, Residential Unit, the minimum floor area for a newly constructed accessory dwelling unit is as follows:
  - a. **Efficiency Unit:** 150 square feet.
  - b. **Studio Unit:** 220 square feet.



- c. *All Other Units*: 400 square feet.

Such usable floor area shall be exclusive of open porches, garages, basements, cellars, and unfinished attics. The minimum floor area for accessory dwelling units that are created by converting existing structures is 150 square feet.

3. *Exterior Access*. Exterior access to the unit, that is independent from the primary residential unit, must be provided. An interior connection consisting of one fire-rated lockable door between the primary residential unit and an accessory dwelling unit or junior accessory dwelling unit may be provided.
4. *Fire Sprinklers*. Fire sprinklers are required only if they are required for the primary residential unit.
5. *Permanent Foundation*. Attached and detached units shall be constructed with an approved permanent foundation.
6. *Property Addresses*. Addresses identifying all residential units on the lot, with minimum three- and one-half-inch numbers plainly visible from the street or road fronting the property shall be provided.
7. *Public Sewer*. Accessory dwelling units and junior accessory dwelling units shall be connected to a public sewer. If public sewer connection is not available, approval of a new or expanded onsite wastewater treatment system shall be required in accordance with the procedures from the Code of the County of Santa Barbara California prior to issuance of a building permit.
8. *Water Meter*. Accessory dwelling units shall comply with the water metering requirements of Title 14, Section 14.08.150 E.
9. *Passageway*. No passageway is required in conjunction with the construction of an accessory dwelling unit or junior accessory dwelling unit.

**G. Development Standards for Standard Accessory Dwelling Units.**

1. *Development Standards Generally*. The development standards listed in this section apply to standard accessory dwelling units and junior accessory dwelling units, except for those units permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units.
  - a. The reductions and exceptions to the development standards normally applicable to residential development allowed in this section are for the express purpose of promoting the development and maintenance of an accessory dwelling unit on the lot. If for any reason the accessory dwelling unit is not maintained on the lot in conformance with this section, the lot shall be brought into compliance with all of the requirements for the residential development, or with the legal nonconforming condition of the lot prior to the development of the accessory dwelling unit, including, but not limited to, the requirements for open yard, setbacks, and covered parking.

- b. Except as otherwise specified in this subsection, projects developed in accordance with this section shall otherwise comply with the development standards applicable to an attached or detached accessory building for the housing type and the base zone in which the lot is located.
  - c. One primary residential unit shall be designated on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted.
  - d. Notwithstanding the size limit of an attached accessory dwelling unit based on a percentage of the proposed or existing primary unit, or lot coverage, floor area ratio, open yard, and minimum lot size standards for an attached or detached accessory dwelling unit, an 800-square-foot, 16-foot high attached or detached accessory dwelling unit may be constructed in compliance with all other development standards for standard accessory dwelling units.
2. **Maximum Floor Area.** The maximum floor area for a standard accessory dwelling unit and junior accessory dwelling unit is as follows:
- a. **Attached Accessory Dwelling Unit.** An accessory dwelling unit that is attached to, and increasing the size of, the primary residential unit shall not exceed 50% of the living area of the existing primary residential unit.
  - b. **Converted Accessory Dwelling Unit.** An accessory dwelling unit that is incorporated entirely within an existing primary residential unit, or within an existing accessory building, is not limited in size except that it shall not exceed the footprint of the existing structure.
  - c. **Detached Accessory Dwelling Unit.** An accessory dwelling unit that is detached from the primary residential unit and may or may not be attached to another detached accessory building, including detached garages, shall not exceed the following maximum floor area based on lot size and number of bedrooms:
    - i. *Lots up to 14,999 square feet and developed with one-bedroom or studio units:* 850 square feet.
    - ii. *Lots up to 14,999 square feet and developed with two or more-bedroom units:* 1,000 square feet.
    - iii. *Lots 15,000 square feet or larger:* 1,200 square feet.
  - d. **Junior Accessory Dwelling Unit.** The maximum floor area of a junior accessory dwelling unit shall be 500 square feet.
3. **Building Separation.** The minimum separation between the primary residential unit and a detached accessory dwelling unit shall be five feet.
4. **Open Yard.** No open yard areas are required for accessory dwelling units or junior accessory dwelling units. The minimum area, dimensions, and location of the required open yard pursuant to Section 30.140.140.C, Open Yards, for the existing or proposed primary residential unit on lots developed with single-unit or two-unit residential, may be reduced as follows in order to construct a standard accessory

dwelling unit pursuant to this subsection, or to construct an accessory dwelling unit proposed over a new or reconstructed maximum 500 square foot garage, provided all other open yard requirements are met:

- a. **Minimum Area.**
    - i. *Lots less than 6,000 square feet:* 500 square feet.
    - ii. *Lots 6,000 up to 7,999 square feet:* 800 square feet.
    - iii. *Lots 8,000 square feet up to 9,999 square feet:* 1,000 square feet.
    - iv. *Lots 10,000 square feet or greater:* 1,250 square feet.
  - b. **Minimum Dimensions.** 15 feet long and 15 feet wide.
  - c. **Location in Driveways and Turnarounds.** Notwithstanding Section 30.140.140.E.6.a, Vehicle Areas, the required open yard may be located in driveways and turnarounds, but not parking areas, in order to allow the construction of a new accessory dwelling unit.
5. **Setbacks.** The following setbacks shall apply to new and converted standard accessory dwelling units approved pursuant to this subsection:
- a. **New Construction.** Newly constructed accessory dwelling units shall comply with the following setback standards:
    - i. **Front Setback:** Meet the minimum front setback for residential structures in the zone, unless further limited by subsection H.8., Front Yard Location, below.
    - ii. **Interior Setback:** Four feet.
  - b. **Conversion.** No setback is required to convert the existing, legally permitted, floor area of a main or accessory building to an accessory dwelling unit. Improvements to existing nonconforming buildings, including conforming additions, are allowed pursuant to Chapter 30.165, Nonconforming Structures, Site Development, and Uses.
  - c. **Substantial Redevelopment.** No setback is required when an existing main or accessory building is substantially redeveloped and converted to an accessory dwelling unit, provided that the new building is reconstructed in the same location and with the same dimensions and floor area as the existing building.
    - i. **Exception for Small Conforming Additions.** One small 150-square-foot conforming first floor addition may be permitted on a substantially redeveloped and converted nonconforming accessory building.
  - d. **New Construction Combined with Replacement of a Nonconforming Garage.** The construction of an accessory dwelling unit may be combined with the demolition and replacement of a nonconforming detached garage if all of the following requirements are met:
    - i. The new garage is reconstructed in the same location and with the same dimensions as the existing garage; or

- ii. The new garage is enlarged only as necessary to provide the same number of parking spaces and to meet the dimension requirements of the City of Santa Barbara Access & Parking Design Standards, but located no closer to the property line as the existing garage; and
  - iii. The accessory dwelling unit is constructed above the reconstructed garage; and
  - iv. The accessory dwelling unit and any additions to the garage shall conform with current setbacks; and
  - v. The new structure shall comply with all applicable height and building story limitations, and all other development standards are met.
- e. **Setback Encroachments.** Setback encroachments allowed pursuant to Section 30.140.090, Encroachments into Setbacks and Open Yards, may be permitted for accessory dwelling units or junior accessory dwelling units.

**H. Architectural Review.** All accessory dwelling units or junior accessory dwelling units shall be subject to the following architectural design criteria as applicable to either new construction or exterior alterations, which shall be reviewed ministerially by the Community Development Director. For purposes of this section, portions of a building or site considered to be the accessory dwelling unit shall include all of the contiguous interior livable floor area of the accessory dwelling unit and any exterior alterations directly attached to, and integral to, the livable floor area of the accessory dwelling unit.

- 1. **Prohibition of Shiny Roofing and Siding.** New roofing and siding materials that are, shiny, mirror-like, or of a glossy metallic finish are prohibited.
- 2. **Roof Tile.** Where a new clay tile roof is proposed, the use of two-piece terra cotta (Mission “C-tile”) roof is required and “S-tile” is prohibited, unless necessary to match the S-tile roof materials of the existing primary residential unit.
- 3. **Skylights.** New skylights shall have flat glass panels. “Bubble” or dome type skylights are not allowed.
- 4. **Glass Guardrails.** New glass guardrails are not allowed, unless necessary to match the glass guardrails of the existing primary residential unit.
- 5. **Garage Conversion.** If a garage is converted to an accessory dwelling unit, the garage door opening shall be replaced with exterior wall coverings, or residential windows and doors, to match the existing exterior garage wall covering and detailing.
- 6. **Grading.** No more than 250 cubic yards of grading (i.e., cut and/or fill under the main accessory dwelling unit building footprint and outside the main building footprint to accommodate the accessory dwelling unit) is proposed in the Hillside Design District or on lots in other parts of the City with a slope of 15% or greater.
- 7. **Height.** The construction of an accessory dwelling unit shall not exceed the following, whichever is greater:
  - a. Height of the primary residential unit;

- b. Number of stories of the primary residential unit; or
- c. 17 feet.

This height limitation is not applicable to an accessory dwelling unit constructed above a garage, however, in no event shall the resulting building exceed the maximum height or number of stories allowed for a detached or attached accessory building in the zone.

- 8. **Front Yard Location.** The construction of a new detached accessory dwelling unit located in the front yard shall be subject to all of the following:
  - a. The new accessory dwelling unit must be located a minimum of 20 feet back from all front lot lines or meet the minimum front setback for the zone in which the lot is located, whichever is greater.
  - b. Unless constructed over a garage, the new unit shall be:
    - i. No more than one-story and less than 17 feet in height; and
    - ii. Screened from the street by topography, location, or landscape, in a manner designed to blend into the surrounding architecture or landscape, so as to minimize visibility of the accessory dwelling unit to the casual observer as viewed from the street.
- 9. **Design Style.** New detached or attached accessory dwelling units shall be compatible with the design of the primary residential unit regarding style, fenestration, materials, colors, and details if the accessory dwelling unit meets any of the following:
  - a. Attached to, or if any portion of the accessory dwelling unit is located within 20 feet of, the primary residential unit;
  - b. Located in the Hillside Design District and 20% or greater average slope;
  - c. Two or more stories tall, or 17 feet or taller in building height;
  - d. Located on a site on which there is a historical resource as follows:
    - i. Listed on the National Register of Historic Places or the California Register of Historic Resources;
    - ii. Designated as a City of Santa Barbara Landmark or Structure of Merit; or
    - iii. Located in a designated historic district.
  - e. Located in the front yard.
- 10. **Privacy Standards.** The construction of an accessory dwelling unit where any portion of the proposed construction is either: two or more stories tall or 17 feet or taller in building height, shall comply with the following:
  - a. Upper story unenclosed landings, decks, and balconies greater than 20 square feet, that face or overlook the adjoining property, shall be located a minimum of 15 feet from the interior lot lines.

- b. Upper story unenclosed landings, decks, and balconies, that do not face or overlook the adjoining property due to orientation or topography, may be located at the minimum interior setback line if an architectural screening element such as enclosing walls, trellises, awnings, or perimeter planters with a five-foot minimum height is incorporated into the unenclosed landing, deck, or balcony.
  - c. Upper story windows that face or overlook the adjoining property, located within 15 feet of the interior lot lines, shall be installed a minimum of 42 inches above finish floor.
11. **Exceptions.** Discretionary applications for design review may be requested in the following circumstances:
- a. An applicant may propose an accessory dwelling unit that does not meet these design criteria subject to approval by the Single Family Design Board, Architectural Board of Review, or Historic Landmarks Commission, as appropriate.
  - b. Discretionary design review may be required for any exterior alterations to the project site or main buildings that are not an integral part of the accessory dwelling unit, but are proposed in conjunction with the accessory dwelling unit, if required pursuant to Chapter 22.22, 22.68, or 22.69 of this code.
- I. Protection for Historic Resources.** No accessory dwelling unit or junior accessory dwelling unit shall be permitted if the proposal would cause a substantial adverse change in the significance of a historical resource listed on the National Register of Historic Places or the California Register of Historical Resources, designated as a City of Santa Barbara Landmark or Structure of Merit, or located in a designated historic district. The Community Development Director shall make this determination by reviewing the proposal for compliance with appropriate Secretary of Interior’s *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings*.
- J. Parking Standards.** No automobile parking spaces are required for accessory dwelling units or junior accessory dwelling units. The required parking for the existing residential units on site may be reduced or replaced as follows to construct an accessory dwelling unit:
- 1. **No Replacement Parking Required.** When an existing garage, carport, or other covered parking structure is converted to an accessory dwelling unit or demolished in order to construct an accessory dwelling unit, those off-street parking spaces for the existing residential unit are not required to be replaced.
  - 2. **Optional Parking Standards.** If optional new or replacement parking spaces are proposed for either the primary residential unit or the accessory dwelling unit, those spaces may be provided as covered, uncovered, in a mechanical lift, or in a tandem configuration pursuant to f. below. The replacement spaces shall meet all of the following:

- a. Covered parking shall meet the development standards applicable to the primary residential unit within the zone in which the lot is located.
- b. All parking spaces must meet the minimum dimensions and development standards consistent with the City Parking Access & Design Standards and Section 30.175.090 Parking Area Design and Development Standards.
- c. In order to maintain visibility for adjacent driveways and intersections, uncovered parking spaces shall comply with Section 30.140.230, Visibility at Driveways and Intersections.
- d. Replacement uncovered parking spaces may be allowed in a front or interior setback, provided all uncovered parking spaces are contained within the area of an existing paved driveway and no increase to paved areas occurs in the setbacks.
- e. New uncovered parking spaces, that are not replacement parking spaces as described above, may be located three feet from any interior lot line, provided a minimum of three feet in width of planting area is provided for the length of the paved parking area along the interior lot line.
- f. Tandem parking configuration shall meet all the following:
  - i. No more than two automobiles shall be placed one behind the other.
  - ii. Both automobile parking spaces parked in tandem shall be assigned to the same residential unit. Tandem parking shall not create any traffic safety issues.
  - iii. Vertical or stackable tandem parking, provided by means of mechanical lifts, is subject to approval by the Public Works Director. Mechanical lifts shall be fully enclosed within a structure and shall require a recorded maintenance agreement, pursuant to Chapter 30.260, Recorded Agreements.
  - iv. Tandem parking in multi-unit and commercial zones is subject to approval by the Public Works Director. Tandem parking shall not create traffic safety issues.

**K. Fire Hazard Area Standards.** All accessory dwelling units or junior accessory dwelling units located in any Fire Hazard Area as defined in the City's Community Wildfire Protection Plan or as may be subsequently retitled in the future as a "High" or "Very High Fire Hazard Severity Zone" as defined in the Community Wildfire Protection Plan adopted by City Council, shall comply with the following standards as applicable to new construction or parking:

- 1. **No Tandem Parking.** No parking space shall be developed in a tandem configuration.
- 2. **High Fire Construction.** The accessory dwelling unit shall be designed to meet high fire construction standards adopted or enforced by the City, as determined by the Chief Building Official or the Fire Code Official.

3. **No Variance or Modification.** No variance or modification to any Fire Code requirements or high fire construction standards shall be permitted.
4. **Defensible Space.** The site must meet defensible space requirements, pursuant to Chapter 8.04 of this code, prior to occupancy and those requirements must be maintained.
5. **Parking.** One covered or uncovered automobile parking space per unit or bedroom, whichever is less, meeting all of the same parking standards required for the primary residential unit as described in subsection J., Parking Standards, shall be required for an accessory dwelling unit.
  - a. **Parking Exceptions for Certain Accessory Dwelling Units.** Automobile parking is not required for an accessory dwelling unit in any of the following instances:
    - i. The accessory dwelling unit is located within a walking distance of one-half mile of a public transit stop, such as a bus stop or train station.
    - ii. The accessory dwelling unit is located within an architecturally and historically significant historic district. For purposes of this provision, El Pueblo Viejo Landmark District, Brinkerhoff Avenue Landmark District, Riviera Campus Historic District, and the El Encanto Hotel Historic District, constitute architecturally and historically significant historic districts within the City and any district hereafter created deemed to be architecturally and historically significant.
    - iii. The accessory dwelling unit is contained entirely within the permitted floor area of the existing primary residential unit or an existing accessory building.
    - iv. When on-street parking permits are required but not offered to the occupant(s) of the accessory dwelling unit.
    - v. When there is a “carshare vehicle” as defined in Chapter 10.73 of this code, located within a walking distance of 500 feet of the accessory dwelling unit.

**L. Development Standards for Special Accessory Dwelling Units.**

1. **Development Standards Generally.** The development standards listed in this section apply to specific types of small accessory dwelling units and junior accessory dwelling units with certain size, height, and setback standards that, if followed, allow for an accessory dwelling unit to be permitted on lots in a Fire Hazard Area, or more than one accessory dwelling unit on a lot, and allows additional reductions and exceptions to development standards for open yard and maximum floor area. Applications utilizing the special standards described in this section may not utilize the less restrictive configuration, size, and height standards allowed under another section to achieve a larger unit or more than one unit.



- a. Any reductions and exceptions in this section are for the express purpose of promoting the development and maintenance of a special accessory dwelling unit or junior accessory dwelling unit on the lot. If for any reason the special accessory dwelling unit or junior accessory dwelling unit is no longer maintained on the lot, the lot shall be brought into compliance with all of the requirements for the remaining residential development, or with the legal nonconforming condition of the lot prior to the development of the accessory dwelling unit or junior accessory dwelling unit.
  - b. Except as otherwise specified in this section, projects developed in accordance with this Chapter shall otherwise comply with the development standards applicable to the housing type and base zone in which the lot is located.
  - c. One primary residential unit shall be designated on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted. In the case when multiple residential units are existing on a lot, there shall be only one primary residential unit.
2. **Configuration – Single Unit Lots.** A lot developed with only one existing or proposed single-unit residence, may permit one of the following types of special accessory dwelling units:
- a. *Converted Portion of Main Building.* Only one accessory dwelling unit or junior accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed livable floor area of the existing or proposed primary residential unit; or
  - b. *Converted Accessory Building.* Only one accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed floor area of a garage or other accessory building on the same lot as the primary residential unit, plus one 150-square-foot conforming first floor addition, if the expansion is limited to accommodating ingress and egress; or
  - c. *One Unit – New Construction.* One newly constructed accessory dwelling unit, detached from any other main or accessory building; or
  - d. *Two Units – Combination.* One junior accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed livable floor area of the existing or proposed primary residential unit, plus one newly constructed accessory dwelling unit, detached from any other main or accessory building.
3. **Configuration – Two-Unit or Multi-Unit Lots.** A lot developed with two or more existing residential units, may permit one of the following types of special accessory dwelling units:
- a. *Converted Non-Livable Space.* At least one accessory dwelling unit, and up to 25 percent of the existing number of residential units on a lot, may be converted on a lot if contained entirely within portions of existing, legally

permitted, fully enclosed floor area of a residential structure that is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages; or

- b. *Two Units – New Construction.* No more than two newly constructed accessory dwelling units, detached from the main or accessory building.

4. **Maximum Floor Area**

- a. *Detached Accessory Dwelling Unit.* The maximum floor area of any detached, new construction, special accessory dwelling unit approved pursuant to this subsection is 800 square feet.
- b. *Converted Accessory Dwelling Unit.* An accessory dwelling unit that is incorporated entirely within portions of existing floor area, approved pursuant to this subsection, is not limited in size.
- c. *Junior Accessory Dwelling Unit.* The maximum floor area of a junior accessory dwelling unit shall not exceed 500 square feet.

5. **Maximum Height – Detached Accessory Dwelling Unit.** The maximum building height of a detached, new construction, special accessory dwelling unit approved pursuant to this subsection is 16 feet.

6. **Exempt from Other Size Limitations.** A special accessory dwelling unit or junior accessory dwelling unit approved pursuant to this subsection is exempt from any other size limitation in this Title.

7. **Exempt from Open Yard.** No open yard is required for a special accessory dwelling unit or junior accessory dwelling unit approved pursuant to this subsection. Open yard for any existing residential units on a lot may be reduced or eliminated entirely in order to permit a special accessory dwelling unit meeting all the standards and criteria in this subsection.

**M. Building Permit Required.** All accessory dwelling units and junior accessory dwelling units shall comply with applicable state and local building codes and shall require approval of a building permit. Applications shall be processed pursuant to Chapter 30.205, Common Procedures, and the specific requirements of this section. The City shall ministerially approve or disapprove a complete building permit application for an accessory dwelling unit or junior accessory dwelling unit in compliance with time periods established by state law.

1. **Combined Permits.** An accessory dwelling unit or junior accessory dwelling unit permit shall not be combined with a permit for other proposed construction on the site unrelated to the accessory dwelling unit or junior accessory dwelling unit. If a permit application for an accessory dwelling unit or junior accessory dwelling unit is submitted at the same time as a permit application for a new single-unit dwelling, review of the permit for the accessory dwelling unit or junior accessory dwelling unit application shall be delayed until the permit for the single-unit dwelling has been approved.

2. **Modifications and Minor Zoning Exceptions for Accessory Dwelling Units or Junior Accessory Dwelling Units.** An accessory dwelling unit or junior accessory dwelling unit that is not in compliance with the development standards of this section may be granted a modification or minor zoning exception if all the required findings can be met, pursuant to the procedures outlined in Chapter 30.250, Modifications, or Chapter 30.245 Minor Zoning Exceptions.
  3. **Posted Sign.** Within five calendar days after submitting an initial building permit application to the City, the property owner shall install a public notice in the form of a posted sign on the property in a manner deemed acceptable by the Community Development Director. The sign shall remain posted until a building permit is issued, or the application expires or is withdrawn. At the time of application submittal, the applicant shall sign an affidavit stating that he or she will post the required sign per this subsection. The validity of the permit shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive this notice.
- N. **Recorded Agreement.** Before obtaining a building permit for an accessory dwelling unit or junior accessory dwelling unit, the property owner shall execute an agreement, pursuant to Chapter 30.260, Recorded Agreements, containing a reference to the deed under which the property was acquired by the present owner which outlines the requirements regarding the sale, rental, and owner occupancy of lots developed with accessory dwelling units and junior accessory dwelling units as specified in subsection E. of this section.
- O. **Residential Density.** An accessory dwelling unit or junior accessory dwelling unit is a residential use that is consistent with the existing General Plan designations and zoning for lots within the allowable residential zones. Any accessory dwelling unit or junior accessory dwelling unit permitted pursuant to this section does not exceed the allowable density for the lot upon which the accessory dwelling unit or junior accessory dwelling unit is located. (Ord. 5834, 2018)

SECTION 2. Section 30.295.020 of Chapter 30.295 of Title 30 of the Santa Barbara Municipal Code is amended to read as follows:

**30.295.020 Residential Use Classifications.**

**A. Residential Housing Types.**

1. **Single-Unit Residential.** One primary residential unit and up to one Accessory Dwelling Unit or one Junior Accessory Dwelling Unit located on a single lot. This classification includes individual mobilehomes and manufactured housing units installed on a foundation system pursuant to Section 18551 of the California Health and Safety Code and meeting the standards of Section 30.185.270, Mobilehomes, Recreational Vehicles and Modular Units, Individual Use.
2. **Two-Unit Residential.** No more than two residential units and may include one or more Accessory Dwelling Units located on a single lot. The residential units

may be located in a single building that contains two residential units (also known as a duplex) or in two detached buildings.

3. **Multi-Unit Residential.** Three or more attached or detached residential units and may include one or more Accessory Dwelling Units on a single lot. Types of multi-unit residential include townhouses, multiple detached residential units (e.g. bungalow court), and multi-story apartment buildings.

**B. Special Residential Unit Types.**

1. **Accessory Dwelling Unit.** An attached or a detached residential unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residential unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary residential unit is or will be situated. An accessory dwelling unit also includes the following:
  - a. An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.
  - b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
6. **Junior Accessory Dwelling Unit.** A unit that is no more than 500 square feet in size and contained entirely within the structure of an existing or proposed single-unit residential housing type. A junior accessory dwelling unit includes its own separate sanitation facilities, or shares sanitation facilities with the existing or proposed single residential unit and includes an efficiency kitchen.

**SECTION 3. Severability and Interpretation.**

A. **Severability.** If any provision of this Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

B. **Interpretation.** This Ordinance shall be construed to confer upon the City the maximum power and authority allowed by state and federal law. In the event state or federal law is found to conflict with and preempt any provision of this Ordinance, or in the event state or federal law changes to conflict with and preempt any provision of this Ordinance, the remaining and non-conflicting provisions of this Ordinance shall be interpreted and construed to give maximum effect to the remaining and non-conflicting provisions so as to effectuate to the greatest extent possible the purposes and restrictions expressed herein.

**SECTION 4. CEQA**

Under California Public Resources Code Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of an ordinance by a city or county

implementing the provisions of Section 65852.2 and 65852.22 of the Government Code, which is the state Accessory Dwelling Unit law.

SECTION 5. Local building codes

For purpose of Government Code Section 65852.2(a)(D)(viii) “local building codes” shall mean, but not be limited to, the uniform technical codes adopted through Santa Barbara Municipal Code Chapter 22.04 and any and all objective development, design, and environmental standards and policies adopted by or implemented within the City.

SECTION 6. Effect on Projects in the Permit Process

Applications for Accessory Dwelling Units subject to the City’s Interim Urgency Ordinance No. 5927, extended by Ordinance No. 5930, that were received on or after January 1, 2017 but before the effective date of City Council adoption may continue to be processed in accordance with Government Code 65852.2 provided that a building permit is issued within 60 days after the effective date of the ordinance, or may elect to be processed in accordance with the proposed Title 30 ordinance amendments. All applications for Accessory Dwelling Units submitted on or after the effective date of City Council adoption, and any Accessory Dwelling Unit applications which have not yet received a building permit by the deadlines described above, shall be subject to the proposed Title 30 ordinance amendments.

SECTION 7. Interim Urgency Ordinance No. 5930

Interim Urgency Ordinance No. 5930 shall automatically terminate and have no further force or effect upon the effective date of this ordinance.

ORDINANCE NO. 5974

STATE OF CALIFORNIA            )  
   )  
 COUNTY OF SANTA BARBARA    ) ss.  
   )  
 CITY OF SANTA BARBARA        )

I HEREBY CERTIFY that the foregoing ordinance was introduced on October 27, 2020 and adopted by the Council of the City of Santa Barbara at a meeting held on November 10, 2020, by the following roll call vote:

- AYES:                   Councilmembers Eric Friedman, Oscar Gutierrez, Meagan Harmon, Mike Jordan, Kristen W. Sneddon; Mayor Cathy Murillo
- NOES:                   None
- ABSENT:               None
- ABSTENTIONS:       None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on November 11, 2020.



  
 \_\_\_\_\_  
 Sarah P. Gorman, CMC  
 City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on November 11, 2020.

  
 \_\_\_\_\_  
 Cathy Murillo  
 Mayor

**ORDINANCE NO. 2602**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS AMENDING VARIOUS SECTIONS OF CHAPTER 40 (ZONING) OF THE DAVIS MUNICIPAL CODE TO IMPLEMENT REGULATIONS REGARDING ACCESSORY DWELLING UNITS, JUNIOR ACCESSORY DWELLING UNITS, AND GUEST HOUSES, AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, effective January 1, 2020, Senate Bill 13 (“SB 13”), Assembly Bill 68 (“AB 68”), Assembly Bill 587 (“AB 587”), Assembly Bill 670 (“AB 670”), and Assembly Bill 881 (“AB 881”) amended state regulations to further encourage the development and limit the standards cities may impose on accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”). Government Code Section 65852.2 also was amended in 2020 by Senate Bill 1030 (“SB 1030”) and Assembly Bill 3182 (“AB 3182”). To comply with State law as amended by this recent legislation, the City must now update the Municipal Code; and

WHEREAS, on March 10, 2021, the Planning Commission of the City of Davis conducted a duly noticed public hearing on Ordinance No. 2602. At the hearing, all interested persons were given the opportunity to be heard. The Planning Commission received and considered the staff report and all the information, evidence and testimony presented in connection with this Ordinance. Following the close of the public hearing, the Planning Commission recommended approval of Ordinance No. 2602 to the City Council; and

WHEREAS, on May 4, 2021, the City Council of the City of Davis conducted a duly noticed public hearing on Ordinance No. 2602. At the hearing, all interested persons were given the opportunity to be heard. The City Council received and considered the staff report, the Planning Commission’s recommendation, and all the oral and written information, evidence, comments, and testimony presented in connection with this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are hereby incorporated into this Ordinance.

SECTION 2. The General Plan of the City of Davis states that a variety of housing types should be encouraged to meet the housing needs of an economically and socially diverse Davis, and to encourage infill as an alternative to sprawl. The Housing Element of the General Plan of the City of Davis also contains a policy to continue to facilitate ministerial accessory dwelling units and discretionary accessory dwelling units. This Ordinance is therefore consistent with the City’s General Plan.

SECTION 3. The definition of “Accessory dwelling unit” in Section 40.01.10 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is amended to read as follows, with all other definitions to remain the same:

“Accessory dwelling unit (“ADU”). Has the meaning set forth in Government Code Section 65852.2 and means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit includes the following: an efficiency unit, as defined in Health and Safety Code Section 17958.1, and a manufactured home, as defined in Health and Safety Code Section 18007.”

SECTION 4. The definition of “Accessory building or structure” in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other definitions to remain the same:

“Accessory building or structure. A structure detached from a primary building located on the same lot and incidental to and subordinate to the principal building or use, including, but not limited to, garages, carports, storage sheds, gazebos, and guest houses. An Accessory Dwelling Unit is not an Accessory Building or Structure and is subject to separate regulations found in Sections 40.26.450 and 40.26.460.”

SECTION 5. The definition of “Guest house” in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other definitions to remain the same:

“Guest house. Living quarters or conditioned space within an accessory building for the use of persons living or employed on the premises, or for temporary use by guests of the occupants of the premises. Such quarters may have bathroom facilities (toilet, sink, tub/shower) and shall have no kitchen facilities. Such quarters shall not be rented or otherwise be used as a separate dwelling. A pool house, workshop, home office or studio is also considered a guest house.”

SECTION 6. The definition of “Apartment, efficiency” in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby repealed.

SECTION 7. The following definitions are hereby added to Section 40.01.10 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code to read as follows, with all other definitions to remain the same:

“Accessory dwelling unit, junior (“JADU”). Has the meaning set forth in Government Code Section 65852.22 and means a residential dwelling unit that is no more than 500 square feet in size and is contained entirely within a single-family residence, which does not include the garage. A JADU shall include an efficiency kitchen, and may include separate bathroom facilities or share bathroom facilities with the single-family residence.”

“Attached ADU. An ADU that shares at least one common wall with the primary dwelling.”

“Detached ADU. An ADU that is constructed as a separate structure from an existing or proposed single-family dwelling or multifamily dwelling. An accessory dwelling unit attached



to the primary structure via a roof, breezeway, trellis, or covered walkway shall be considered a detached ADU.”

“Efficiency Unit. Has the meaning set forth in Section 17958.1 of the Health and Safety Code, and may be permitted for occupancy by no more than two persons. The efficiency unit shall have a minimum floor area of 220 square feet and shall have a bathroom facility and a partial kitchen or kitchenette.”

SECTION 8. Section 40.03.045 [Conditional uses permitted with an administrative use permit (AUP)] of Article 40.03 (RESIDENTIAL ONE-FAMILY (R-1) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

“40.03.045 Conditional uses permitted with an administrative use permit (AUP).

The following conditional uses may be permitted in an R-1 district subject to the granting of an administrative use permit (AUP):

(a) Non-ministerial accessory dwelling unit. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(b) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all of the requirements of Section 40.26.470.”

SECTION 9. Subdivisions (h) and (i) of Section 40.04.040 (Conditional Uses) of Article 40.04 (RESIDENTIAL ONE- AND TWO-FAMILY (R-2) DISTRICTS) of Chapter 40 of the Davis Municipal Code are hereby amended to read as follows, with all other subdivisions to remain the same:

“(h) Non-ministerial accessory dwelling units. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(i) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all of the requirements of Section 40.26.470.”

SECTION 10. Subdivision (e) of Section 40.04A.030 (Accessory Uses) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended to read in full, with all other subdivisions to remain the same:

“(e) Accessory dwelling units. Accessory dwelling units meeting the requirements of Section 40.26.450.

SECTION 11. Subdivision (g) of Section 40.04A.040 (Conditional Uses) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is amended in its entirety to read as follows, with all other subdivisions to remain the same:

“(g) Conversion of an existing non-conforming non-habitable accessory structure to a guest house as provided for in Section 40.04A.080 of this article; provided that:

(1) The accessory structure was not constructed in violation of any zoning ordinance previously in effect in the district; and

(2) The new use will not constitute a nuisance.”

SECTION 12. A new Section 40.04A.045 is hereby added to Article 40.04A (RESIDENTIAL ONE-AND TWO FAMILY CONSERVATION (R-2CD) DISTRICT) of Chapter 40 of the Davis Municipal Code to read as follows:

“40.04A.045 Conditional uses permitted with an administrative use permit (AUP).

The following conditional uses may be permitted in an R-2CD district subject to the granting of an administrative use permit (AUP):

(a) Non-ministerial accessory dwelling unit. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(b) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all the requirements of Section 40.26.470.”

SECTION 13. Paragraph (3) of Subdivision (a) of Section 40.04A.070 (Parking) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other paragraphs and subdivisions to remain the same:

“(3) Accessory Dwelling Unit Parking. No vehicle parking space is required for an ADU.

SECTION 14. Subdivision (e) of Section 40.07.030 (Accessory Uses) of Article 40.07 (Residential One- and Two-Family and Mobile Home (R-2-MH) District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(e) Accessory dwelling units meeting the requirements of Section 40.26.450.”

SECTION 15. Subdivision (d) of Section 40.14.040 (Accessory Uses) of Article 40.14 (Central Commercial (C-C) District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(d) Accessory dwelling units meeting the requirements of Section 40.26.450.”

SECTION 16. Subdivision (e) of Section 40.15.040 (Accessory Uses) of Article 40.15 (Mixed-Use District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(e) Accessory dwelling units meeting the requirements of Section 40.26.450.”

SECTION 17. Paragraph (15) of Subdivision (c) of Section 40.26.010 (Accessory buildings/structures) of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(15) Use for Dwelling Purposes. Accessory structures shall not be used for dwelling purposes.”

SECTION 18. Paragraph (8) of Subdivision (d) of Section 40.26.010 (Accessory buildings/structures) of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety and a new paragraph (9) is hereby added to read as follows, with all other subdivisions to be renumbered accordingly and otherwise remain the same:

“(8) Accessory Dwelling Units. In accordance with the underlying zoning district, ministerial accessory dwelling units are subject to the standards in Section 40.26.450, and non-ministerial accessory dwelling units are subject to the standards in Section 40.26.460.

(9) Guest Houses. Guest houses are subject to the standards in Section 40.26.470 and in accordance with the requirements of the underlying zoning district.”

SECTION 19. Section 40.26.450 of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

“40.26.450 Ministerial Accessory Dwelling Units and Junior Accessory Dwelling Units.

- (a) Purpose. The purpose of this section is to implement the requirements of Government Code Sections 65852.2 and 65852.22 to allow ministerial accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in a manner that encourages their development but simultaneously minimizes impacts on traffic, parking, density, and other areas where the City is still permitted to exercise local control. ADUs that do not meet the provisions of this Section 40.26.450, shall be considered as non-ministerial ADUs subject to the provisions of Section 40.26.460.

- (b) Definitions. For the purpose of this section, the following definitions apply. Otherwise, the words and phrases shall have the meanings respectively ascribed to them by section 40.01.010.

Manufactured Home. Has the meaning set forth in section 18007 of the Health and Safety Code.

Primary Dwelling. For purposes of this section, means the existing or proposed single-family or multi-family dwelling on the lot where an ADU would be located.

Public Transit. For purposes of this section, has the meaning set forth in Government Code Section 65852.2(j).

- (c) Permitting procedures.

(1) Before constructing an ADU or converting an existing structure or portion of an existing structure or residence to an ADU or JADU, the applicant shall obtain permits in accordance with the requirements of this section.

(2) All ADUs and JADUs shall satisfy the requirements of the California Building Standards Code, as amended by the City, and any other applicable laws.

(3) Building permit approval only. An applicant shall not be required to submit an application for an ADU permit under subsection (d) of this section, and may instead seek building permit only approval for an ADU or JADU, or both, where the proposal satisfies the requirements of Government Code Section 65852.2(e)(1), as the same may be amended from time to time, the California Building Standards Code, as amended by the City, and any other applicable laws. An ADU or JADU approved pursuant to this subsection shall be rented only for terms of 30 days or longer. The following are the categories of ADUs and JADUs that shall be approved under this paragraph (3), unless Government Code Section 65852.2(e)(1) is amended to state otherwise:

(A) A JADU within the Primary Dwelling, and an ADU within the Primary Dwelling or an ADU within an existing accessory structure. One ADU and one JADU per lot with a proposed or existing single-family dwelling is allowed if all of the following apply:

(i) The JADU is within the proposed space of a single-family dwelling or existing space of a single-family dwelling and the ADU is within either the existing or proposed space of a single-family dwelling or an existing accessory structure. An ADU built in an existing accessory structure may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. Such an expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

- (I) The space has exterior access from the proposed or existing single-family dwelling.
  - (II) The side and rear setbacks are sufficient for fire and safety.
  - (III) The JADU complies with the requirements of Government Code Section 65852.22 and with the requirements set forth in subsections c, d, and e of this section.
- (B) Detached new construction ADU for Primary Dwelling. This ADU may be combined with a JADU described in subparagraph (a) above. One detached, new construction ADU for a lot with a proposed or existing single-family dwelling if all of the following apply:
- (i) The ADU shall be no more than 800 square feet in size.
  - (ii) The ADU shall not exceed a height limit of 16 feet.
  - (iii) The ADU shall be set back a minimum of four feet from side and rear lot lines.
  - (iv) The ADU shall comply with the front yard setback as required by the zone in which it is located.
- (C) ADU within non-livable space in existing multifamily structure. One ADU within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings. If requested, more than one ADU shall be allowed, up to the number of ADUs that equals 25 percent of the existing multifamily dwelling units in the structure.
- (D) Detached new construction ADUs for existing multifamily dwelling. Not more than two detached ADUs located on a lot that has an existing multifamily dwelling, subject to a height limit of 16 feet and minimum four-foot rear and side setbacks.
- (4) Projects Subject to ADU Permit Review and Timelines.
- (A) The director or his/her designee shall ministerially review and approve an ADU permit application and shall not require a public hearing, provided that the submitted application is complete and demonstrates that the ADU complies with the requirements contained in this section and any other applicable law.
  - (B) ADU permit applications subject to ministerial approval shall be processed within the timelines established by California Government Code Section 65852.2.
  - (C) Where an ADU permit application is submitted with an application for a Primary Dwelling that is subject to discretionary review under this Code, the ADU permit application will be considered separately without discretionary review or a public hearing, following action on the portion of the project subject to discretionary review.

- (D) In addition to obtaining an ADU permit, the applicant shall be required to obtain a building permit and any other applicable construction or related permits prior to the construction of the ADU.
- (d) ADU permit application submittal requirements
- (1) An ADU application is required to be filed with the Department of Community Development and Sustainability for an ADU that does not satisfy the requirements of subsection (c)(3) of this section (Building permit approval only). An ADU application shall be accompanied by the filing fee as established by resolution of the City Council, and shall include, but not be limited to, the following documents and information:
    - (A) Name and address of the applicant.
    - (B) Owner-Builder Acknowledgment and Information Verification Form.
    - (C) Assessor's parcel number(s) of the property.
    - (D) Plot Plan (Drawn to Scale). In sufficient detail to clearly describe:
      - (i) Physical dimensions of the property.
      - (ii) Location and dimensions of all existing and proposed structures, walls, and fences.
      - (iii) Location and dimensions of all existing and proposed easements, septic tanks, leach lines, seepage pits, drainage structures, and utilities.
      - (iv) Location, dimensions, and names of all adjacent roads, whether public or private.
      - (v) Setbacks.
      - (vi) Existing and proposed methods of circulation, including ingress and egress, driveways, parking areas, and parking structures.
      - (vii) Panoramic color photographs showing the property from all sides and showing adjacent properties.
      - (viii) A description of architectural treatments proposed for the ADU.
      - (ix) Written confirmation from any water district or sewer district providing service of the availability of service.
    - (E) Floor plans. Complete floor plans of both existing and proposed conditions shall be provided. Each room shall be dimensioned and resulting floor area calculation included. The use of each room shall be labeled. The size and location of all doors, closets, walls, and cooking facilities shall be clearly depicted. For an attached ADU, the plans must include the Primary Dwelling as well.
    - (F) Elevations. North, south, east, and west elevations that show all exterior structure dimensions, all architectural projections, and all openings for both the primary residence and the proposed accessory dwelling unit. For an attached ADU, the plans must include the Primary Dwelling as well.

- (G) Additional Information. Such additional information as shall be required by the Community Development Department Director.
- (2) All ADUs shall satisfy the requirements of Chapter 8, Buildings, of the Davis Municipal Code and require a building permit from the city building official.
- (3) In accordance with State law, ADUs are an accessory use to the Primary Dwelling on the lot. ADUs shall not be considered to exceed the allowable density for the lot.
- (e) Development Standards for ADUs. Except those ADUs approved pursuant to subsection (c)(3) of this section (Building permit approval only), ADUs shall comply with the following development standards:
- (1) Location Restrictions. One ADU shall be allowed on a lot with a proposed or existing Primary Dwelling that is zoned to allow single family or multi-family residential use.
- (2) Development Standards.
- (A) Size restrictions. If there is an existing Primary Dwelling, an Attached ADU shall not exceed fifty percent (50%) of the gross floor area for the Primary Dwelling. A Detached ADU shall not exceed 850 square feet in gross floor area, or 1,000 square feet in gross floor area if the ADU provides more than one bedroom. In no case shall an ADU be less than 220 square feet, or the minimum square footage to allow an “efficiency unit” as defined in Health and Safety Code Section 17958.1, as that law may be amended.
- (B) Height restrictions.
- (i) An Attached or Detached ADU shall not exceed 16 feet in height, except as permitted in (ii) below.
- (ii) An Attached ADU may be constructed on or as the second story of an existing primary single family residence (including the garage area) provided it complies with the height and setbacks as required by the zone in which the property is located.
- (C) Setbacks. No new setback shall be required for an ADU that is constructed within an existing structure or new ADU that is constructed in the same location and with the same dimensions as an existing structure. For all other ADUs, the required minimum setback from side and rear lot lines shall be four feet. An ADU shall comply with all required front yard and street side yard setbacks otherwise required by the Davis Municipal Code.
- (D) Lot Coverage, Floor Area Ratio, and Open Space. An ADU shall conform to all lot coverage, floor area ratio, and open space requirements applicable to the zoning district in which the property is located, except that an ADU that is 800 square feet or less, not more than 16 feet in height, and compliant with a minimum 4-foot side and rear setback, shall be considered consistent with all city development standards, irrespective of any other Municipal Code limitations governing lot coverage, floor area ratio, and open space.

- (E) Design. All Accessory Dwelling Units that are approved subject to the provisions of subdivision (d) shall comply with the following design standards:
    - (i) The accessory dwelling unit shall have the same roof pitch as the primary dwelling with matching eave details, but may vary by up to 2/12 more or 2/12 less than the roof pitch of the primary dwelling unit. If the unit is located in a historic conservation zone, it must follow the roof pitch requirements for the design style allowed in that zone or subarea.
    - (ii) A garage converted to an ADU that does not proceed under the building permit only approval process shall include removal of the garage door(s) which shall be replaced with architectural features, including walls, doors, windows, trim and accent details to match the primary structure.
    - (iii) An ADU shall not require exterior alterations to the street-facing façade of a property that is historically designated or in a conservation overlay district.
    - (iv) The architecture of the ADU shall use the same architectural features, including walls, doors, windows, trim and accent details to match the primary structure.
  - (F) Exterior access. An ADU shall have a separate exterior access. Access stairs, entry doors and decks must face the primary residence or the alley, if applicable.
  - (G) Fire sprinklers. ADUs are required to provide fire sprinklers if they are required for the Primary Dwelling.
  - (H) Separation. An ADU shall be located at least 5 feet from the Primary Dwelling.
  - (I) Properties Listed on the California Register of Historic Resources. An ADU that has the potential to adversely impact any historical resource listed on the California Register of Historic Resources, shall be designed and constructed in accordance with the “Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings” found at 36 CFR 68.3, as the same may be amended from time to time.
- (3) Parking.
- (A) No additional vehicle parking space is required for a ministerial ADU.
  - (B) When an ADU is created by converting or demolishing a garage, carport or covered parking structure, replacement of parking space(s) eliminated by the construction of the ADU shall not be required as long as the ADU remains in use as a legal ADU.



- (f) Standards for JADUs. In accordance with the standards set forth in Government Code Section 65852.22, JADUs shall comply with the following requirements, unless State law is amended to set forth different standards in which case State law standards will govern.
  - (1) A JADU shall be a minimum of 220 square feet and a maximum of 500 square feet of gross floor area. The gross floor area of a shared sanitation facility shall not be included in the maximum gross floor area of a JADU.
  - (2) A JADU must be contained entirely within the walls of the habitable portion of the existing or proposed single-family dwelling. The habitable portion of the single family dwelling does not include the garage or carport.
  - (3) A separate exterior entry from the main entrance to the single-family dwelling shall be provided to serve a JADU.
  - (4) A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing single-family dwelling.
  - (5) A JADU shall include an efficiency kitchen or kitchenette, which shall include all of the following:
    - (A) A cooking facility with appliances.
    - (B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
  - (6) No additional parking is required for a JADU.
- (g) Covenant required. Prior to the issuance of a Certificate of Occupancy for the ADU or JADU, the property owner shall record a declaration of restrictions, in a form approved by the City Attorney, placing the following restrictions on the property, the property owner, and all successors in interest:
  - (1) The ADU or JADU shall not be sold, transferred, or assigned separately from the Primary Dwelling, but may be rented.
  - (2) The ADU or JADU shall not be used for short term rentals for less than 30 consecutive days.
  - (3) If there is a JADU on the property, either the JADU or Primary Dwelling shall be occupied by the owner of record.
  - (4) The property owner and all successors in interest shall maintain the ADU and/or JADU and the property in accordance with all applicable ADU and/or JADU requirements and standards

- (h) Services, impact fees, and utility connections.
- (1) ADUs shall not be allowed where roadways, public utilities or services are inadequate in accordance with the general plan and zoning designation for the lot.
  - (2) ADUs and JADUs shall have adequate water and sewer services. These services may be provided from the water and sewer points of connection for the Primary Dwelling and not be a separate set of services. For an ADU that is not a conversion of an existing space, a separate utility connection directly between the accessory dwelling unit and the utility may be required. Consistent with Government Code Section 65852.2(f), the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit.
  - (3) The owner of an ADU shall be subject to the payment of all sewer, water and other applicable fees, including impact fees set forth in Government Code Section 66000 et seq., except as follows:
    - (A) ADUs that are less than 750 square feet shall not be subject to impact fees.
    - (B) ADUs that are 750 square feet or more shall be charged impact fees that are proportional in relation to the square footage of the Primary Dwelling unit.
  - (4) The City shall not issue a building permit for an ADU or JADU until the applicant provides a will serve letter from the local water and sewer provider. Notwithstanding the foregoing, if a private sewage disposal system is being used, the applicant must provide documentation showing approval by the Building Official in lieu of the will serve letter by the local sewer provider.
- (i) Fire safety requirements. The construction of all new ADUs and JADUs shall meet minimum standards for fire safety as defined in the Building Code of the City of Davis and the Fire Code of the City of Davis, as the same may be amended by the City from time to time.
- (j) Ownership. No ADU or JADU shall be created for sale or financing pursuant to any condominium plan, community apartment plan, housing cooperative or subdivision map.
- (k) Occupancy. Except as provided elsewhere in this section, ministerial ADUs may be rented or owner occupied.
- (l) Planned Development Districts. In the event that a residential planned development district includes standards that would preclude the construction of a ministerial ADU that would otherwise be permitted under this Section 40.26.450, the requirements of this section shall apply, and shall supersede the planned development standards as applied to ministerial ADUs within the applicable planned development district.”

SECTION 20. A new Section 40.26.460 (Non-Ministerial Accessory Dwelling Units) is hereby added to Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code to read as follows:

“Section 40.26.460 Non-Ministerial Accessory Dwelling Units.

- (a) Purpose. The purpose of this section is to allow accessory dwelling units (ADUs) that do not meet the provisions of Section 40.26.450. Non-ministerial ADUs are subject to the regulations of this section and the approval of an administrative use permit.
- (b) The following standards shall apply to non-ministerial accessory dwelling units:
- (1) The maximum size of a non-ministerial accessory dwelling unit shall be 1,200 square feet.
  - (2) The minimum setbacks shall be:
    - (A) Front yard, the same as is required by the zone where the ADU is located.
    - (B) Street side yard, 15 feet.
    - (C) Interior side yard, five feet.
    - (D) Rear yard, 10 feet.
    - (E) The minimum interior side yard and rear yard shall be three feet if said yards adjoin: an alley, park or greenbelt, or a zoning district that does not principally permit single-family dwellings or two-family dwellings (e.g., districts that permit multiple-family dwellings, nonresidential uses, agriculture, public and semipublic facilities, or similar principal permitted uses). The interior side yard and rear yard for a yard adjoining a zoning district that principally permits single-family or two-family dwellings shall comply with the general requirements in subparagraphs (C) and (D) above.
  - (3) The minimum required distance between the non-ministerial accessory dwelling unit and the primary dwelling unit, and all other structures on the property, shall be in conformance with the California Building Code.
  - (4) The maximum height shall be 30 feet.
  - (5) The maximum lot coverage shall be 50 percent for the primary dwelling and accessory dwelling units and all accessory structures combined.
  - (6) The minimum useable open space is 20 percent.
  - (7) No additional vehicle parking space is required for a non-ministerial ADU.
  - (8) The accessory dwelling unit shall have the same roof pitch as the primary dwelling with matching eave details, but may vary by up to 2/12 more or 2/12 less than the roof pitch of the primary dwelling unit. If the unit is located in a historic conservation zone, it must follow the roof pitch requirements for the design style allowed in that zone or subarea.
  - (9) A garage converted to an ADU that does not proceed under the building permit only approval process shall include removal of the garage door(s) which shall be replaced with architectural features, including walls, doors, windows, trim and accent details to match the primary structure.

- (10) The architecture of the ADU shall use the same architectural features, including walls, doors, windows, trim and accent details to match the primary structure.
  - (11) Fencing or landscaping shall be installed and maintained between the unit and the neighboring property.
  - (12) For an accessory dwelling unit that is constructed as a second story or above a garage, all windows facing the side or rear lot lines shall be made of frosted or etched glass, or otherwise include a privacy film or treatment to ensure privacy for neighboring properties if the lot line abuts another residential property.
  - (13) Adequate open space and landscaping shall be provided for both the primary dwelling unit and the non-ministerial accessory dwelling unit.
- (c) An application for a non-ministerial accessory dwelling unit may be approved only if the Director makes the findings required by Section 40.30A.070.”

SECTION 21. A new Section 40.26.470 is hereby added to Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code to read as follows:

“Section 40.26.470 Guest Houses.

- (a) Purpose. The purpose of this section is to further define and ensure compatibility of small accessory buildings otherwise called guest houses.
- (b) Definitions. For the purposes of this section, the words and phrases shall have the meanings respectively ascribed to them by section 40.01.010.
- (c) The following standards shall apply to guest houses:
  - (1) The maximum lot coverage shall be 50 percent for the total of the primary structure, any accessory dwelling unit, any other accessory structure and the proposed guest house.
  - (2) The maximum total square footage for a guest house is 1,200 square feet or 50 percent of the primary structure, whichever is less.
  - (3) A guest house shall have the same setbacks as an accessory building, pursuant to Section 40.26.010.
  - (4) A guest house shall meet the height requirement for accessory buildings in Section 40.26.010.
  - (5) No parking shall be required for guest houses.
  - (6) Guest houses may have restroom facilities (toilet, sink, bathtub and/or shower) but are prohibited from having a kitchen or cooking facilities.

- (7) Only one guest house is permitted per lot.
- (8) A guest house shall not be rented or leased separate from the principal dwelling unit or otherwise used as a separate dwelling unit.
- (9) A guest house may be rented to a business authorized as a home occupation at the same address.
- (10) Except as otherwise required by Government Code Section 65852.2, no more than one accessory dwelling unit and one guest house may be located on any lot where a single family residence exists on a property.
- (11) A guest house shall comply with all standards applicable to an accessory building/structure in Section 40.26.010, except in the case of a conflict with the provisions herein, in which case the provisions in this section shall govern.

(d) An application for a guest house may be approved only if the Director makes the findings required by Section 40.30A.070.”

SECTION 22. Section 40.30A.070 (Findings for Approval) of Article 40.30A (Administrative Use Permits) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

“40.30A.070 Findings for Approval.

An administrative use permit approval shall be approved, conditionally approved, or denied by the Director (or the planning commission or city council if subject to an appeal) pursuant to the requirements of Article 40.39, Administrative Approvals, of this chapter. An administrative use permit shall only be granted for uses that the Zoning Code expressly provides may be authorized upon the approval of an administrative use permit, for example non-ministerial accessory dwelling units, guest houses, and certain cannabis-related uses. Such application may be approved only if the following findings are made:

- (a) Conforms to general plan. The proposed structure or use conforms to the requirements and intent of this chapter and the general plan.
- (b) Conditions and requirements will be met. Any additional conditions and requirements stipulated by the Director (or the planning commission or city council if subject to an appeal) have been or will be met.
- (c) Not detrimental to public welfare. That such use will not, under the circumstances of the particular case, constitute a nuisance or be detrimental to the public welfare of the community.
- (d) Compatible relationship with adjacent properties. That the location and design of the structure or use maintains a compatible relationship with adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties.”

SECTION 23. The City Council determines that this ordinance is exempt from environmental review under the California Environmental Quality Act, (California Public Resources Code §§ 21000, et seq., (“CEQA”) and the CEQA Guidelines (14 California Code of Regulations §§ 15000, et seq.) because this zoning ordinance implements the provisions of Government Code Section 65852.2 and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080.17 and California Code of Regulations Section 15282(h).

SECTION 24. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

SECTION 25. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

INTRODUCED on the 4th day of May, 2021, and PASSED AND ADOPTED by the City Council of the City of Davis on this 18th day of May, 2021, by the following vote:

AYES: Arnold, Carson, Chapman, Frerichs, Partida

NOES: None

Gloria J. Partida  
Mayor

ATTEST:

Zoe S. Mirabile, CMC  
City Clerk



Office of the City Manager

INFORMATION CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Mark Numainville, City Clerk  
 Subject: City Council Short Term Referral Process – Quarterly Update

INTRODUCTION

This report is a quarterly update on the status of short term (90-day) and other date-certain Council referrals.

CURRENT SITUATION AND ITS EFFECTS

In this context, tracking refers to a manually updated chart (Attachment 1). The May 15, 2018 Council referral establishing the monthly update includes both “short term” and “date-certain” referrals. Short term referrals are referrals that staff determines they will be able to complete in approximately three months. Date-certain referrals are those which contain a specified date of completion at the time they are approved by the City Council. Currently, the City only tracks short term referrals in an Excel spreadsheet.

The January 21, 2020 Council consent item changed the reporting frequency from monthly to quarterly. Providing a quarterly update on all short term and date-certain referrals will allow Council and the public to see the status of these referrals and any circumstances which lead to delays.

BACKGROUND

In 2016, the City Council adopted a system of Re-Weighted Range Voting (RRV) to prioritize the outstanding City Council referrals to staff. The RRV system enables City Council to provide direction to staff on which referrals are highest priority to the City Council. However, that process does not provide information on the status of short term or date-certain referrals. While many short term or date-certain referrals were “updated” through being completed and presented to Council as consent or information items, there was no comprehensive overview of this subset of referrals.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The City Council may wish to direct staff to evaluate this process after it has been in place six months.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

No direct fiscal impact. Greater efficiencies in staff resources due to prioritization of work and alignment with budget and strategic plan goals.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

- 1: Pending Short Term Referrals
- 2: Completed Short Term Referrals



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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-02-11	2	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	2) direct the Berkeley Public Health Department to review the issue of flavored cannabis products for combustion or inhalation, and cannabis products whose names imply that they are flavored, and review any additional ingredients that may be hazardous, whether natural or artificial, including vitamin E acetate in inhalation products, and make recommendations for action.	Council members			2020-07-20 17:00:00	Health, Housing and Community Services	Pending	2020-07-20 17:00:00		
2020-01-28	12	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	2) analyze the impacts of artificial flavorings/additives and advise if any further regulations are necessary	Council members			2020-07-20 17:00:00	Health, Housing and Community Services	Cancelled	2020-07-20 17:00:00		

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-06-16	0	Urgency Item: Safety for All: The George Floyd Community Safety Act - City Attorney and Manager Analysis of Contractual and Legal Barriers to Public Safety Reform	Direct the City Manager and City Attorney to analyze contractual and legal barriers to public safety reform including police union contracts, vendor contracts, state and federal laws, to determine barriers to accountability and substantive reform. In addition, direct the City Manager and City Attorney to evaluate elements in the proposed police review commission charter amendment, that can be implemented by the City Council.	Council members	Ben Bartlett, Jesse Arreguin, Kate Harrison		2020-06-24 17:00:00	City Manager's Office	On Hold	2020-06-24 17:00:00		<p>2021-06-09 16:10:28 - Melissa McDonough (Additional comments) On hold, pending Reimagining Public Safety</p> <p>2021-04-05 11:18:09 - Melissa McDonough (Additional comments) To the greatest extent possible, this work is being incorporated into the reimagining public safety process and it is anticipated that any recommendations that result will outline any barriers to implementation.</p> <p>2021-01-12 15:42:28 - Melissa McDonough (Additional comments) On hold, pending Reimagining Police</p>
2020-02-11	2	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	1) determine if the City can require businesses to post notices on their website	Council members			2020-02-17 17:00:00	City Attorney	Not Started	2020-02-17 17:00:00		

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-15	25	Prohibition on the Resale of Used Combustion Vehicles in 2040	On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to refer to the City Manager for review of the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040, to the extent legally possible.	Commission		Community Environmental Advisory Commission	2020-12-25 17:00:00	City Attorney	Not Started	2020-12-25 17:00:00		

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-02-19	16	Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program	That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report; with the following specifications: Recommendation of creating 1 new dispensary license for equity applicants. It is envisioned as new licenses are created, such as, delivery, manufacturing, and micro-business, permits will be reserved for equity applicants for each new category.	Council members	Ben Bartlett, Kriss Worthington, Cheryl Davila		2021-12-31 12:00:00	Planning and Development	Not Started	2021-12-31 12:00:00		<p>2021-06-25 15:24:06 - James Bondi (Additional comments) Project has been de-prioritized, no staff resources allocated. Would require start from beginning, so status changed to "Not Started"</p> <p>2021-01-15 13:24:28 - James Bondi (Additional comments) Equity program on hold pending additional staff resources. Planned end date pushed back, percent complete reduced to 25%</p> <p>2020-04-15 11:32:41 - James Bondi (Additional comments) Planned end date moved back to Oct 2020, given delays to public processes and re-prioritization due to COVID response.</p>

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-07-25	37	Reviewing the GIG Car Share Pilot Program	Refer to the City Manager and Transportation Department a review of the concerns, emerging regarding some features of the recently implemented GIG Car Share pilot program, request adjustments before the two-year pilot program from staff.	Council member	Linda Maio, Susan Wengraf		2022-01-03 17:00:00	Public Works	Not Started	2022-01-03 17:00:00		
2022-05-10	33	Hopkins Corridor Project Conceptual Design	This supplemental material contains a referral to the City Manager to extend the bicycle and pedestrian safety improvements planned for Hopkins (for the Monterey to Gilman segment) further west to San Pablo Avenue, contingent upon holding two community engagement meetings to seek input from stakeholders. This referral is complementary to direction presented by staff in item # 33 and is not intended to modify it in any way.	Council members	Rashi Kesarwani		2022-05-12 17:00:00	Public Works	Not Started	2022-05-12 17:00:00		

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2022-05-24	6	Proposal to Allocate Revenues Generated by the Transient Occupancy Tax in the Waterfront Area to the Marina Fund to Avoid Insolvency, Rebuild its Fund Balance and to Stabilize its Finances	That Council adopt a Resolution adopting a policy that all Transient Occupancy Taxes (TOT hotel tax) generated at the Berkeley Waterfront be allocated to the City's Marina Enterprise Fund. All other property, sales, utility users, and parking taxes; as well as business license and franchise fees, would continue to be allocated to the City's General Fund. Policy Committee Recommendation: On April 28, 2022, the Budget & Finance Policy Committee took the following action: forward the item to Council with a qualified positive recommendation to consider as part of the budget process				2022-06-01 17:00:00	City Manager's Office	Not Started	2022-06-01 17:00:00		

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-04-03	18	Supplemental Paid Family Leave	2) refer to the City Manager to draft an ordinance regarding retaliation against employees using state family leave, including a private right of action provision.	Commission			2019-01-31 17:00:00	City Attorney	Work in Progress	2019-01-31 17:00:00		<p>2019-12-16 10:27:45 - Christopher Jensen (Additional comments) City Attorney's Office is coordinating with Human Resources.</p> <p>2019-09-17 11:24:26 - Christopher Jensen (Additional comments) City Attorney's Office to coordinate with Human Resources</p>

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-03-26	15	Rescinded 2021-10-26 Dynamex Decision Impact and Compliance on Minimum Wage Ordinance and Paid Sick Leave Ordinance	That the City Council refers to the City Manager and the Labor Commission to ensure the Berkeley Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance are interpreted and enforced in a manner consistent with the holdings in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903.	Council members	Ben Bartlett		2019-11-29 17:00:00	City Attorney	Work in Progress	2020-01-31 17:00:00		<p>2019-12-16 10:28:22 - Christopher Jensen (Additional comments) City Attorney's Office is coordinating with Human Resources.</p> <p>2019-09-17 10:59:00 - Christopher Jensen (Additional comments) A draft opinion is under review in the City Attorney's office.</p> <p>2019-06-18 08:04:27 - Melissa McDonough (Additional comments) The City Attorney's Office is drafting a City Attorney opinion analyzing the holding in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4Cal.5th 903 with respect to the City's MWO and PSLO. The completed memo will be referred to the City Manager and the Labor Commission for review by</p>



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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-02-11	15	Recommendations Related to Code Enforcement and Receivership Actions	On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following: a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years; b. How various code enforcement issues at	Council members			2020-02-17 17:00:00	City Manager's Office	Work in Progress	2020-02-17 17:00:00		2022-01-13 13:19:01 - Melissa McDonough (Additional comments) Staff are consulting with City Attorney's Office about an appropriate response to this referral.  2021-10-22 10:06:35 - Melissa McDonough (Additional comments) Staff are consulting with City Attorney's Office about an appropriate response to this referral.  2020-10-21 11:12:01 - Melissa McDonough (Additional comments) The staff assigned to conduct this work has been tasked with civil enforcement of the face coverings urgency ordinance.  2020-07-20 10:49:42 - Melissa McDonough (Additional comments) Work on this project was

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-07-16	9	Referral to the City Manager to Consider Amending the Language of the City's Wireless Telecommunications Ordinance and Aesthetic Guidelines	Request that the City Manager consider amending the language of the City's Wireless Telecommunications Ordinance (BMC 23C.17) and Aesthetic Guidelines (BMC 16.10 & Aesthetic Guidelines for PROW permits) and return to City Council for adoption as soon as possible.	Council members	Susan Wengraf, Jesse Arreguin, Ben Bartlett, Kate Harrison		2019-07-22 17:00:00	City Attorney	Work in Progress	2020-02-28 17:00:00		<p>2019-11-27 10:54:30 - Melissa McDonough (Additional comments) The City Attorney's Office, the City Manager's Office, Public Works, and Land Use Planning are in the process of revising an internal draft of administrative guidelines for implementing BMC 16.10 with respect to small cell wireless facilities.</p> <p>2019-09-17 11:03:27 - Christopher Jensen (Additional comments) The City Manager's Office and City Attorney's Office are coordinating with other departments to update guidelines and procedures for wireless application submittals.</p>

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-07-28	30	Rescinded 2021-10-26 Providing our Unhoused Community in the City of Berkeley with Menstrual Products	3. Direct the City Manager to use existing homeless services funding to develop and deploy a program to provide a broad spectrum of menstrual products, including but not limited to, feminine hygiene, pads, tampons, underwear, and other related products, both through the City's outreach direct services, as well as through the community based homeless services providers. Additionally, require some elements of this program be deployed immediately, with a full program deployment within six months.	Council members	Cheryl Davila, Ben Bartlett, Lori Droste		2020-10-15 17:00:00	Health, Housing and Community Services	Work in Progress	2020-10-15 17:00:00		

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-11-10	11	Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street	Refer to the City Manager a proposal to install stop signs at the intersections of Eighth Street and Carleton Street and Eighth Street and Pardee Street.	Council members	Jesse Arreguin		2020-11-18 17:00:00	Public Works	Work in Progress	2020-11-18 17:00:00		<p>2021-10-13 08:49:37 - Nancy Melendez (Additional comments) Needs memo declaring completion of assessment</p> <p>2021-06-23 11:41:19 - Nancy Melendez (Additional comments) All way stop evaluated, and found not warranted</p> <p>2021-04-15 10:11:39 - Nancy Melendez (Additional comments) Data analysis concluded that traffic and pedestrian volumes are far below the level at which stop signs may be warranted.</p> <p>2021-01-14 17:44:32 - Nancy Melendez (Additional comments) Data collection needed for Stop Warrants is being scheduled</p>

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-01	25	Personal Liability Protection for Small Businesses	1. Direct the City Manager and City Attorney to draft and submit to the City Council for consideration an emergency ordinance to prohibit the enforcement of personal liability provisions in commercial leases and commercial rental agreements in the City of Berkeley for lessees/renters who have experienced financial impacts related to the Covid-19 pandemic. 2. Direct the City Manager to conduct outreach to all commercial tenants regarding any protections enacted by the City Council, with a particular focus on businesses that were required to stop	Council members	Sophie Hahn, Susan Wengraf		2020-12-04 17:00:00	City Attorney	Work in Progress	2020-12-04 17:00:00		
2020-10-27	21	Convert 62nd Street between King St, and Adeline St. into a One-Way Line that exits in the direction of Adeline St.	Refer to the City Manager to convert 62nd Street between King St. and Adeline St. into a one-way lane that exits to Adeline and blocks motorists from entering 62nd Street through Adeline Street.	Council members	Ben Bartlett, Jesse Arreguin		2021-06-23 17:00:00	Public Works	Work in Progress	2021-06-23 17:00:00		

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-10	53	Voluntary Time Off on Statewide Election Days for City Employees	Refer to the City Manager to designate Statewide Election Days as VTO days, and refer to the 2x2 Committee to discuss coordinating City and District policy on holidays, in particular Election Day.	Council member	Rigel Robinson, Cheryl Davila, Sophie Hahn, Lori Droste		2021-07-02 17:00:00	Human Resources	Work in Progress	2021-07-02 17:00:00		<p>2022-01-18 13:44:05 - Melissa McDonough (Additional comments) The referral will be formally complete when the VTO calendar for FY23 is adopted (i.e., it will be the first year that an election VTO appears).</p> <p>2020-10-21 11:01:23 - Melissa McDonough (Additional comments) Pending draft Administrative Regulation to institute as regular practice and memo to Council to close out referral. Implemented VTO day as Election Day (Nov 3) for 2020.</p> <p>2020-04-28 09:58:54 - Melissa McDonough (Additional comments) item went to council and approved. Delayed due to COVID-19</p>

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-07-25		Rescinded 2021-10-26 Public Toilet Policy	Refer to the City Manager to develop the following "Neighborhood Public Toilet Policy": Develop a process in which residents can obtain a permit for a neighborhood public toilet via an official petition; Residents should contact the City via 311 to obtain an official petition form to apply for a permit; In order to obtain the permit, the petition should be signed by at least 51% of residential addresses and business owners within the nearest two block radius of the proposed public toilet site; The City shall not fund or contribute to the financing of the public toilets or their maintenance.	Council member			2020-12-31 17:00:00	City Manager's Office	Past Due	2020-12-31 17:00:00		<p>2021-10-22 10:04:32 - Melissa McDonough (Additional comments) Staff continue to evaluate the feasibility of this referral, given the challenges of maintaining public toilets.</p> <p>2020-07-20 10:51:47 - Melissa McDonough (Additional comments) Response to the referral has been delayed due to the COVID-19 pandemic and its impact on available staffing to support the draft policy. In response to the pandemic, the City has placed and maintains several additional portable toilets and handwashing stations throughout the City.</p> <p>2019-08-05 09:47:54 - Melissa McDonough (Additional comments) Staff have prepared a</p>

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-12-19	22	Rescinded 2021-10-26 Develop Ordinance Prohibiting Companies Participating in the Construction of a Border Wall from Contracting with the City of Berkeley	Direct the City Manager to develop an ordinance prohibiting companies involved in the construction of a border wall from contracting with the City of Berkeley. Return to Council with the proposed ordinance within 90 days.	Council member	Ben Bartlett, Sophie Hahn, Cheryl Davila		2018-07-20 17:00:00	Finance	Pending Not On Schedule	2018-07-20 17:00:00		<p>2020-04-16 10:57:58 - Melissa McDonough (Additional comments) October 2019 draft ordinance was sent to City Attorney for review. Remaining at 25% complete            General Services Manager to commence follow up with City Attorney's Office following COVID-19 event and Emergency Operations Center deactivation.</p> <p>2019-11-25 13:41:42 - Melissa McDonough (Additional comments) Draft ordinance sent to the City Attorney for review.</p>



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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-04-02	18	Companion Report: Effective Enforcement of Safe Lead-Paint Practices - Update on Amendments	Based on the intent of the recommendation from the Community Environmental Advisory Commission (CEAC) for the City to expand enforcement of unsafe lead paint practices, refer to the City Manager to: - Coordinate with the Alameda County Healthy Homes Program to clearly identify roles and responsibilities for expanding enforcement of unsafe lead practices, and to explore options for sharing resources that can support expanded local enforcement; - Identify what resources, staff capacity, and program structure would be required to expand City enforcement of unsafe lead practices; -	Council members			2020-12-31 15:28:36	City Manager's Office	Pending Not On Schedule	2020-12-31 15:28:36		<p>2020-04-02 13:24:58 - Melissa McDonough (Additional comments) Multi-department staff resources are required and are not available to address this request right now.</p> <p>2019-10-03 13:55:00 - Melissa McDonough (Additional comments) Completed matrix</p> <p>2019-09-12 08:32:23 - Melissa McDonough (Additional comments) Convened all City divisions which touch issue (Public Health, Environmental Health, Toxics, Building &amp; Safety, 311). Mapped existing processes. Preparing draft consolidation plan.</p> <p>2019-08-07 15:33:54 - Melissa McDonough (Additional comments) In progress, drafting</p>

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**Pending Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-03-14	24	Referral to Consider Caregiver Parking in Residential Shared Parking Pilot	Refer to the City Manager and Transportation Commission to consider a pilot program for caregiver parking permits in RPP zones in the goBerkeley Residential Shared Parking Pilot.	Council member			2020-06-12 17:00:00	Public Works	Pending On Schedule	2020-06-12 17:00:00		<p>2021-10-13 08:42:05 - Nancy Melendez (Additional comments) No change</p> <p>2021-01-14 17:36:21 - Nancy Melendez (Additional comments) Due to Covid-19 work remains suspended, and the new end date is likely to be 12-31-2021</p> <p>2020-10-05 09:35:13 - Nancy Melendez (Additional comments) (no change) Due to the Shelter in Place order and temporary suspension of RPP, the schedule for this project is estimated to be delayed 6 to 12 months. The new planned end date is June 12, 2021</p> <p>2020-06-30 15:24:51 - Nancy Melendez (Additional comments) Due to the Shelter in Place order and</p>

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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2014-04-29	35	35. City Manager Referral: Policy for Companies Such as Airbnb to Pay Transient Occupancy Tax, as Currently Paid by Other Small Local Businesses	Refer to the City Manager creation of a policy for companies such as Airbnb to pay the Transient Occupancy Tax, as currently paid by other small local businesses.	Council member	City Council District 7	Kriss Worthington		2014-10-24 17:00:00	Planning	Completed	2014-10-27 08:00:00	2016-09-07 00:00:00	
2014-12-16	25	Reconcile the West Berkeley Plan and the Zoning Code as it Pertains to Medical Uses	Refer to the Planning Commission the task of revising the current zoning ordinance so that it reflects the West Berkeley Plan's goals of encouraging medical uses in West Berkeley.	Council member	City Council District 2			2015-06-12 17:00:00	Planning	Completed	2015-06-15 08:00:00	2017-01-24 00:00:00	
2015-09-15	43	Prohibit Sales of Tobacco Products to Persons Under the Age of 21	Direct the City Manager and Community Health Commission to draft an ordinance amending Berkeley Municipal Code Chapter 9.80 "Tobacco Retailers" to prohibit the sales of tobacco products and smoking paraphernalia to persons under the age of 21.	Council member		Jesse Arreguin		2015-06-15 17:00:00	Health, Housing and Community Services	Completed	2015-06-15 17:00:00	2015-06-15 17:00:00	
2015-09-15	43	Prohibit Sales of Tobacco Products to Persons Under the Age of 21	Direct the City Manager and Community Health Commission to draft an ordinance amending Berkeley Municipal Code Chapter 9.80 "Tobacco Retailers" to prohibit the sales of tobacco products and smoking paraphernalia to persons under the age of 21.	Council member		Jesse Arreguin		2016-03-11 17:00:00	Health, Housing and Community Services	Completed	2016-03-11 17:00:00	2016-01-26 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-09-15	55	Referral to the Community Environmental Advisory Commission to Install 1.8 GPM Showerheads in All New Housing Projects or Any Renovation Over \$50,000	Refer to the Community Environmental Advisory Commission to explore requiring a maximum of 1.8 GPM low flow showerheads in new housing projects and all housing renovations exceeding \$50,000 throughout Berkeley.	Council member		Kriss Worthington		2016-03-11 17:00:00	Planning	Completed	2016-03-14 08:00:00	2016-07-19 00:00:00	
2015-11-10	1	Proposed Amendments to the Minimum Wage Ordinance; Amending Berkeley Municipal Code Chapter 13.99 (Continued from September 15, 2015)	Review and consider information regarding the activities and costs associated with implementing and enforcing the Commission on Labor's proposed amendments to the Minimum Wage Ordinance (MWO), including the potential impact of the proposed amendments on the City's minimum wage employees, employers, non-profit organizations and community-based organizations, on-call workers and youth training program workers, and either: 1. Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.99, which includes staff-recommended revisions to the Commission's proposed Ordinance; -OR-					2016-05-06 17:00:00	City Manager's Office	Completed	2016-05-09 08:00:00	2016-09-01 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-11-17	30	Fourth Ambulance Pilot Project 6-Month Update	No recommendation noted. Action: Moved to Consent Calendar and held over to January 19, 2016. Fire to report back in May 2016 for permanent program.					2016-05-13 17:00:00	FIRE & EMERGENCY SERVICES	Completed	2016-05-16 08:00:00	2018-07-01 00:00:00	
2015-12-01	33	City Manager and Planning Commission's Referral: Enable Implementation of Council Approved Floor Area Ratio in the Telegraph Commercial District between Dwight and Bancroft by Amending the Zoning Ordinance	Refer to the City Manager and Planning Commission and immediate implementation strategy to bring the City Zoning Ordinance in compliance with the policy adopted by City Council to increase Floor Area Ratio (FAR) in the Telegraph Commercial District between Dwight and Bancroft	Council member	City Council District 7	Kriss Worthington		2016-05-27 17:00:00	Planning	Completed	2016-05-30 08:00:00	2016-06-28 00:00:00	
2015-12-01	22	City Manager Referral: Pilot Program to Implement Solar Trash Compactors on Telegraph Avenue and Downtown Berkeley	Refer to the City Manager to adopt a Pilot Program to implement Solar Trash Compactors on Telegraph Avenue and Downtown Berkeley.	Council member		Kriss Worthington, Linda Maio, Susan Wengraf, Lori Droste		2016-05-27 17:00:00	Public Works	Completed	2016-05-30 08:00:00	2018-07-24 00:00:00	2019-02-05 16:44:20 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts.
		Google Translate Bar							Information Technology	Completed	2016-06-01 00:00:00	2016-06-01 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-12-15	35	Amending Open Government Ordinance to Allow Submission of Revised/Supplemental Items	Refer to the City Manager and City Attorney to draft an ordinance amending Berkeley Municipal Code Section 2.06.070.E (Open Government Ordinance) to allow the submission of revised or supplemental agenda material for the Supplemental Communications Packet 2. The revised or supplemental material must be submitted no later than 12 noon the day of the City Council meeting at which the item is to be considered. The online version of the City Council agenda shall also contain a link to such items. If revised agenda material is submitted by this deadline, it would not require a two-thirds vote of the Council to accept the material.	Council member		Jesse Arreguin, Susan Wengraf, Lori Droste		2016-06-10 17:00:00	City Clerk	Completed	2016-06-10 17:00:00		
2015-12-15	30	Provide Cost Estimates to Restore the Berkeley Pier	Refer to the City Manager to determine the cost to make the appropriate repairs so that it will be safe for public use.	Council member	City Council District 2			2016-06-10 17:00:00	City Manager's Office	Completed	2016-06-13 08:00:00	2017-03-14 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-12-15	54	Referral to City Manager: Establishment of Affordable Housing Small Sites Program Revised Version	Refer to the City Manager to: 1. Look into the feasibility of creating a Small Sites Program to allow non-profits to purchase small multi-family buildings (5-25 units) to create and preserve affordable housing, with an emphasis on properties with a high potential for conversion to cooperative homeownership. 2. Develop an inventory of City-owned land and other land owned by public agencies in the City of Berkeley which could potentially be used to create below-market rate housing.	Council member		Jesse Arreguin		2016-06-10 17:00:00	Health, Housing and Community Services	Completed	2016-06-13 08:00:00	2016-12-13 00:00:00	2019-02-05 16:47:39 - Melissa McDonough (Additional comments) 2 is completed. 1 was later prioritized long term as top priority of Council's housing action plan. Plan outline complete and will bring before HAC in July 2018.
2016-01-19	24	Tenant Buyout Agreement Ordinance	Refer to the City Manager and the Rent Stabilization Board to draft an ordinance regulating situations where a tenant agrees to vacate a rent-controlled unit in exchange for a sum of money, known as a buyout.	Council member		Jesse Arreguin		2016-07-15 17:00:00	City Manager's Office	Completed	2016-07-18 08:00:00	2016-03-31 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-02-09	26	Develop a Provision for the Landmarks Preservation Ordinance to Allow for the De-designation of a Landmark Building that has been Legally Demolished (Continued from January 12, 2016)	Refer to the City Manager to develop a provision for the Landmarks Preservation Ordinance (LPO) that would allow a landmark designation to be de-designated for a building that has been previously landmarked but subsequently has been legally demolished.	Council member				2016-08-05 17:00:00	City Manager's Office	Completed	2016-08-08 08:00:00	2016-05-10 00:00:00	
2016-02-09	15	Budget Referral: Including BigBelly Solar Compactor Bins Allocation in the 2016 Mid-Year Budget Process	Refer to the 2016 Mid-year budget process the purchasing of BigBelly Solar Compactor Bins in order to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.	Council member		Kriss Worthington, Lori Droste		2016-08-05 17:00:00	Public Works	Completed	2016-08-08 08:00:00	2018-07-24 00:00:00	2019-02-05 16:51:37 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts.
2016-03-15	6	Prioritize Installation of Bicycle Lane on Fulton Street	Direct the City Manager and Transportation staff to prioritize and expedite the installation of a bicycle lane on Fulton Street between Bancroft Way and Channing Way.	Council member		Jesse Arreguin		2016-09-09 17:00:00	Public Works	Completed	2016-09-12 08:00:00	2016-05-10 00:00:00	



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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-04-05	10	Modify the Proposed Early Mitigation Fee Discount and Preserve Revenue Towards Units At Or Below 50% AMI and Add Sunset Clause (Continued from February 23, 2016)	That the City of Berkeley amend Council Item 10a to remove the option of paying a substantially-reduced mitigation fee at the issuance of a permit, and to preserve revenue from the mitigation fees to maintain or increase the funds designated towards units for incomes at or below 50% AMI, and add a sunset clause.	Council member		Kriss Worthington		2016-09-30 17:00:00	Health, Housing and Community Services	Completed	2016-10-03 08:00:00	2016-07-19 00:00:00	
2016-04-26	31	Creation of 311 Mobile Application	Refer to the City Manager to create a mobile application for the 311 system and improve the 311 Online Service Center.	Council member		Jesse Arreguin		2016-10-24 08:00:00	Information Technology	Completed	2016-10-24 08:00:00	2016-11-15 00:00:00	
2016-05-10	21	Resolutions Consenting to Inclusion of the City of Berkeley Properties in the California Home Finance Authority PACE Programs and Associate Membership in California Home Finance Authority	ABAG has a new report and the City Council has voted twice in favor; thus, the City of Berkeley should approve and sign an agreement for collaborative services for Property Assessed Clean Energy Financing (PACE) marketplace. Also, that the City of Berkeley approve and sign acknowledgement addendum of RCSA, as executed between ABAG and RPPs.	Council member		Kriss Worthington		2016-11-04 17:00:00	City Attorney	Completed	2016-11-07 08:00:00	2016-09-20 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-05-31	20	Requesting a Comprehensive Report on the State of Homeless Services within the City of Berkeley	Request the City Manager direct staff to prepare a report outlining the details of City funded homeless services. The purpose of this report is to help Council and the community understand the various factors related to the allocation of resources to address homelessness within the City. Once the report is complete, it is requested that city staff schedule a worksession to go over the findings.	Council member	City Council District 5			2016-11-25 17:00:00	Health, Housing and Community Services	Completed	2016-11-28 08:00:00	2016-11-01 00:00:00	
2016-05-31	22	City Manager Referral: Consider Adding Energy Efficient Equity as an Additional Property Assessed Clean Energy Program	Refer to the City Manager to consider adding Energy Efficient Equity as an additional property assessed clean energy program.	Council member		Kriss Worthington		2016-11-25 17:00:00	Planning	Completed	2016-11-28 08:00:00	2016-09-20 00:00:00	
2016-06-28	47	City Manager Referral: Feasibility of Acquiring a High-Capacity Scanner for Multiple City Departments	Refer to the City Manager to consider investing in a high-capacity scanner to digitize City records for the Council and multiple City departments.	Council member		Kriss Worthington		2016-12-26 08:00:00	Information Technology	Completed	2016-12-26 08:00:00	2017-12-12 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-12-15	54	Referral to City Manager: Establishment of Affordable Housing Small Sites Program Revised Version	Refer to the City Manager to: 1. Look into the feasibility of creating a Small Sites Program to allow non-profits to purchase small multi-family buildings (5-25 units) to create and preserve affordable housing, with an emphasis on properties with a high potential for conversion to cooperative homeownership. 2. Develop an inventory of City-owned land and other land owned by public agencies in the City of Berkeley which could potentially be used to create below-market rate housing.	Council member		Jesse Arreguin		2017-01-02 17:00:00	Health, Housing and Community Services	Completed	2017-01-02 17:00:00	2017-01-02 17:00:00	
2016-07-12	27	Refer to City Manager to Consider Applying for \$100,000 from the Better Together Resilient Communities Grant Program	That the City Manager consider applying for the \$100,000 grant that PG&E's Better Together Resilient Communities grant program will offer in the beginning of 2017.	Council member		Kriss Worthington		2017-01-06 17:00:00	Planning	Completed	2017-01-09 08:00:00	2016-12-31 00:00:00	
2016-07-19	41	Companion Report: Amend Berkeley Municipal Code Creating Community Health Commission	Refer to staff to write an ordinance based on the Community Health Commission (CHC) recommendation with the changes suggested by staff.		MAYOR AND COUNCIL			2017-01-13 17:00:00	Health, Housing and Community Services	Completed	2017-01-16 08:00:00	2016-11-29 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-09-20	32	City Manager Referral: Implementing BigBelly Solar Compactor Bins	Refer to the City Manager to examine the feasibility of procuring BigBelly Solar Compactor Bins to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.	Council member		Kriss Worthington, Lori Droste		2017-03-17 17:00:00	Public Works	Completed	2017-03-20 08:00:00	2018-07-24 00:00:00	2019-02-05 17:04:44 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts.
2016-09-20	21	City Manager Referral: Consider the Four Recommendations Contained in the Alameda County Grand Jury Report (Continued from July 19, 2016)	Refer to the City Manager to consider the four recommendations in response to the Alameda County Grand Jury Report recommendations.	Council member		Kriss Worthington		2017-03-20 08:00:00	Information Technology	Completed	2017-03-20 08:00:00	2016-10-20 00:00:00	
2016-09-20	22	Amending Council Rules Regarding Removal of Commissioners	Direct staff to return with a policy recommendation consistent with the recommendations in this report, i.e., noting that as a matter of courtesy and respect, Councilmembers are expected to set the date a commissioner is to be replaced on a commission and communicate that date to the commissioner not less than two weeks from the official date of replacement.	Council member		Commission		2017-03-17 17:00:00	City Clerk	Completed	2017-03-20 08:00:00	2018-06-12 00:00:00	2019-02-05 17:02:37 - Melissa McDonough (Additional comments) Incorporating changes from City Council.
		Improved Emergency Notification System							Information Technology	Completed	2017-04-01 00:00:00	2017-06-05 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-10-18	26	Revisions to the Public Art in Private Development Program	Request the City Manager draft a resolution to revise the Public Art in Private Development Program Guide to provide the Civic Arts Commission guidance and more flexibility in the use of the Cultural Trust Fund with the language suggested in the report.	Council member				2017-04-14 17:00:00	Office of Economic Development	Completed	2017-04-17 08:00:00	2016-12-13 00:00:00	
2016-10-18	25	Amendments to BMC 23C.23.050 to Allow a Third Option to Satisfy the Private Percent for Art Requirements	Request the City Manager draft an ordinance for Council adoption to revise BMC 23C.23.050, the One-Percent for Public Art on Private Projects Ordinance, to do the following: 1. Have 5% of the 1% requirement go directly to administration of the Public Art in Private Development program regardless of how the developer decides to satisfy the requirement;	Council member				2017-04-14 17:00:00	Office of Economic Development	Completed	2017-04-17 08:00:00	2017-01-24 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-10-18	41	City Plan for Emergency Shelter During Winter Season	Refer the following actions to the City Manager to consider in developing a plan for emergency shelter/services during the upcoming winter season. These actions will help implement Resolution No. 67,357-N.S. "Declaring a Homeless Shelter Crisis in Berkeley": 1. Allow full use of the Multi-Agency Service Center (MASC) at 1931 Center Street as a Warming Center. Direct the City Manager to study the feasibility of using the West Berkeley Senior Center as a day-time Warming Center or evening shelter. Engage in discussions with Dorothy Day House about a day-time respite center. 2. Direct staff to develop a winter shelter services program for Fall 2016-Spring 2017 with funding	Council member		Jesse Arreguin		2017-04-14 17:00:00	Health, Housing and Community Services	Completed	2017-04-17 08:00:00	2017-06-27 00:00:00	
2016-11-01	15	City Manager Referral: Increasing Transparency in City Public Record Act Responses	Approved revised recommendation to request a report from the City Manager on how the City is using the permitted exemptions in compliance with the Public Records Act.	Council member		Kriss Worthington		2017-04-28 17:00:00	City Attorney	Completed	2017-05-01 08:00:00	2016-12-13 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-12-13	29	Ordinance for Standards for Testing and Certification of DAS Antennas	Request that the City Manager draft ordinance language to amend Section 16.10.100 of the Berkeley Municipal Code to include Standards for Testing and Certification of DAS Antennas and return to the City Council within 60 days.	Council member		Susan Wengraf		2017-06-09 17:00:00	City Attorney	Completed	2017-06-12 08:00:00	2017-03-28 00:00:00	
2017-01-24	37	Berkeley BABIES Initiative	Request that the City Manager create a provision and enforcement mechanism to ensure that all publically-accessible City buildings install and maintain at least one baby diaper-changing accommodation that is accessible in both men and women's restrooms or a single diaper-changing accommodation that is accessible to all genders. In addition, request that the City Manager provide recommendations to mandate all businesses to provide changing stations in either women's and men's restrooms or gender-neutral restrooms.	Councilmembers				2017-07-24 08:00:00	City Manager's Office	Completed	2017-07-24 08:00:00	2017-07-01 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-01-24	38	Berkeley Mothers Initiative	Request that the City Manager ensure that all City buildings provide and maintain at least one private place reasonably close to an employee's workspace for breastfeeding mothers to pump.	Councilmembers		Lori Droste		2017-07-21 17:00:00	City Manager's Office	Completed	2017-07-24 08:00:00	2017-07-01 00:00:00	
2017-01-31	10	Medical Cannabis Ordinance Revisions and Cultivation Application Process	Request that the City Manager provide Council with analysis of the questions presented by Councilmember Sophie Hahn.	Council member				2017-07-28 17:00:00	Planning	Completed	2017-07-31 08:00:00	2017-11-07 00:00:00	
2017-02-14	11	Updated Information Report on Measure M	Request that the City Manager return to the City Council in April with an Information Report on Measure M implementation, expenditures, projected expenses and plans.	Council member				2017-08-11 17:00:00	Public Works	Completed	2017-08-14 08:00:00	2017-05-02 00:00:00	



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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-03-28	33	Referral Response: Cigarette Butt Pollution Prevention	REFER to the City Manager to enact a pilot program in downtown Berkeley with the goal of greatly reducing cigarette butt litter that accumulates on sidewalks and curbsides, in a central location. This pilot program would: a) Place a total of four receptacles for cigarette butt disposal in front of three adult schools and a bus stop where smoking behavior continues despite its prohibition. The receptacles are to be placed in front of: i. Berkeley City College, 2050 Center Street; ii. Language Studies International on 2015 Center Street; iii. Kaplan International, Berkeley, 150 Berkeley Square; and iv. a selected major bus stop in the vicinity of an entrance to the Downtown Berkeley	Commission			Community Environmental Advisory Commission	2017-09-22 17:00:00	Office of Economic Development	Completed	2017-09-25 08:00:00	2017-05-30 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-03-28	22	Security Camera Database	Request that the City Manager return to Council with an update on the referral to create a voluntary database of security cameras in Berkeley. With an increase in crime, residents are anxious to help the Berkeley Police Department solve cases and arrest the perpetrators - amended to include direction that guidelines protect privacy and prevent misuse of camera footage.	Council member				2017-09-25 08:00:00	Police	Completed	2017-09-25 08:00:00	2018-08-15 00:00:00	
2017-07-25	40	Expediting Elements of Previous Council Referral to Study Possible Scenarios of the Loss of Federal Funds	Direct the City Manager to expedite the compilation and delivery of a list of federal funds that the City of Berkeley receives and the programs and facilities supported by such funds.	Council member		Sophie Hahn, Jesse Arreguin, Cheryl Davila, Kate Harrison		2018-01-19 17:00:00	Health, Housing and Community Services	Completed	2017-10-23 00:00:00	2018-12-11 12:22:40	2019-02-05 17:14:03 - Melissa McDonough (Additional comments) HHCS is updating with the latest single audit findings.

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-05-30	53	Eliminate the Required Affidavits of Residency for Commissioners	Eliminate the requirement for Commissioners to submit Affidavits of Residency when they are appointed, and annually thereafter, in pursuit of saving time and money for the City of Berkeley. Revised Materials - <a href="http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_53_Eliminate_the_Required_-_Rev.aspx">http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_53_Eliminate_the_Required_-_Rev.aspx</a>	Council member				2017-11-24 17:00:00	City Clerk	Completed	2017-11-27 08:00:00	2017-09-12 00:00:00	
2017-06-27	32	Housing Inspection and Community Services Manager	Request the City Manager to create and fill the position of Housing Inspection and Community Services Manager.	Council member				2017-12-22 17:00:00	Planning	Completed	2017-12-25 08:00:00	2018-09-13 00:00:00	2019-02-05 17:13:07 - Melissa McDonough (Additional comments) New position approved by Personnel Board. Will bring to Council for adoption by November which will complete referral.

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-10-03	7	Request for Information Regarding Grant Writing Services from Specialized Grant Writing Firms	Refer to the City Manager to issue a request for information to explore grant writing services from specialized municipal grant-writing firms, and report back to Council.	Council member		Sophie Hahn, Kate Harrison, Cheryl Davila, Ben Bartlett		2018-01-01 17:00:00	Finance	Completed	2018-01-01 17:00:00	2019-09-24 12:41:03	2019-04-12 15:07:44 - Melissa McDonough (Additional comments) Issued #18-11201 Feb. 5, 2018 as an RFI (Request for information); closed March 1, 2018. Received 13 information responses for review. Next Steps: use responses to inform scope of work, then release as RFP.
2017-07-25	51	Commercial Cannabis Regulations and Licensing	Refer to the City Manager and Cannabis Commission the proposed local ordinances to establish a licensing process for Commercial Cannabis operations, as permitted under Proposition 64, Adult Use of Marijuana Act. The Council requests that the City Manager and Cannabis Commission report to the City Council on its recommendations on regulations and licensing for commercial cannabis businesses before the end of 2017.	Council member				2018-01-19 17:00:00	Planning	Completed	2018-01-22 08:00:00	2018-09-13 00:00:00	2019-02-05 17:15:33 - Melissa McDonough (Additional comments) Lengthy process involving 3 Commissions and many City departments. Some Ordinance changes will be at Council 9/13/18. But more will be needed. Council Worksession scheduled for 10/9/18, then adoption of more Ordinance changes expected by end of year, which will close this referral.

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-10-31	17	Expanded Criteria for the Installation of Stop Signs	1. Refer to the Transportation Commission consideration of additional or supplemental stop sign criteria which addresses the needs of vulnerable populations, the presence of bicycle boulevards, and the difficulty of crossing particular intersections. 2. Direct that staff consult with the Bicycle Subcommittee of the Transportation Commission when making decisions impacting bicycle boulevards, whenever possible. 3. Request that the City Manager provide an informational report on the particular state and federal warrants and local policies that prevent stop signs being used as traffic calming measures.	Council member		Kate Harrison, Ben Bartlett, Lori Droste	Transportation Commission	2018-01-29 17:00:00	Public Works	Completed	2018-01-29 17:00:00	2019-11-12 17:00:00	2019-09-25 08:55:09 - Melissa McDonough (Additional comments) Commission Recommendation and City Manager Companion report are under review and tentatively scheduled for council approval in Nov 2019  2019-02-05 16:27:28 - Melissa McDonough (Additional comments) Transportation Commission formed a subcommittee and held first meeting 6/11/18, additional meetings to be planned by subcommittee.

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-09-12	33	Voter Registration Forms in All City Buildings on Their Main Floors	Direct the City Manager to provide voter registration forms on the main floor of all designated city buildings that are open to the public and in all Community based organizations within the city limits. Community based organizations that are funded by the City of Berkeley will be required to pick up the voter registration forms from the City Clerk's Office and that should be clearly stated in their respective contracts.	Council member		Cheryl Davila, Kate Harrison, Sophie Hahn		2018-03-09 17:00:00	City Clerk	Completed	2018-03-12 08:00:00	2017-11-08 00:00:00	
2017-10-03	24	Parallel Permitting Process	Request that the City Manager in coordination with the Director of Planning and the Chief Building Official work to establish a voluntary parallel permitting process for applications to construct housing in the City of Berkeley.	Council member		Susan Wengraf, Linda Maio, Lori Droste, Jesse Arreguin		2018-03-30 17:00:00	Planning	Completed	2018-04-02 08:00:00	2017-11-01 00:00:00	2019-02-05 17:23:50 - Melissa McDonough (Additional comments) This voluntary parallel permitting option already exists. Following October 2017 referral we advised Building staff to be sure to make option known to interested applicants.

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-10-03	21	Referral to the City Manager to Provide a Public Master List of the Legislation on which the City Council Has Taken a Position	Request that the City Manager work with the City's lobbyist to create and maintain a master list of the legislation on which the City Council has taken a formal position of support or opposition through passage of an item.	Council member		Kate Harrison, Sophie Hahn, Cheryl Davila		2018-03-30 17:00:00	City Clerk	Completed	2018-04-02 08:00:00	2018-01-23 00:00:00	
2018-01-23	27	Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool	Short Term Referral to City Manager to assess the feasibility to keep the West Campus Pool open all year round and to start COB Shower Program at the West Campus Pool. Keeping the West Campus Pool open all year round will provide equitable swimming options in both North Berkeley and in South/West Berkeley and provide another location available for our community to shower.	Council member		Cheryl Davila, Ben Bartlett		2018-07-20 17:00:00	Parks, Recreation & Waterfront	Completed	2018-04-23 00:00:00	2018-10-16 10:14:13	2019-02-05 17:38:54 - Melissa McDonough (Additional comments) a) On June 12, 2018, Council received an Off Agenda Memo that identifies the cost to establish a shower program at West Campus Pool. B) In mid-September 2018, Council will receive an Off Agenda Memo that describes the feasibility of keeping West Campus pool open year-round.
2017-10-31	30	Short-Term Referral to the City Manager, a Process for Relocation of a Permitted Cannabis Dispensary	Refer to the City Manager to approve a process for the relocation of Apothecarium, a cannabis dispensary with valid permits.	Council member				2018-04-27 17:00:00	Planning	Completed	2018-04-30 08:00:00	2018-01-23 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-12-05	18	City Manager Referral: Prioritizing New Business Before Old Business at City Council Meetings	Prioritize new business before old business at City Council Meetings by: 1. Altering the Council rules of procedure as adopted May 24, 2016 so that new business comes before old business. The reformatted section will read "The agenda for the regular business meetings shall include the following: Ceremonial; Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, New Business, Old Business); Information Reports; and Communication from the Public"; and 2. Granting explicit authorization to Agenda Committee to move new business backwards or forwards at their discretion by amending section III E of	Council member				2018-06-01 17:00:00	City Clerk	Completed	2018-06-04 08:00:00	2018-01-30 00:00:00	



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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-02-13	17	Referral to the City Manager to Submit a Filing to the CPUC Recommending Adjusting Electric Rule 20 to Better Serve the City of Berkeley and Other Communities with Very High Fire Hazard Severity Zones	A referral to the City Manager to submit a filing with the California Public Utilities Commission (CPUC) concerning the CPUC's current review of Electric Rule 20. The CPUC is considering, among other things, how the existing program is administered by the various utility companies operating in California and the definition of what projects are to be included in the public interest.	Council member		Susan Wengraf, Sophie Hahn, Jesse Arreguin, Lori Droste		2018-08-10 17:00:00	Public Works	Completed	2018-08-10 17:00:00		
2018-02-13	26	Referral to the City Manager on Gender Options of the General Application for City Boards and Commissions	Refer to the City Manager to add a nonbinary gender option on the General Application for appointment to Berkeley boards and commissions.	Council member		Lori Droste, Linda Maio, Susan Wengraf, Worthington		2018-08-10 17:00:00	City Clerk	Completed	2018-08-13 08:00:00	2018-03-01 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-02-27	22	Wildland Urban Interface Fire Safety and Fire Safety Education	Commission Referral #5 revised to read: 5. Refer to the Planning Commission to consider Accessory Dwelling Units (ADUs) in the Very High Hazard Fire Zone to review public safety issues especially relevant to the risk of WUI fires. Amend Section 23D.10 to incorporate greater public safety considerations to be met before issuing an Administrative Use Permit (AUP);		City Council and Mayor			2018-08-24 17:00:00	FIRE & EMERGENCY SERVICES	Completed	2018-08-24 17:00:00		
2018-03-13	17	Referral to the Arts Commission and the City Manager: Cost Estimate and Plan for Installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St	Refer to the City Manager a request to develop a cost estimate and an installation plan for installing sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer the cost estimate and plan to the Arts Commission.	Council member				2018-09-07 17:00:00	Public Works	Completed	2018-09-07 17:00:00		

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-01-30	14	Direction and Referral to the City Manager Regarding "Premier Cru" Property	3. The Berkeley Way Affordable Housing Project is the City's top affordable housing priority. Premier Cru, as a City property, to be developed for affordable housing falls under the "High Priority" on the list of housing initiatives passed by Council on November 28, 2017. In light of the above, refer to the City Manager to take the following actions to move Premier Cru forward as a High Priority initiative: a. Based on recommendations from Health, Housing and Community Services and other Departments, the Housing Advisory Commission, and on consultation with local affordable housing providers, and taking into consideration requirements and restrictions associated	Council member		Sophie Hahn, Jesse Arreguin, Linda Maio, Kate Harrison		2018-09-07 17:00:00	Planning	Completed	2018-09-10 08:00:00	2018-05-29 00:00:00	
2017-12-19	41	Companion Report: Public Works Commission Recommendation for the Five-Year Paving Plan	Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2018 to FY 2022. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.					2018-09-21 17:00:00	Public Works	Completed	2018-09-24 08:00:00	2018-07-24 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-12-05	24	Ordinance Amending the Berkeley Municipal Code to Establish Ability to Pay Provisions Regarding Parking Fines and Fees in Accordance with Guidelines Established in Assembly Bill 503	to refer the item as written in Supplemental Reports Packet #2 to the City Manager to conduct an analysis of the item, including a review of current indigency procedures and coordination with similar efforts in the City of Oakland, and report back to the Council in 90 days.	Council member			Transportation Commission	2018-09-28 17:00:00	Finance	Completed	2018-09-28 17:00:00	2018-07-02 00:00:00	
2018-04-24	17	Refer the Housing Advisory Commissions Questions on the Smoke-Free Residential Housing Ordinance to Staff and Berkeley Considers	The Housing Advisory Commission respectfully requests that the Council direct the City Manager to assist the HAC in its review of the Smoke-Free Residential Housing Ordinance, a regulation of tobacco use, as follows: 1. By responding to the HAC's questions enumerated in the report with any readily available responsive information. 2. By facilitating the conduct of a "Berkeley Considers" questionnaire about the Smoke-Free Residential Housing Ordinance, questions for which are proposed in the report.	Commission				2018-10-19 17:00:00	Health, Housing and Community Services	Completed	2018-10-19 17:00:00	2019-03-17 14:41:36	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-07-25	10	Authorizing City Manager Approval for Community Development Block Grant (CDBG) Community Facility Improvement Contracts Under \$200,000; Amending BMC Chapter 7.18	Adopt first reading of an Ordinance, by two-thirds vote of the Council, amending Chapter 7.18 of the Berkeley Municipal Code to authorize the City Manager to enter into and amend contracts of up to \$200,000 with applicants recommended for funding by staff and the Housing Advisory Commission under the City's Community Development Block Grant (CDBG) program for community facility improvements.					2018-10-19 17:00:00	Health, Housing and Community Services	Completed	2018-10-22 08:00:00	2018-04-24 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-07-31	10	Direction to the City Manager Regarding the Community Service In Lieu of Parking Penalties Program	Direct the City Manager to amend the eligibility requirements of the Community Service In Lieu of Parking Penalties Program in order to allow all indigent individuals to be eligible to participate in the program (regardless of the registration status of a potential participant's vehicle).	Council member		Ben Bartlett, Cheryl Davila, Kate Harrison, Sophie Hahn		2018-10-29 17:00:00	Public Works	Completed	2018-10-29 17:00:00	2019-01-19 15:21:35	2019-08-27 15:23:33 - Nancy Melendez (Additional comments) FJ/DP: Aside from the fact that Public Works is not actually involved in citations or citation payment plans or alternatives, this program exists and the FAQ at the link below was updated January 2019. <a href="https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_General/COMMUNITY%20SERVICE.pdf">https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_General/COMMUNITY%20SERVICE.pdf</a>  2019-02-05 15:38:44 - Melissa McDonough (Additional comments) Because this is a multidepartmental task assigned to Public Works, involving Finance and City Attorney, and administered by the
2018-05-15	23	Transgender Health Access Training at City of Berkeley Clinics	Adopt a Resolution providing \$2,400 from the General Fund to support a half-day Transgender Health Access Training for City of Berkeley Public Health staff in June 2018.	Commission				2018-11-09 17:00:00	Health, Housing and Community Services	Completed	2018-11-10 17:00:00	2019-02-04 10:22:57	2019-04-15 10:25:13 - Laura Schroeder (Additional comments) On February 4, 2019 staff from public health and mental health attended a training on Transgender Access to Public Health

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
	24	Budget Referral: Increasing Safety at San Pablo Park	Request the City Manager perform traffic assessments to gather data and refer any needed improvements to the FY 2020 – FY 2021 budget process.	Councilmembers		Cheryl Davila		2018-11-13 17:00:00	Public Works	Completed	2018-11-13 17:00:00	2019-05-16 00:00:00	
2018-05-29	14	Implementation of Secure Storage Program	1. Direct the City Manager to expedite implementation of two publicly available, secure storage facilities to accommodate as many individuals as possible, based on the parameters set in staff's March 2, 2018 RFI: Downtown Homeless Storage Pilot - Staffing and Operations and on additional parameters outlined in Program Details, below. 2. Direct the City Manager to publicize the locations, hours, and rules applicable to new storage facilities through normal outreach channels (website, press release, etc.) and through direct outreach to homeless individuals by the City, community organizations (CBOs) and other partners such as the Downtown Berkeley Association and	Council member				2018-11-23 17:00:00	Health, Housing and Community Services	Completed	2018-11-26 08:00:00	2018-07-24 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-07-10	20	Refer to City Manager to look into adopting an ordinance requiring a permit process for scooter sharing companies to operate on public streets	Refer to the City manager to look into adopting an ordinance establishing a pilot Powered Scooter Share Permit Program for 24 months, requiring a permit issued by the Director of Public Works, establishing a fee for the issuance of the permit, establishing administrative penalties for failure to obtain a permit or violation of permit requirements, providing a procedure for the assessment and collection of administrative penalties for permit violations or parking or leaving standing an unpermitted powered scooter subject to the pilot Powered Scooter Share Permit Program on a sidewalk, street, or other public right-of-way.	Council member		Kriss Worthington, Sophie Hahn	Transportation Commission	2018-11-27 17:00:00	Public Works	Completed	2018-11-27 17:00:00	2018-11-27 17:00:00	<p>2022-01-27 11:08:37 - Nancy Melendez (Additional comments) Council approved the ordinance, and the City is now accepting and processing applications.</p> <p>2021-10-13 08:47:05 - Nancy Melendez (Additional comments) Second reading of the Ordinance October 12, 2021 for permitting shared electric scooters and other electric micromobility devices</p> <p>2021-04-15 10:10:12 - Nancy Melendez (Additional comments) Staff is preparing a new permit program for dockless shared mobility devices like scooters and ebikes. This will be submitted for review by the City</p>



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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-12-11	23	Short-term referral to City Attorney and Health Housing and Community Service to amend Berkeley Municipal Code 7,441-N.S. to expand the control of flavored tobacco across the City of Berkeley toward preventing youth and young adult tobacco use	Short-term referral to City Manager to amend Berkeley Municipal Code 7,441-N.S. according to the changes made in the attached amended ordinance to prohibit the sale of flavored tobacco products and require a minimum package size for cigars and little cigars across the City of Berkeley. The primary purpose of the amendment to the ordinance is to do more to prevent youth and young adult tobacco use.	Councilmembers		Cheryl Davila		2018-12-11 17:00:00	City Attorney	Completed	2018-12-11 17:00:00	2019-09-10 13:15:43	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-09-13	31	Short-Term Referral to City Manager re: Emergency Standby Officers Qualifications	Referral to the City Manager to consider the following suggestions for requirements and qualifications for Emergency Standby Officers and return to Council within 90 days with recommendations. Possible requirements may include: -Trainings in roles and responsibilities to serve as a standby officer possibly including: ethics and workplace harassment. -City government experience. - Council District residency. -Require standby officers to meet the same qualifications, including restrictions on conflict of interest, as required in the City Charter for City Councilmembers. -In addition, consider requiring Councilmembers to nominate three people in	Council member		Susan Wengraf, Jesse Arreguin, Sophie Hahn		2018-12-11 17:00:00	City Clerk	Completed	2018-12-11 17:00:00	2019-05-02 12:02:38	2019-02-05 15:21:26 - Melissa McDonough (Additional comments) Ongoing discussion with City Attorney regarding potential criteria
2018-07-10	17	Referral to City Manager to Consolidate all City Commission Workplans in One Place for Easy Access for Staff, the Public, and Elected Officials	Make a referral to the City Manager to consolidate all City Commission Workplans in one place for easy (electronic) access for staff, the public, and elected officials.	Council member				2019-01-04 17:00:00	City Clerk	Completed	2019-01-07 08:00:00	2018-09-13 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-10-30	20	Proposed Portland Loo Installations in Telegraph Commercial District	Short-Term Referral to the City Manager to identify costs for the installation of a "Portland Loo" type of bathroom facility in Telegraph Commercial District. Costs should be comprehensive and include, but not be limited to: the facility, infrastructure, design, construction, oversight and any contingencies.	Councilmembers		Jesse Arreguin, Sophie Hahn		2019-01-31 17:00:00	Public Works	Completed	2019-01-31 17:00:00	2019-02-27 00:00:00	
2018-11-13	23	Clarifying Jurisdiction of Ohlone Greenway	Refer to the City Manager to review the recommendation to place the Ohlone Greenway under park rules and policies with the intent of revising the BMC to include the Ohlone Greenway as open space and enforce park-like rules.	Councilmembers		Linda Maio, Sophie Hahn, Kate Harrison		2019-02-13 17:00:00	City Attorney	Completed	2019-02-13 17:00:00	2019-09-17 10:57:38	2019-09-17 10:57:27 - Christopher Jensen (Additional comments) Referral response complete; Public Works is providing assistance on right-of-way issues.  2019-04-24 10:04:24 - Mark Numainville (Additional comments) City Attorney provided legal opinion to PRW. PRW to report to Council.
2017-05-02	27	Berkeley Bicycle Plan 2018	Adopt a Resolution approving the Berkeley Bicycle Plan 2017, and directing the City Manager to pursue implementation of the Plan as funding and staffing permit.					2019-02-15 17:00:00	Public Works	Completed	2019-02-15 17:00:00		

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-11-17	28	Improve Conditions on Our Community Sidewalks; Amending Berkeley Municipal Code Chapters 13.36 and 14.48	Discuss and refer the following services and ordinances to the City Manager for implementation, and adopt first reading of three Ordinances: 1. Adding Section 13.36.085 to the Berkeley Municipal Code prohibiting urination and defecation in public places. 2. Amending Sections 14.48.020 and 14.48.170 of the Berkeley Municipal Code regulating use of sidewalks. 3. Adding Section 13.36.040 to the Berkeley Municipal Code prohibiting obstruction of City-owned planters and trees. Additional Services: 1. Create a secure storage facility for personal belongings; bins must be of adequate size, of reasonable number (estimate of 50 – 100 at the outset) and ensure reasonable access, with	Council member		Linda Maio, Lori Droste		2019-02-28 16:00:00	City Manager's Office	Completed	2019-02-28 16:00:00	2019-02-28 16:00:00	<p>2019-10-15 14:27:16 - Melissa McDonough (Additional comments) Staff has prepared an overview of the outcomes from the pilot implementation of the Shared Sidewalk Policy , and anticipates presenting its findings to Council in Fall 2019. The ongoing program is currently in place.</p> <p>2019-08-07 14:46:28 - Melissa McDonough (Additional comments) Storage is done as is mobile showers and expansion of bathrooms, 14.48 re: sidewalks is done.</p> <p>2019-04-24 15:08:11 - Melissa McDonough (Additional comments) Outreach information disseminated to people on streets; another round of personal</p>

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-11-13	24	Budget Referral: Increasing Safety at San Pablo Park	4. Develop, implement and coordinate drills for active shooter and other emergency protocol at San Pablo Park: Create protocol with input from community partners, then orient licensed daycare providers, coaches, trainers and program staff who operate out of the park, and conduct drills with City staff operating the Center and providers in order to prepare for emergencies and how to use the Center as a shelter during or following them.	Councilmembers		Cheryl Davila		2019-03-01 17:00:00	Police	Completed	2019-03-01 17:00:00	2019-03-30 15:34:27	2019-04-24 15:35:06 - Melissa McDonough (Additional comments) Training class conducted March 30
2017-12-05	17	City Manager Referral: Consider CPUC Interconnection Applications	Refer to the City Manager consideration of applying for CPUC interconnection applications.	Council member				2019-03-04 16:00:00	Public Works	Completed	2019-03-04 16:00:00	2018-04-04 00:00:00	
2018-09-13	18	Adopt a Resolution in Support of Appropriate City Enforcement Measures to Mitigate Damages Resulting from the Removal of Trees at 1698 University Avenue	Amended to be a referral to the City Manager regarding enforcement of measures to mitigate damage to the general welfare of the City and neighborhood resulting from the damage and subsequently-required removal of trees at 1698 University Avenue.	Council member		Kate Harrison		2019-03-11 17:00:00	Planning	Completed	2019-03-11 16:00:00	2018-10-01 15:56:16	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-09-25	22	Safe storage of firearms - Revised materials (Supp 2)	Refer to the City Manager to review draft Safe Storage of Firearms ordinance, identify and resolve issues, and return to Council within 90 days.	Council member		Susan Wengraf, Sophie Hahn		2019-03-22 17:00:00	City Attorney	Completed	2019-03-23 16:00:00	2018-12-24 16:21:16	
2018-10-02		Lobbyists Registration and Regulation Ordinance; Amendments to Existing Revolving Door Ordinance	Request an analysis from the City Manager before the November budget discussion on the administrative impacts and cost to implement the lobbyist ordinance.	Council member	MAYOR AND COUNCIL			2019-03-29 17:00:00	City Attorney	Completed	2019-03-30 16:00:00	2019-01-22 12:32:26	
2018-10-02	9	Amend BMC Chapters 6.24 and 14.52 to Authorize Paid Parking on Shattuck Avenue between Carleton Street and Ward Street and add the Northside (Euclid/Hearst) Metered Parking Area to the goBerkeley Program; and Authorize Paid Parking at the City-Owned Adeline/Alcatraz Parking Lot	Request staff to perform an analysis of the parking in the Northside area during the academic year to be completed within six months.	Council member	MAYOR AND COUNCIL			2019-04-02 17:00:00	Public Works	Completed	2019-04-02 17:00:00	2019-08-01 15:29:17	2019-08-27 15:29:52 - Nancy Melendez (Additional comments) GH: Staff conducted an analysis of the parking in the Northside area in spring 2019, roughly six months after goBerkeley price and time limits went into effect on November 1, 2018. As summarized in the June 25, 2019 Information Report submitted to Council, the data showed that goBerkeley changes are working as intended to increase parking availability in the area. Two minor adjustments to prices and time limits in "Value" zones went into effect August 1, 2019
													2019-02-05 16:25:11 - Melissa McDonough

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-10-30	35	City Manager referral: Initiate a franchise agreement with FlixBus	That the Council refer to the City Manager initiation of a franchise agreement with FlixBus, requiring a permit issued by the Director of Public Works, establishing a fee for the issuance of the permit, establishing administrative penalties for failure to obtain a permit or violation of permit requirements, and providing a procedure for the assessment and collection of administrative penalties for permit violations.	Councilmembers		Kriss Worthington		2018-10-30 17:00:00	Public Works	Completed	2019-05-01 11:39:27	2019-05-23 00:00:00	2019-04-23 11:49:56 - Mark Numainville (Additional comments) Resolution of Intent adopted on 3/26/19; Public Hearing set for 4/30/19
2018-10-16	25	Welcome to Berkeley Signage	Refer to the City Manager on a short term basis to replace all the Welcome to Berkeley signs with the Option B design per the Transportation Commission recommendation, including "Ohlone Territory" but not a second motto. Also, leave space on the sign to add a policy message and consult with Ohlone leaders on the use of the word "territory."	Councilmembers	City Council District 2	Cheryl Davila		2018-10-16 17:00:00	Public Works	Completed	2019-05-03 12:00:00	2019-02-07 00:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-02-19	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	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	Councilmembers		Kate Harrison, Rigel Robinson, Sophie Hahn		2019-05-21 17:00:00	Planning	Completed	2019-05-21 17:00:00	2019-06-11 09:40:07	2019-04-15 09:44:51 - James Bondi (Additional comments) Scheduled for Council 4/30/19.  2019-04-12 16:04:35 - Melissa McDonough (Additional comments) May be done at Council 4/30/19, pending recommendation from Planning Commission (special Public Hearing 4/3/19).



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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-02-19	9	Short-Term Referral: Develop Ordinance permitting Cannabis Events and designate Cesar Chavez Park as an Approved Venue	Short-Term Referral to the City Manager to develop ordinance amendments permitting up to three cannabis events per year in the first year in the City of Berkeley and designating Cesar Chavez Park as the sole approved location for cannabis events, provided such events are organized and licensed as required by the State of California. The ordinance shall: 1. reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2. specify procedures for such events that replicate similar alcohol related event protocols. The City Council will revisit the provisions of the ordinance following the first year of implementation.	Councilmembers		Jesse Arreguin		2019-05-21 17:00:00	Planning	Completed	2019-05-22 00:00:00	2019-04-15 09:54:32	2019-04-15 09:54:26 - James Bondi (Additional comments) Council considered and opted not to adopt policy, 4/2/19.  2019-04-12 16:02:31 - Melissa McDonough (Additional comments) Pending Council adoption of Cannabis Ordinance revisions scheduled for April 2 (second reading April 23).
2017-07-25	37	Reviewing the GIG Car Share Pilot Program	Refer to the City Manager and Transportation Department a review of the concerns, emerging regarding some features of the recently implemented GIG Car Share pilot program, request adjustments before the two-year pilot program from staff.	Council member		Linda Maio, Susan Wengraf		2019-05-28 17:00:00	Public Works	Completed	2019-05-28 17:00:00	2019-05-28 11:39:27	2019-02-05 15:16:47 - Melissa McDonough (Additional comments) The program evaluation will be conducted in early 2019 and an action report prepared for Council to continue, modify, or discontinue the pilot.

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-03-26	23	Referral to City Manager to Scope Process and Estimate Cost of New General Plan	Referral to the City Manager to return to City Council with an outline of the process for creating a new City of Berkeley General Plan. The cost for the first two years of work will be included in the report for consideration during the upcoming 2020-2021 Budget Process.	Councilmembers		Jesse Arreguin, Cheryl Davila		2019-06-21 17:00:00	Planning	Completed	2019-06-21 17:00:00	2019-06-12 09:41:11	2019-04-15 09:53:31 - James Bondi (Additional comments) Scoping has begun. Off-Agenda Memo will provide answers (date TBD)
2018-12-11	26	Referral to the City Manager and Planning Commission to Update the Housing Pipeline Report to Address Timeline between Planning Entitlements and Submission of Building Permit Applications and Consider Reasons for Delay	Referral to the City Manager to include in the Housing Pipeline Report an analysis of the time between planning entitlements and building permit requests for all projects of five units or greater over the past five years. On an ongoing basis, refer to the City Manager and Planning Commission to propose changes to current Planning approval process to address the causes of delays between entitlements and building permits for construction or substantial rehabilitation of five or more dwelling units.	Councilmembers		Kate Harrison		2018-12-11 17:00:00	Planning	Completed	2019-07-16 16:43:23	2019-07-23 11:40:57	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-03-26	15	Ensuring the Sustainability of the Berkeley Flea Market	Short-term referral to the City Manager to provide material and strategic assistance to the Berkeley Flea Market, to sustain and enhance its ability to serve both merchant participants and the community at large.	Council member		Ben Bartlett, Sophie Hahn, Cheryl Davila		2019-05-27 17:00:00	Office of Economic Development	Completed	2019-07-30 11:38:31	2019-07-30 11:38:31	<p>2019-12-25 20:59:26 - Jordan Klein (Additional comments) Info report to Council on January 21, 2020 (Referral Response: Small Business Retention Programs) includes a summary of the assistance provided to CSU / Berkeley Flea Market, and includes their new strategic plan as an attachment. OED will continue to provide support to the Flea Market, directly and through our partner organizations.</p> <p>2019-11-25 13:18:59 - Melissa McDonough (Additional comments) Community Services United (nonprofit that runs the flea market) submitted their strategic plan for the flea market to OED on</p>

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-05-28	29	Referral to the Public Works Department and the City Manager: Finishing the installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St.	Refer to the City Manager a request to finish the installation of sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer to the Public Works Department for its installation.	Councilmembers		Ben Bartlett, Kate Harrison, Cheryl Davila, Jesse Arreguin		2019-06-13 17:00:00	Public Works	Completed	2019-08-07 13:59:42	2019-10-01 17:00:00	<p>2021-04-14 14:02:28 - Nancy Melendez (Additional comments) All materials have arrived. Final installation is scheduled and work is anticipated to be completed by 4-30-21.</p> <p>2020-06-30 15:29:22 - Nancy Melendez (Additional comments) PW waiting for a response from Berkeley Electric to confirm project and when they can start.</p> <p>2019-11-26 14:28:34 - Melissa McDonough (Additional comments) Project is out to bid and completion is expected by end of fiscal year.</p> <p>2019-11-26 14:19:08 - Melissa McDonough (Additional comments)</p>

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2018-11-13	18	Short-Term Referral to City Manager to Complete Steps Necessary to Establish Lava Mae Services in Berkeley	Short-term referral to the City Manager to coordinate with Fire, Planning and Public Works Department Heads to provide permits, identify locations and allow access to water and disposal hook-ups necessary to bring Lava Mae shower services to Berkeley's homeless populations within 90 days for a 6-8 week pilot. This includes: - Determining locations to set up portable shower; and -Identifying water source for hook ups designated to dispense water for showers, either fire hydrants (preferred) or garden hose spigots; and -Parking permits for shower trailer; and - Identifying sewage manholes designated to pump out/dump gray and black water (H2O) into the sewer system; and -	Councilmembers		Cheryl Davila, Sophie Hahn		2019-09-10 17:00:00	City Manager's Office	Completed	2019-09-10 17:00:00	2019-09-12 08:29:03	2019-09-12 08:30:15 - Melissa McDonough (Additional comments) Report on Council agenda.  2019-08-07 15:07:11 - Melissa McDonough (Additional comments) Sites and hook-ups have been established.

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-09-20	22	Amending Council Rules Regarding Removal of Commissioners	Direct staff to return with a policy recommendation consistent with the recommendations in this report, i.e., noting that as a matter of courtesy and respect, Councilmembers are expected to set the date a commissioner is to be replaced on a commission and communicate that date to the commissioner not less than two weeks from the official date of replacement.	Council member		Commission		2019-09-10 17:00:00	City Clerk	Completed	2019-09-10 17:00:00	2019-09-10 17:00:00	
2019-09-10	55	Game Day Parking - Minor Update to include RPP area K	Refer to the City Manager the modification of parking restrictions in specified RPP Zones on UC Berkeley home football game days as follows: establish "Enhanced Fine Areas" to prohibit parking without a valid RPP permit to include RPP Zone K; and install new RPP signs in zone K to clearly indicate UC Berkeley home football game day parking prohibitions.	Council member		Lori Droste, Jesse Arreguin		2019-09-16 17:00:00	Public Works	Completed	2019-09-16 17:00:00	2019-09-16 17:00:00	2020-10-28 16:19:57 - Mark Numainville (Additional comments) Item 13 on the 10-27-2020 agenda  2020-06-30 15:27:04 - Nancy Melendez (Additional comments) There is no known plan for Cal Football this fall. So the program is not expected to occur this year. Work to include area K has not started.  2019-11-26 14:14:38 - Melissa McDonough (Additional comments) Scheduled for Council action spring 2020.

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2019-09-10	48	Request for Information Regarding Current Status and Progress on Traffic Mitigations at Dwight Way and California Street	Refer to the City Manager a request for information regarding the current status and progress on traffic mitigations and pedestrian safety improvements at the intersection of Dwight Way and California Street.	Council member		Ben Bartlett		2019-09-16 17:00:00	Public Works	Completed	2019-09-16 17:00:00	2019-09-16 17:00:00	<p>2021-06-23 11:40:09 - Nancy Melendez (Additional comments) Construction beginning July 2021</p> <p>2020-10-05 09:33:42 - Nancy Melendez (Additional comments) Received approval to fill Associate Traffic Engineer vacancy to do the work. initiating hiring process.</p> <p>2020-03-19 10:31:47 - Nancy Melendez (Additional comments) Engineering Design work is commencing now, construction expected in Spring 2021</p> <p>2019-11-26 14:16:26 - Melissa McDonough (Additional comments) Off agenda memo pending</p>

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-07-16	14	Opportunity Zone Project Guidelines for the City Manager	Refer to the City Manager the priorities listed below for investment in Berkeley's Opportunity Zones for proactive outreach and marketing to investors or Opportunity Funds, and to guide any discussions or negotiations regarding development projects in Opportunity Zones. The priorities are: Construction of new Affordable Housing units or acquisition and preservation of affordable housing; Preservation of historic buildings; Cultural Institutions and Performing Arts Venues; Civic Uses (Government Offices, Libraries, Schools, Public Safety); Public Open Space and Recreation Facilities; Health Care Services; Transportation Demand Management features; and Job training or	Councilmembers		Ben Bartlett, Kate Harrison, Jesse Arreguin, Cheryl Davila		2019-07-22 17:00:00	Office of Economic Development	Completed	2019-09-25 11:01:10	2020-01-24 10:52:16	2020-04-16 10:52:40 - Melissa McDonough (Additional comments) Off-agenda memo released on 1/24/20: <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Opportunity%20Zones%20012320.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Opportunity%20Zones%20012320.pdf</a>  2019-11-25 13:28:38 - Melissa McDonough (Additional comments) Information report postponed pending further analysis.  2019-11-05 13:31:36 - Jordan Klein (Additional comments) Information report submitted for 12/3/19 Council Meeting  2019-09-24 07:59:59 - Melissa McDonough (Additional comments) Expect to send an info
2019-11-12	18	Request for Information: Police Dispatch	Refer to the City Manager a request for information clarifying: 1. when non-emergency phone calls to the police are directed to the Berkeley Police Department and when to the California Highway Patrol or other outside agencies, and 2. what staffing or technological changes would be needed to direct more calls to Berkeley dispatch.	Councilmembers		Kate Harrison		2019-11-20 17:00:00	Police	Completed	2019-11-20 17:00:00	2019-11-20 17:00:00	2020-10-26 10:56:20 - Melissa McDonough (Additional comments) Off agenda memo submitted 10/26  2020-08-05 09:43:23 - Melissa McDonough (Additional comments) Completion pending submittal of memo to Council documenting work.



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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-24	36	Companion Report: Health Study to be Conducted by the Public Health Division to Gather Data on Health Conditions, Health Disparities and Mortality Rates of Berkeley's homeless	Send a letter to Alameda County requesting data on deaths of identified homeless individuals. Contact Alameda County request that they explore the feasibility of recording homelessness as a data point in death records and/or making investments to begin tracking this information locally.	Councilmembers				2019-10-31 17:00:00	Health, Housing and Community Services	Completed	2019-11-29 17:00:00	2019-11-29 17:00:00	2019-12-02 14:10:47 - Melissa McDonough (Additional comments) Disregard previous comment. Mistake.  2019-12-02 14:06:36 - Melissa McDonough (Additional comments) RFP issued, due date for responses 12/12/19
2019-09-10	35	1281 University Avenue Request for Proposals	Refer to the City Manager to issue a Request for Proposals (RFP) for residential development at the City-owned site at 1281 University Avenue with a requirement that 100% of the on-site units to be restricted to 80% AMI or below households with at least 10% at 50% AMI, with consideration given to accommodations that serve unhoused or homeless households, including nontraditional living arrangements such as tiny homes and that Council consider interim use for the site for housing purposes.	Commission			Housing Advisory Commission	2019-11-29 17:00:00	Health, Housing and Community Services	Completed	2019-11-29 17:00:00	2019-11-29 17:00:00	2019-12-02 14:11:54 - Melissa McDonough (Additional comments) RFP issued, responses due 12/12/19

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-10	30	Referral Response: Proposed New BMC Ordinance Adding Chapter 9.26 Live Animal Sales – Disclosure Requirements	In lieu of approving the ordinance, encourage Berkeley live animal retailers to provide purchasers with information regarding the sourcing of their animals by utilizing one or two of the following designations describing the sourcing of the particular animal: 'captive bred;' 'hobby breeder' or 'licensed breeder;' 'rescue;' 'wild caught;' or 'imported.'	Commission			Animal Care Commission	2019-12-16 17:00:00	City Manager's Office	Completed	2019-12-16 17:00:00	2019-10-03 17:00:00	2019-10-15 14:28:21 - Melissa McDonough (Additional comments) Staff developed a set of standard terms and sent a letter to all animal retailers on 10/3/2019, encouraging them to use the designations. Staff has prepared and submitted a referral response via off-agenda memo.

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-03-10	23	Directing the City Manager to Lease Caltrans Property at University and West Frontage Road	Direct the City Manager to: 1. Negotiate a lease agreement with the California Department of Transportation (Caltrans) for the leasing of state property at University Avenue and West Frontage Road as indicated in Attachment 1. The property will be used for a temporary outdoor shelter with restrooms, hand washing stations and garbage service. The City Manager should also inquire about whether additional Caltrans parcels adjacent to those being offered are also available for lease. The City Manager should utilize funding previously allocated for an Outdoor Shelter program from Measure P tax receipts. 2. Concurrent with the lease negotiation, develop a plan and	Councilmembers		Jesse Arreguin, Rigel Robinson, Kate Harrison, Sophie Hahn		2020-03-23 17:00:00	City Manager's Office	Completed	2020-03-23 17:00:00	2020-03-23 17:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-04-14	0	Save Our Small (SOS) Business Loan Fund	Refer to the City Manager to rapidly explore and, if feasible, pursue the creation of a special structured financial recovery loan fund to provide a supplemental source of capital for Berkeley small businesses impacted by the COVID-19 emergency. Among other considerations, the City Manager is requested to consider whether the City of Berkeley should act as a sponsor of the fund, working with one or more financial institutions to pool capital from private investors and the City of Berkeley to lower the risk of the product and support low interest rates. The City Manager is also recommended to partner with the Haas Business School at UC Berkeley to design terms of the SOS business loan fund and	Councilmembers		Sophie Hahn, Jesse Arreguin, Susan Wengraf, Kate Harrison		2020-04-16 17:00:00	City Manager's Office	Completed	2020-04-16 17:00:00	2020-04-16 17:00:00	2020-10-21 11:31:46 - Melissa McDonough (Additional comments) see off agenda memo: (April 27) <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Business%20and%20Arts%20Organization%20Continuity%20Grant%20Programs%20042720.docx.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Business%20and%20Arts%20Organization%20Continuity%20Grant%20Programs%20042720.docx.pdf</a>

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-06-02	11	Berkeley Safe Open Air Dining	1. Refer to the City Manager to explore and identify, on an expedited basis, potential public locations throughout Berkeley, including but not limited to wide sidewalks, street medians, building curtilages, parking bays and strips, streets and portions of streets, parking lots, and parks, for the temporary placement of tables and chairs to be used, if and when safe and feasible, for open air dining to support restaurants, cafes, food shops, and other small businesses impacted by the COVID-19 emergency, and to increase capacity for pedestrians to use sidewalks for walking and queuing in commercial areas while maintaining social distancing. 2. Refer to the City	Councilmembers		Sophie Hahn, Jesse Arreguin, Rigel Robinson, Kate Harrison		2020-06-10 17:00:00	City Manager's Office	Completed	2020-06-10 17:00:00	2020-06-10 17:00:00	
2020-03-10	26	Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street	Refer the item to the City Manager to explore City uses of the property for housing and homelessness services and needs, or other uses, and review the remediation needs of the property.	Councilmembers				2020-07-20 17:00:00	Health, Housing and Community Services	Completed	2020-07-20 17:00:00	2020-07-20 17:00:00	

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2020-01-21	32	Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability	Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee: 1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities." 2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to	Councilmembers		Cheryl Davila, Ben Bartlett		2020-01-23 17:00:00	Planning	Completed	2020-07-31 17:00:00	2020-07-21 17:00:00	2020-07-24 13:25:25 - James Bondi (Additional comments) Completed at Council 7/21/2020. Council action to accept report also created new long-term referral, to be tracked separately.  2020-07-01 13:12:14 - James Bondi (Additional comments) Referral response scheduled for Council 7/21/20.  2020-04-15 11:31:10 - James Bondi (Additional comments) Work has begun, draft report to Council prepared, but put on hold until budget recommendations can be considered in larger City budget context given COVID impacts.

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-09-15	31	Preserving Our Children's Recreation Areas	Request the City Manager implement the following recommendations for Willard Park and utilize them for other parks where appropriate: 1. Increase nighttime enforcement and enable the enforcement of park rules and ordinances. 2. Consider the presence of needles and feces a Public Health threat and enable the Public Health Department to cordon off areas of encampment for the purpose of clearing the areas of contamination and ensuring the areas are safe for public use. 3. Determine where additional signage is needed to clarify rules regarding camping and park hours, as well	Councilmembers		Lori Droste, Jesse Arreguin		2020-09-25 17:00:00	City Manager's Office	Completed	2020-09-25 17:00:00	2020-09-25 17:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-09-15	27	Outreach and Technical Assistance for Berkeley Small Businesses Eligible to Participate in the California Rebuilding Fund	Refer to the City Manager to engage in robust outreach to small businesses and organizations in Berkeley that may be eligible to participate in the California Rebuilding Fund, a new public-private partnership based on the SOS Small Business Loan model Berkeley passed in April 2020, that will leverage government backed capital to support small enterprises in California. It is our understanding that loans will be made in part on a first come, first served basis, so time is of the essence for staff to do outreach. The City Manager is requested to focus outreach in particular on underserved small businesses and nonprofits, entrepreneurs in historically	Councilmembers		Sophie Hahn		2020-09-25 17:00:00	City Manager's Office	Completed	2020-09-25 17:00:00	2020-09-25 17:00:00	2020-10-21 11:30:40 - Melissa McDonough (Additional comments) This effort will dovetail with the expanded RLF program (called "RLP", resiliency loan program) the federal funds are to be accepted and approved by council 10/27/20.
2020-09-22	16	Healthy Checkout Ordinance	2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.	Councilmembers		Kate Harrison, Sophie Hahn		2020-10-15 17:00:00	Health, Housing and Community Services	Completed	2020-10-15 17:00:00	2020-10-15 17:00:00	



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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-10-13	17	Removal of Traffic Bollards on the Intersection at Fairview and California St.	Refer to the City Manager to remove the traffic bollards at the intersection at Fairview and California St. for the following reasons: 1. To allow residents, emergency responders, street cleaning and garbage disposal services, and delivery vehicles ease of access to enter and exit Fairview Street; 2. To allow residents of the 1600 block of Fairview St. access to additional parking spots because the current capacity is inadequate; and 3. To decrease illegal dumping that has been incentivized by the traffic bollards and eliminate the harborage of junk, debris, and garbage.			Ben Bartlett		2020-10-22 17:00:00	Public Works	Completed	2020-10-22 17:00:00	2020-10-22 17:00:00	2021-01-14 17:42:45 - Nancy Melendez (Additional comments) The bollards have been removed.

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2020-10-13	12	Authorize Installation of Security Cameras at the Marina and Request an Environmental Safety Assessment	Adopt the following recommendations in order to address the recent dramatic uptick in reported crime incidents at the Berkeley marina: - Request that the City Manager install security cameras and signage as expeditiously as possible as a long-term safety measure; -Refer to the City Manager to perform an environmental safety assessment of the Berkeley marina with particular attention to the berther parking areas. Cameras will not use facial recognition or biometric software.	Councilmembers		Rashi Kesarwani, Susan Wengraf		2020-10-22 17:00:00	Parks Recreation & Waterfront	Completed	2020-10-22 17:00:00	2020-10-22 17:00:00	

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Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-10-13	18	Enforce Bi-Weekly (Once Every Two Weeks) Residential Cleaning Measures to Address Encampments and Promote Clean Streets in Berkeley	Refer to the City Manager to promote equitable street cleaning practices and require biweekly (once every two weeks), cleanings of populated encampment sites in Berkeley and adjacent residential neighborhoods. In order to determine where City Staff should prioritize residential cleaning services, the City Manager should establish a radius around the campsites. When encampments are on non-City owned property, such as Caltrans, the City should bill the appropriate agency for the cost of staff and materials.			Ben Bartlett, Sophie Hahn, Kate Harrison, Cheryl Davila		2020-10-22 17:00:00	City Manager's Office	Completed	2020-10-22 17:00:00	2020-10-22 17:00:00	2022-01-13 13:17:54 - Melissa McDonough (Additional comments) Staff have implemented this and we now provide regular garbage service to encampment and nearby areas impacted by encampment on a twice weekly basis.  2021-10-22 09:36:04 - Melissa McDonough (Additional comments) Staff have begun implementing this and we now provide regular garbage service to encampment and nearby areas impacted by encampment on a twice weekly basis.

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**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-11-10	5	Referral Response: Including Climate Impacts in City Council Reports	Request that the City Manager update the templates and associated training materials to add "Climate Impacts" in the "Environmental Sustainability" section of reports to the City Council, and codify the changes in Appendix B in the next update to the Berkeley City Council Rules of Procedure. This recommendation is a partial response to a January 21, 2020 referral, sponsored by Councilmembers Davila and Bartlett, to require that all City Council items and staff reports include "climate impacts" in addition to environmental sustainability.	Councilmembers				2020-11-18 17:00:00	City Clerk	Completed	2020-11-18 17:00:00	2020-11-18 17:00:00	

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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-01	28	Rescinded 2021-10-26 Referral: Commission Low-Income Stipend Reform	Refer to the City Manager to develop and return to Council with a plan to improve equity, accessibility, and representation in City of Berkeley commissions by modernizing the low-income stipend program, and in doing so consider: 1. Increasing the annual household income cap for stipend eligibility from \$20,000 to align with the 50% Area Median Income (AMI) guidelines for Alameda County and reflect household size, and updating it annually with the latest HUD data. 2. Increasing the low-income stipend from \$40 to \$78 per meeting, and updating it annually with the City of Berkeley minimum wage to correspond to compensation for 2.5 hours of work.	Councilmembers		Rigel Robinson		2020-12-04 17:00:00	City Clerk	Completed	2020-12-04 17:00:00	2020-12-04 17:00:00	

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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-15	39	Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration	On November 2, 2020 the Councilmembers			Lori Droste, Jesse Arreguin, Rigel Robinson, Kate Harrison		2020-12-25 17:00:00	Office of Economic Development	Completed	2020-12-25 17:00:00	2020-12-25 17:00:00	2021-04-05 11:08:42 - Melissa McDonough (Additional comments) Anticipated return to Council in May 2021

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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-06-16	24	Lessons Learned in Organizational Management During Crisis	Refer to the City Manager to include insights and reflections on organizational management in any comprehensive report regarding the City response to the COVID-19 Emergency. Information should include but not limited to: an overview of how the City was structured and functioned differently during activation of the Emergency Operations Center, the benefits and challenges with cross departmental collaborations, and strategies or structures worth instituting and incorporating into future day-to-day departmental actions and interactions.	Councilmembers		Jesse Arreguin, Kate Harrison, Sophie Hahn, Susan Wengraf		2021-01-15 17:00:00	City Manager's Office	Completed	2021-01-15 17:00:00	2021-01-15 17:00:00	2020-10-28 16:18:36 - Mark Numainville (Additional comments) Presentation made and report submitted at 10-27-2020 council meeting  2020-10-16 15:22:51 - Melissa McDonough (Additional comments) Report and presentation on 10/27 City Council Meeting Agenda  2020-07-14 14:04:25 - Melissa McDonough (Additional comments) The report on our emergency response will be provided culminating a year of activities.

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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2021-01-26	11	Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code	Refer to the City Manager, the Disaster and Fire Safety Commission and the Planning Commission to evaluate and recommend to Council within 90 days, a set of ordinance amendments and implementation programs to address emergency access and egress, parking and objective development standards for ADUs in all districts with expedited consideration to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3. (Attachment 1 to the report). Recommendations to Additional Objective Development Standards in Zones 2 and 3: -Zone 2 and 3 - limit the base maximum size of newly	Councilmembers		Susan Wengraf, Sophie Hahn		2021-01-28 17:00:00	Planning	Completed	2021-01-28 17:00:00	2021-01-28 17:00:00	2021-11-05 13:56:59 - James Bondi (Additional comments) Closed at Council 10/26/21 (Council heard item).  2021-06-25 15:42:18 - James Bondi (Additional comments) Submitted for Council 7/13/21.
2021-03-09	11	Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)	prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.	Councilmembers				2021-03-15 17:00:00	City Clerk	Completed	2021-03-15 17:00:00	2021-03-15 17:00:00	2021-11-03 16:41:56 - Mark Numainville (Additional comments) See Item 3 from 10/26 agenda. New templates posted and distributed to Council.



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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-15	32	Deferral of Remaining Permit Fees for 2009 Addison Street	Refer to the City Manager to conduct a feasibility analysis and develop an MOU with the Berkeley Repertory Theater to defer \$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater's housing project at 2009 Addison Street (leaving flexibility for timing, setting of interest, schedule of payments, and fund sources).	Councilmembers		Jesse Arreguin, Susan Wengraf		2021-03-31 17:00:00	Planning	Completed	2021-03-31 17:00:00	2021-03-31 17:00:00	2021-06-25 15:18:31 - James Bondi (Additional comments) MOU on fee deferrals executed by Council in 2021, Econ. Devt lead department./  2021-02-05 11:19:27 - Melissa McDonough (Additional comments) The Planning and Development Department has started to analyze the permit service center fund and staff are meeting with Berkeley Rep to discuss the deferral referral.
2016-07-12	27	Refer to City Manager to Consider Applying for \$100,000 from the Better Together Resilient Communities Grant Program	That the City Manager consider applying for the \$100,000 grant that PG&E's Better Together Resilient Communities grant program will offer in the beginning of 2017.	Council member		Kriss Worthington		2021-06-28 17:00:00	Planning	Completed	2021-06-28 17:00:00	2021-06-28 17:00:00	2021-06-25 15:30:16 - James Bondi (Additional comments) Was in process of completion before the referral was made. Completed immediately after.
2016-05-31	22	City Manager Referral: Consider Adding Energy Efficient Equity as an Additional Property Assessed Clean Energy Program	Refer to the City Manager to consider adding Energy Efficient Equity as an additional property assessed clean energy program.	Council member		Kriss Worthington		2021-06-28 17:00:00	Planning	Completed	2021-06-28 17:00:00	2021-06-28 17:00:00	

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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-09-15	55	Referral to the Community Environmental Advisory Commission to Install 1.8 GPM Showerheads in All New Housing Projects or Any Renovation Over \$50,000	Refer to the Community Environmental Advisory Commission to explore requiring a maximum of 1.8 GPM low flow showerheads in new housing projects and all housing renovations exceeding \$50,000 throughout Berkeley.	Council member		Kriss Worthington		2021-06-28 17:00:00	Planning	Completed	2021-06-28 17:00:00	2021-06-28 17:00:00	2021-06-25 15:40:07 - James Bondi (Additional comments) Done at Council 7/19/16
2018-09-13	18	Adopt a Resolution in Support of Appropriate City Enforcement Measures to Mitigate Damages Resulting from the Removal of Trees at 1698 University Avenue	Amended to be a referral to the City Manager regarding enforcement of measures to mitigate damage to the general welfare of the City and neighborhood resulting from the damage and subsequently-required removal of trees at 1698 University Avenue.	Council member		Kate Harrison		2021-06-28 17:00:00	Planning	Completed	2021-06-28 17:00:00	2021-06-28 17:00:00	
2014-04-29	35	35. City Manager Referral: Policy for Companies Such as Airbnb to Pay Transient Occupancy Tax, as Currently Paid by Other Small Local Businesses	Refer to the City Manager creation of a policy for companies such as Airbnb to pay the Transient Occupancy Tax, as currently paid by other small local businesses.	Council member	City Council District 7	Kriss Worthington		2021-06-28 17:00:00	Planning	Completed	2021-06-28 17:00:00	2014-05-02 08:00:00	2021-06-25 10:49:57 - James Bondi (Additional comments) Referral was never necessary, TOT is collected from STRs

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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2021-09-14	39	Open Government Commission Recommendations to City Council Regarding Teleconferenced Meetings	Adopted the recommendation from the Mayor in Supplemental Communications Packet #2 to refer amendments to Appendix C of the Rules of Procedure to the City Manager to bring back to Council for adoption.	Councilmembers		Jesse Arreguin		2021-09-22 17:00:00	City Clerk	Completed	2021-09-22 17:00:00	2021-09-22 17:00:00	2021-11-03 16:38:44 - Mark Numainville (Additional comments) See Item 7 from 10-12-21 agenda - Item completed
2021-09-28	0	Re-Establishing a COVID-19 Business Damage Mitigation Fund	Refer to the City Manager to re-establish the COVID-19 Business Damage Mitigation Fund in an amount up to \$50,000 to provide one-time grants to small businesses who experience property damage due to vandalism and other problematic behavior during this COVID-19 local State of Emergency. Authorize the City Manager to appropriate funding for the Mitigation Fund from Berkeley Relief Fund donations received through the East Bay Community Foundation.	Councilmembers		Jesse Arreguin		2021-10-04 17:00:00	City Manager's Office	Completed	2021-10-04 17:00:00	2021-10-04 17:00:00	

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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-09-13	31	Short-Term Referral to City Manager re: Emergency Standby Officers Qualifications	Referral to the City Manager to consider the following suggestions for requirements and qualifications for Emergency Standby Officers and return to Council within 90 days with recommendations. Possible requirements may include: -Trainings in roles and responsibilities to serve as a standby officer possibly including: ethics and workplace harassment. -City government experience. - Council District residency. -Require standby officers to meet the same qualifications, including restrictions on conflict of interest, as required in the City Charter for City Councilmembers. -In addition, consider requiring Councilmembers to nominate three people in	Council member		Susan Wengraf, Jesse Arreguin, Sophie Hahn		2021-11-04 17:00:00	City Clerk	Completed	2021-11-04 17:00:00	2021-11-04 17:00:00	2021-11-03 16:49:48 - Mark Numainville (Additional comments) Completed with Reso 68830 on 4/23/19

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**Completed Short Term Referrals**  
**2nd Quarter 2022**

Meeting Date	Agenda Item No.	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-09-12	33	Voter Registration Forms in All City Buildings on Their Main Floors	Direct the City Manager to provide voter registration forms on the main floor of all designated city buildings that are open to the public and in all Community based organizations within the city limits. Community based organizations that are funded by the City of Berkeley will be required to pick up the voter registration forms from the City Clerk's Office and that should be clearly stated in their respective contracts.	Council member		Cheryl Davila, Kate Harrison, Sophie Hahn		2021-11-04 17:00:00	City Clerk	Completed	2021-11-04 17:00:00	2021-11-04 17:00:00	
2016-12-13	29	Ordinance for Standards for Testing and Certification of DAS Antennas	Request that the City Manager draft ordinance language to amend Section 16.10.100 of the Berkeley Municipal Code to include Standards for Testing and Certification of DAS Antennas and return to the City Council within 60 days.	Council member		Susan Wengraf		2022-01-03 17:00:00	City Attorney	Completed	2022-01-03 17:00:00	2022-01-03 17:00:00	





Office of the City Manager

INFORMATION CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Eleanor Hollander, Economic Development Manager  
 Subject: Federal Economic Relief Spending in Berkeley

INTRODUCTION

The Office of Economic Development (OED) is pleased to share how federal funding from the CARES Act and American Rescue Plan Act (ARPA) were used to support local economic recovery.

CURRENT SITUATION AND ITS EFFECTS

Since March 17, 2020, when the City of Berkeley and six Bay Area counties issued health orders for residents to stay at home (“Shelter-in-Place”), and for all but a few essential businesses to cease operations, Berkeley businesses have experienced negative impacts from the COVID-19 pandemic. In the past two and a half years, the acute phase of the pandemic has receded; all businesses are permitted to operate, and the use of effective treatments and vaccines to prevent disease and reduce severity have become widespread and available to all those over six months of age.

However, as detailed in [2020 and 2021 citywide economic dashboards](#) published by the Office of Economic Development (OED), the pandemic has had widespread impacts on the economy overall, and more severe and prolonged impacts in certain sectors such as performing arts, tourism & hospitality, retail, and restaurants. As such, relief funding from the federal government has been designed to support small businesses (which comprise the vast majority of the Berkeley economy) and the industries in greatest need.

To support economic recovery in Berkeley, federal funding was allocated to the following:

- **Low interest rate loans to Berkeley small businesses:** In July 2020, the City of Berkeley’s existing Revolving Loan Fund (RLF) program was modified to accept \$814,000 of Economic Development Administration (EDA) Coronavirus Aid, Relief, and Economic Security (CARES) Act recovery assistance funding. CARES funding was used to establish a second loan fund, the COVID-19 Resiliency Loan Program (RLP), with a goal to provide low interest rate loans to

Berkeley small businesses negatively impacted by the COVID-19 pandemic. To date, RLP has provided \$520,000 to 11 businesses through 11 loans. Through work with Berkeley's Loan Administration Board, and the Federal Economic Development Administration (EDA), a sub grantee agreement was executed for a nimble certified Community Development Financial Institution, Working Solutions, to manage the fund on behalf of the city. This agreement immediately improved the experience for Berkeley's borrowers with seamless disbursement, and the ability to make online loan payments. Additionally, \$60,000 of American Rescue Plan Act (ARPA) funds were distributed to Working Solutions, to provide technical assistance and small business support to Berkeley's RLP participants.

- **Grants for arts organizations & festivals:** Funded by ARPA, Berkeley Arts Recovery Grants (BARG) for Organizations & Festivals provided one-time grants to all qualifying Berkeley-based nonprofit and fiscally sponsored arts organizations and festivals. BARG grants are being used to mitigate arts organizations' economic losses from COVID-19, implement COVID-19 prevention tactics, and procure consulting and marketing services to support organizations' future financial sustainability. In February and March 2022, 74 grant awards were dispersed totaling \$1,532,345, with individual awards ranging from \$3,000 to \$33,000, and an average grant award amount of \$20,734 per organization.
- **Grants for artists and cultural practitioners:** Also funded through ARPA, in May 2022, the Center for Cultural Innovation administered the Berkeley Arts Recovery Grants (BARG) for Artists & Cultural Practitioners on behalf of the City. This grant program distributed \$276,250 to 114 Berkeley-based artists, culture bearers, cultural practitioners, makers, specialized arts workers, and teaching artists. Awards ranged from \$1,250 to \$8,000 each and were prioritized to individuals from marginalized communities, as well as those with the highest percentage of income lost from arts and culture related-professions.
- **Grants for artists to create temporary public art on the theme of COVID recovery:** With the remaining ARPA funds (approximately \$125,000) set aside for arts community recovery, the Civic Arts Program plans to implement a second round of Berkeley Arts Works Projects (BAWP) grants. BAWP was an initiative first implemented in 2021, which provided artists financial opportunities during an economically challenging time, while also enhancing Berkeley's cultural and economic vitality through community-focused public art projects. The prior round of BAWP grants totaled approximately \$200,000 and was funded through the City's "Cultural Trust Fund" (Fund 148).
- **Funding for tourism and hospitality industry marketing and advertising:** In January 2022, \$500,000 of ARPA funds were provided to Visit Berkeley, the city's destination marketing organization (DMO) to support the hard-hit tourism and hospitality industries. With these funds, Visit Berkeley initiated the "Make Berkeley Your Bay Area Basecamp" digital advertising campaign, which featured ads in the AAA Northern California Digital TourBook, as well as on AAA.com, Expedia.com and Hotels.com. For all channels, ad clicks brought customers



looking for a place to stay in Northern California to an integrated landing page to book Berkeley lodging.<sup>1</sup> Additionally, from May – September 2022, Visit Berkeley is participating in an advertising campaign with Visit California and Expedia called “What If You Could” featuring banner ads on Expedia.com and hotels.com that targets California and West Coast travelers looking to stay in Northern California and brings them to a dedicated landing page to book Berkeley lodging. With the remaining ARPA funds, Visit Berkeley also plans to:

- Update and re-open their Visitor Information Center
- Create a new Berkeley tourism video and small videos on each Berkeley commercial district
- Sponsor the UC Berkeley Event Planner Certification Program
- Develop a Berkeley story on TravelZoo
- Sponsor two more banner campaigns targeting meeting planners via the California Society of Association Executives monthly e-newsletter and the Meeting Professionals International weekly e-newsletter.
- Do additional promotions and marketing for the *Berkeley Bucks* e-gift card program, which enables purchases at merchants throughout Berkeley.
- **Local business marketing and advertising:** The #DiscoveredinBerkeley business marketing campaign was launched in 2019 to, “inspire pride among Berkeley residents and business owners alike about the amazing commercial activity happening in the neighborhoods where they live and work, encourage local shopping, raise awareness of the business services offered by the City’s Office of Economic Development and enhance Berkeley’s reputation as a good place to do business.” In May 2022, \$12,500 of ARPA funding was allocated to Cityside, the publisher of the local independent online news publication, *Berkeleyside*, to support the creation of sponsored stories, banner ads, and graphics for social media and the DiscoveredinBerkeley.com website highlighting exceptional businesses in Berkeley. Remaining ARPA funds, in the amount of \$37,500 will be spent on events, social media, and additional media channels that will greater increase local businesses’ sales, visibility in the region, reputation, and community pride.
- **Equity-focused programming for the innovation sector:** Berkeley Ventures, Berkeley Values was launched in 2019 to align the growth of Berkeley’s innovation sector with the community values of diversity, equity and inclusion. Remaining ARPA funds, in the amount of \$20,000 will be spent on activities that engage Berkeley startup founders, funders, and STEM industry professionals to build a local economy that benefits our entire community. Programs being explored include: STEM CareerX Day tours for Berkeley High School students at local startups and innovation companies, developing a community of practice for Berkeley investors focused on implementing diversity, equity and inclusion (DEI) best practices, and a crowdfunding pitch competition for first-time, early stage, or

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<sup>1</sup> Visit [https://www.aaa.com/multimedia/Visit\\_Berkeley/index.html](https://www.aaa.com/multimedia/Visit_Berkeley/index.html) for an example of the Visit Berkeley campaign with Triple AAA.

underrepresented minority founders who would otherwise be lacking access to capital.

- **Business success planning for worker owned cooperatives:** Beginning in 2018, OED partnered with Project Equity to meet the local demand for business succession planning, and provide technical assistance to Berkeley's businesses wishing to transition to employee ownership. Remaining ARPA funds, in the amount of \$40,000 will be spent on a continued multi-year engagement with Project Equity. The funds will enable Project Equity to stay as an on-call advisor to businesses in Berkeley that want to transition to worker ownership. Project Equity's work will also implement strategies to measure business retention risk in Berkeley on an ongoing basis.

### BACKGROUND

In addition to these programs supported by federal relief packages, OED employed and supported a number of other City- and donor-funded strategies to support economic recovery throughout the course of the pandemic.

- Cash grants through the Berkeley Relief Fund to small businesses and arts organizations
- Communicating regularly on health orders and covid-19 support opportunities with impacted businesses through a variety of formats and channels, e.g. city website including downloadable signs, email, newsletters, social media, phone calls, etc.
- Creating a temporary and permanent path for businesses to set up and operate parklets and other outdoor commerce locations
- Development of the BerkeleyHolidays.com online gift guide, gift fair, and corresponding #BerkeleyHolidays social media marketing campaign
- Deployment of the Berkeley Art Works Projects (BAWP) grant program, administered by OED's Civic Arts division, to provide financial opportunities for Berkeley artists during an economically challenging time, and enhance Berkeley's cultural and economic vitality through community-focused public art projects. Grants ranged from the micro (\$500) to \$10,000 for larger projects. The program challenged grantees to respond to one of the following themes through their project: Public health & wellbeing, Economic recovery & resilience, Community connection & belonging. To date, the BAWP grant program has provided close to \$200,000 in funding for 32 artists, performers, and community members to create temporary public art projects throughout Berkeley that bolster collective resilience and recovery from the effects of COVID-19. Installation of these projects throughout the city began in 2021 and will continue through 2022. A map of BAWP projects can be seen here: <https://www.berkeleyartworksprojects.org/map>.

These recovery efforts, paired with a variety of other targeted business outreach, engagement, and assistance, supports the City's Strategic Plan, advancing our goal to foster a dynamic, sustainable, and locally-based economy.

ENVIRONMENTAL SUSTAINABILITY

Many of the City's environmental sustainability goals are inextricably tied to the overall health of the City's economy. Staff believes that the continued pursuit of sustainable economic goals represents a strength and source of resilience for Berkeley.

POSSIBLE FUTURE ACTION

OED staff will, as directed by Council through previous and future referral items, partner with other City departments and community partners to implement programs and policies that foster a dynamic, sustainable, and locally-based economy, and assist in economic recovery throughout 2022 and beyond.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Actions that facilitate increased economic activity will increase revenues related to sales tax and property tax, and thus have a positive fiscal impact on the city.

CONTACT PERSON

Eleanor Hollander, Economic Development Manager, (510) 981-7536  
Elizabeth Redman Cleveland, Chief Strategist, Sustainable Growth (510) 981-7532

Attachments:

1: ARPA Spending to Support Economic Recovery



City of

# BERKELEY

Office of Economic Development

*ARPA Spending to Support Economic Recovery*



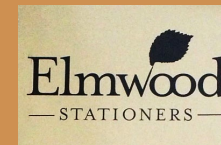
# COVID-19 Resiliency Loan Program (RLP)

- July 2020 - City of Berkeley’s existing Revolving Loan Fund (RLF) program was modified to accept \$814,000 of Economic Development Administration (EDA) Coronavirus Aid, Relief, and Economic Security (CARES) Act recovery assistance funding.
- CARES Act grant used to establish a second loan fund, the COVID-19 Resiliency Loan Program (RLP) with a goal to provide low interest rate loans to Berkeley small businesses negatively impacted by the COVID-19 pandemic.
- \$60,000 of American Rescue Plan Act (ARPA) funds dedicated to Working Solutions, a certified Community Development Financial Institution to provide technical assistance and small business support to Berkeley’s RLP participants.

COVID-19 RLP Portfolio	Active Loans
Number of RLP Loans	11
RLP \$ Loaned	\$520,000

Source: Berkeley OED, January 2022

## Current RLP Borrowers Include

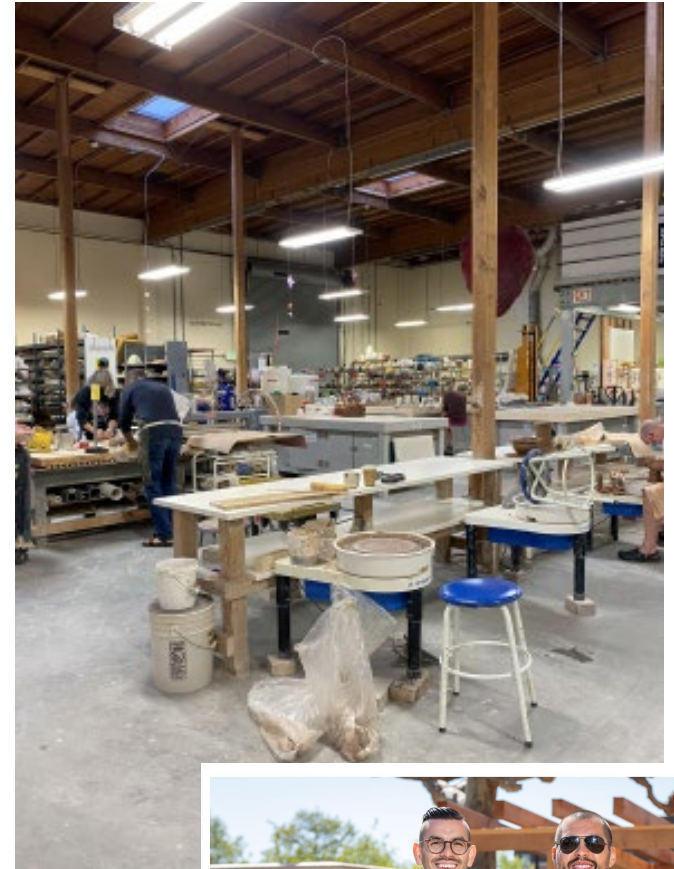


**BARBARIAN**

# Berkeley Arts Recovery Grants Program



- 74 one-time grants, funded with ARPA dollars, to all qualifying Berkeley-based nonprofit and arts organizations and festivals
- Grant amounts ranged from \$3,000 to \$33,000, with an average award of \$20,734 per organization



Photos: BARG grantees. Berkeley Potters' Studio (2022) and Café Ohlone (2021).



# Berkeley Arts Recovery Grants Program

## Berkeley Arts Recovery Grants for Artists and Cultural Practitioners



- \$275,000 in ARPA dollars made available as grants to Berkeley-based artists and cultural practitioners.
- Grant amounts range up to \$10,000 each.
- Funds administered on behalf of the City by the Center for Cultural Innovation.

- Grant applications opened on April 4, 2022
- Deadline to apply was May 4, 2022
- Grant awards disbursed in May and June of 2022.

# Berkeley Art Works Projects (BAWP)

**BERKELEY**  
**ART WORKS**  
**PROJECTS**  
PUBLIC ART PROJECT GRANTS TO SUPPORT  
COMMUNITY RECOVERY AND RESILIENCE

- \$200,000 provided to date to 32 artists, performers, and community members to create temporary public art projects throughout Berkeley that bolster collective resilience and recovery from the effects of COVID-19
- Grants ranged from \$500 to \$10,000 for larger projects
- A second round of BAWP grants will be offered in late 2022.

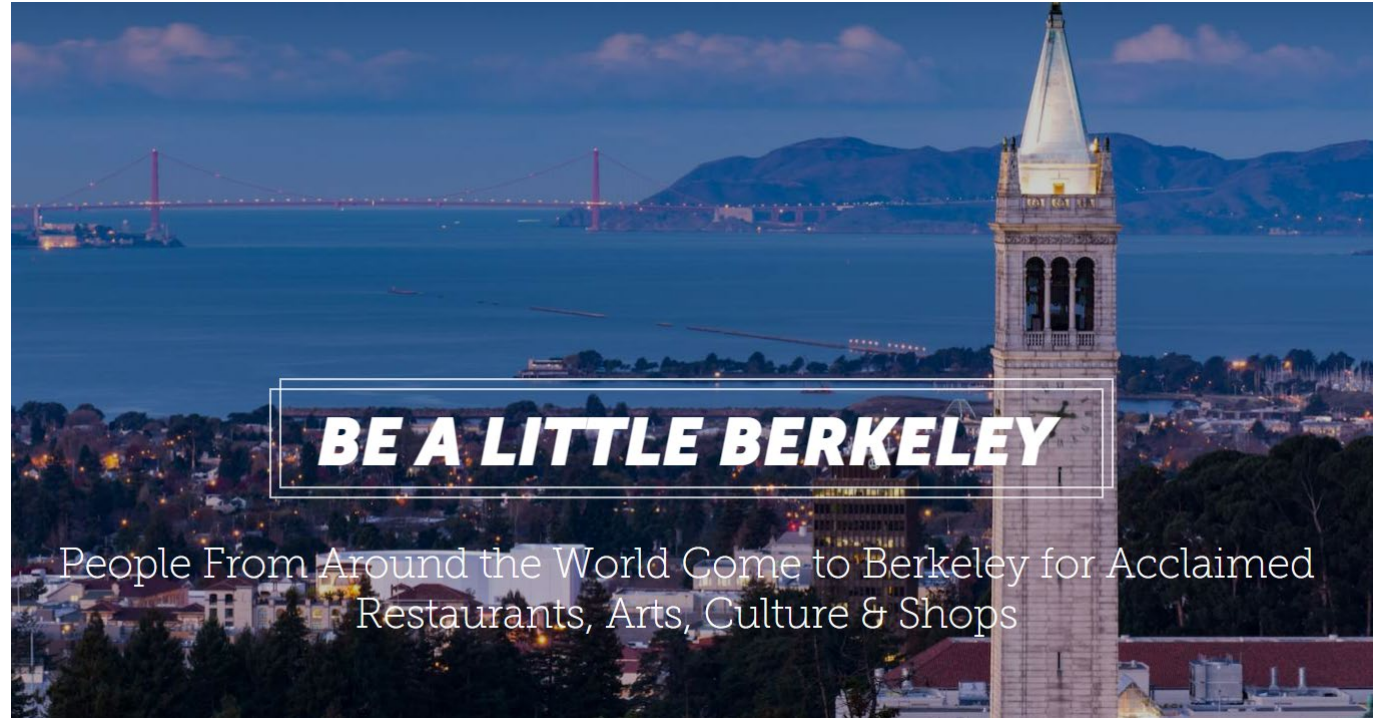


Photos: BWAP projects - Moonstruck (left) and Ceci Bowman (above).

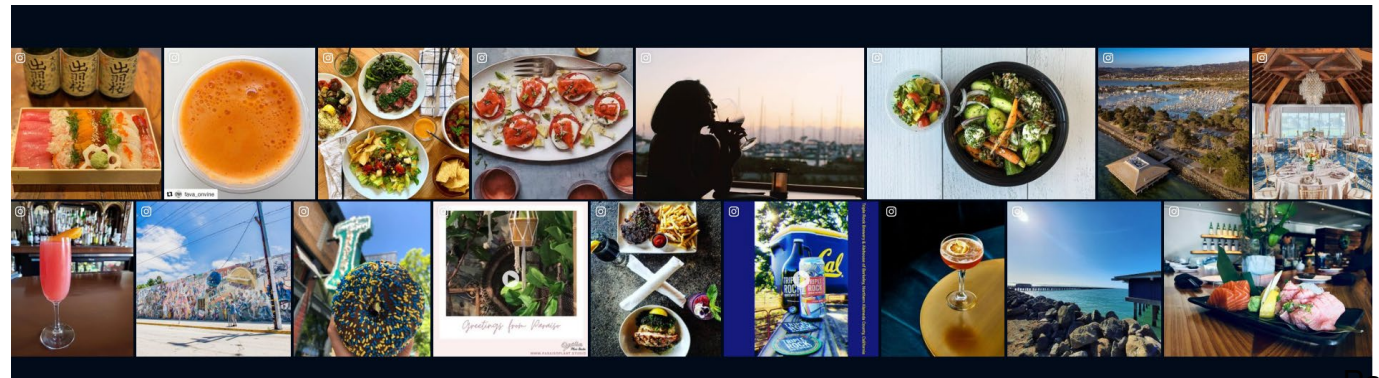




# Support for tourism industry recovery



\$500,00 of ARPA funds were provided to Visit Berkeley, the city’s destination marketing organization (DMO) to support the hard-hit tourism and hospitality industries.





# Support for tourism industry recovery - AAA ad campaign

**Click for AAA Member Discount**

**Make Berkeley Your Bay Area Base Camp**

With seven AAA Diamond-rated hotels located in the heart of the San Francisco Bay Area, Berkeley is your best place to stay and play. This hip college city just across the water from San Francisco is day-trip close to Napa, Sonoma and Livermore wine country. From Berkeley, it's a big head start to Mendocino, Lake Tahoe, Yosemite, and all amazing NorCal destinations.

Pre and post, return to your "Bay Area Base Camp" for Berkeley's world-class dining and arts, buy-local shopping and outdoor adventures. We should mention: you may not want to go anywhere else, with all there is to do right here. Plan accordingly.

Visit Berkeley launched the "Make Berkeley Your Bay Area Basecamp" digital advertising campaign in 2022 which featured ads in the AAA Northern California Digital TourBook as well as on AAA.com. Ad clicks brought customers looking for a place to stay in NorCal to an [integrated landing page](#) to book Berkeley lodging.

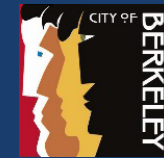
**Ad**

**Make Berkeley Your Bay Area Base Camp**  
Great rates and flavorful plates. Berkeley is the best place to stay and play.

# Support for tourism industry – Visit California ad campaign



From May – September 2022, Visit Berkeley participated in an advertising campaign with Visit California and Expedia called “What If You Could” featuring banner ads on Expedia.com and hotels.com that targets California and West Coast travelers looking to stay in Northern California and brings them to a dedicated landing page to book Berkeley lodging.



# #DiscoveredinBerkeley business marketing campaign

The 2021 campaign highlighted local businesses supporting environmental sustainability, social equity, local production, and artistic creativity.

- More than 2,750 users visited [DiscoveredinBerkeley.com](https://DiscoveredinBerkeley.com) (87% were new visitors)
- Instagram @DiscoveredinBerkeley achieved 650+ followers (and the uses of #DiscoveredinBerkeley exceeded 3,300)
- 8 Berkeleyside articles generated 12,800+ page views & 1,000+ clicks on content within
- 21 Berkeleyside banner ads generated 609k+ impressions and more than 780 clicks



#DISCOVERED in BERKELEY

### BERKELEYHOLIDAYS.COM Gift Guide

Spoil your friends and family over the holidays—and enable economic recovery —with coffee from **Uncommon Grounds**.

Support local businesses this holiday season >



#DISCOVERED in BERKELEY

Woman owned **Darling Electric Salon**, a certified Green Business, uses only environmentally conscious products and works with beauty industry partners to generate useful products like fuel, trash cans, and construction materials from their salon waste.

Learn more about Berkeley's innovative businesses >



#DISCOVERED in BERKELEY

Brewers at **The Rare Barrel** in West Berkeley use fresh fruit to create the unique tastes for their sour beers.

Learn more about Berkeley's innovative businesses >



#DISCOVERED in BERKELEY

### BERKELEYHOLIDAYS.COM Gift Guide

Spoil your friends and family over the holidays—and enable economic recovery —with jewelry or masks made by **Arbel Shemesh** at **ACCI**.

Support local businesses this holiday season >



#DISCOVERED in BERKELEY

Eating outside at **Imm Thai Street Food** in Downtown Berkeley is an authentic Thai dining experience.

Learn more about Berkeley's innovative businesses >



#DISCOVERED in BERKELEY

### BERKELEYHOLIDAYS.COM Gift Guide

Spoil your friends and family over the holidays—and enable economic recovery —with a care package from **Scenic Made**.

Support local businesses this holiday season >



# Berkeley Ventures Berkeley Values

- Berkeley Ventures, Berkeley Values (BV<sup>2</sup>) was launched in 2019 to align the growth of Berkeley's innovation sector with the community values of diversity, equity and inclusion.
- Remaining ARPA funds will be spent on activities that engage Berkeley startup founders, funders, and STEM industry professionals to build a local economy that benefits our entire community.



Pictured: A (BV<sup>2</sup>) Initiative - STEM X Career Day visit to Cell Valley Labs incubator space where about a dozen students from the Berkeley High School club of National Society of Black Engineers Jr toured the facilities and learned about fermentation, startup life, and a variety of STEM career pathways (April 2022).



# Succession Planning & Worker Cooperatives

- OED’s continued partnership with Project Equity will help meet the local demand for business succession planning; and provide technical assistance to Berkeley’s businesses wishing to transition to employee ownership.
- Recovery funding will enable Project Equity to stay as an on-call advisor to businesses in Berkeley that want to transition to worker ownership, and will also help implement strategies to measure business retention risk in Berkeley.

{ Project Equity }

### The Local Butcher Shop

“Selling to the employees and sustaining the legacy—without having to change our employee structure, change any farmers or ranchers, and continue to keep our community serviced with well-sourced meat—was a no-brainer.”

– Monica Rocchino, former owner



{ Project Equity }

Pictured: materials from Project Equity’s Presentation entitled, *“Berkeley as a national model for business retention through employee ownership”* delivered to Berkeley’s Land Use, Housing, and Economic Development Policy Committee (April 2022). The Local Butcher Shop opened in Berkeley, CA in 2011 and transitioned to employee ownership in 2021.

## Project Equity’s Transition Process





City of

# BERKELEY

## Office of Economic Development (OED)

See the OED website for past Economic Dashboards and other economic reports:

<https://www.cityofberkeley.info/oed/reports/>

Contact OED for more information:

[oedmailbox@cityofberkeley.info](mailto:oedmailbox@cityofberkeley.info)







Office of the City Manager

INFORMATION CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Sanctuary City Contracting Compliance Report for FY 2022

INTRODUCTION

City Council adopted ordinance 7,650-N.S., which is referred to as the Sanctuary City Contracting Ordinance (SCCO), in 2019. The SCCO states that the City shall not enter into a new, amended, or extended contract or agreement with any entity that provides United States Immigration and Customs Enforcement with data broker or extreme vetting services.

Section 13.105.040 requires the City Manager to report annually regarding compliance with section 13.105.030 for the prior year. Section 13.105.030 of the Berkeley Municipal Code details the prohibition on the use of City resources.

CURRENT SITUATION AND ITS EFFECTS

The Sanctuary City Contracting Ordinance establishes the City as a leader in social responsibility. The SCCO is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

## Report Requirements:

*(1) detail with specificity the steps taken to ensure compliance with Section 13.105.030:*

City solicitations include invitations for bids (IFB), requests for proposals (RFP), and requests for qualifications (RFQ). IFB, RFP, and RFQ public postings each contain the SCCO language. Signed compliance certificates are submitted with proposals and bid responses.

New and amended contracts and agreements include the Compliance Certificate attesting review of and compliance with the SCCO. Signed certificates are required as part of the City's contract documents.

*(2) disclose any issues with compliance, including any violations or potential violations of this Ordinance:*

**Motorola:** BPD sought to contract with a vendor, Motorola. Motorola indicated they would not be able to sign the SCCO compliance certification attestation form required in all City contracts.

**Axon:** BPD sought to contract with vendor Axon for body-worn cameras. Concern was raised related to the SCCO, and that Axon may be non-compliant with the SCCO.

*(3) detail actions taken to cure any deficiencies with compliance:*

**Motorola:** BPD submitted a council item detailing the business case for leasing and use of Motorola radios, along with a request for City Council to approve a waiver of the SCCO for this agreement with Motorola. Motorola had refused to sign the SCCO certification due to concerns about its potentially broad scope. The BPD Motorola item was discussed at the 9/28/21 Council meeting, and, following discussion, City Council approved a waiver of the SCCO via Resolution 70,052-N.S. on 10/5/21 (attached).

A complaint was brought about by a citizen group via email (attached) related to:

- a. The Motorola purchase generally, such as why the City did not explore other radio manufacturers besides Motorola, and
- b. That the Motorola SCCO waiver was not documented in the annual SCCO report.

Response to item a.: See the attachment with the City's business case for continued utilization of Motorola radios, as well as the SCCO waiver.

Response to item b.: The SCCO is to be presented prior to November in order to document the SCCO activities that occurred during the prior fiscal year. City Council discussion and waiver for the lease of Motorola radios occurred in fiscal year 2022, thus the issue was drafted into this report for FY 2022 (see above and attached). Reporting on the Motorola discussion, waiver, and contract was *not* required to be part of the FY 2021 report, but included in the FY 2022 report.

**Axon:** BPD sought to contract with Axon for body worn cameras and allegations were made by the public regarding potential SCCO concerns. However, Axon submitted the SCCO form, signed by their general counsel, attesting to review of and compliance with the City's SCCO. Thus, no Council waiver was required in order to proceed with the contract with Axon. The complaints were heard in public comments, and the item discussed and voted on by Council.

No other complaints or issues related to non-compliance were brought forward in FY 2022.

BACKGROUND

This report is for FY 2022 and is hereby submitted on September 13, 2022 in advance of the November 2022 due date, and represents compliance issues with the Sanctuary City Contracting Ordinance discovered or brought forth between July 1, 2021 – June 30, 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

POSSIBLE FUTURE ACTION

This report will be submitted annually.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

1. Motorola Business Case from BPD/BFD
2. Resolution 70,052-N.S. Council Waiver of SCCO
3. Complaint email string-Motorola decision and waiver report issue
4. City Council Agenda 6/21/2022 Special Meeting – Axon
5. Resolution 70,415-N.S. Axon agreement approval



Office of the City Manager

CONSENT CALENDAR  
October 5, 2021

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jennifer A. Louis, Interim Chief of Police  
Abraham Roman, Interim Fire Chief  
Subject: Waiver of Sanctuary City Ordinance for Motorola Solutions Lease

RECOMMENDATION

Adopt a Resolution waiving the contract prohibition of Berkeley Municipal Code Chapter 13, 105, Sanctuary City Contracting, in order to enter into a Public Safety Radio System lease with Motorola Solutions, Incorporated.

FISCAL IMPACTS OF RECOMMENDATION

The approval of this waiver now will allow the City of Berkeley to save \$1 million dollars.

CURRENT SITUATION AND ITS EFFECTS

The Public Safety Radio System is a Strategic Plan Priority Project, advancing our goals to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities, provide an efficient and financially-healthy City government, and create a resilient, safe, connected, and prepared city.

In order to provide effective and expeditious public safety services for the City of Berkeley, the Police and Fire Departments rely on multiband portable and mobile radio communications to ensure emergency services can be delivered to the City of Berkeley and other regional partners. The preeminent provider of radio communications equipment is Motorola Solutions Incorporated. While Motorola Solutions Incorporated has several divisions within their organization, the radio system and equipment will not be accessible to the United States, Immigrations and Customs Enforcement (ICE) officials. However, Vigilant Solutions is an independently operated subsidiary of Motorola Solutions Incorporated. Vigilant Solutions provides services to the ICE organization. Pursuant to Chapter 13.105, the Sanctuary City Contracting Ordinance, the Council must grant a waiver in order for the City to contract with Motorola Solutions Incorporated.

## BACKGROUND

The Police and Fire Department currently use Motorola manufactured portable and mobile radios. Radio communication is critical to providing emergency response services to the City of Berkeley. The majority of the current public safety Motorola radios were purchased in December of 2011 and have exceeded their useful life. Additionally, radio replacement parts will no longer be manufactured, making radio repairs nearly impossible. Furthermore, radios will need to be encryption enabled to be compliant with the California Department of Justice mandates that all transmissions of personal identifiable information and criminal justice information be encrypted to reduce the unauthorized use of confidential information over the public safety radio systems statewide. The Fire Department also has an urgent need to expand the number of radios assigned to support the department redesign. These radios will be used to support enhanced operations in fire prevention, wildland urban interface prevention, and the expanding number of ambulances that will be deployed in FY22-23.

The City of Berkeley is a member agency of the East Bay Regional Communications System Authority (EBRCSA). EBRCSA is a radio communications network system built by Motorola to provide interoperability for emergency responders and others on the network in Alameda and Contra Costa counties. The original purchase was as a result of an extensive RFP process in which Motorola was the only respondent that could implement the scope and magnitude of the project. All Sheriff, Police, Fire, and EMS agencies in Alameda and Contra Costa Counties are part of EBRCSA network; with the exception of Bay Area Regional Transit Police. Several agencies in Solano County have joined EBRCSA as well. The Berkeley Police and Fire 911-Dispatch radio consoles were also built by EBRCSA with Motorola equipment. EBRCSA owns and maintains the Dispatch consoles. EBRCSA contracts with Motorola for repairs and hardware and software upgrades to the Dispatch consoles.

The lack of radio communication between public safety agencies during major fire events, most notably the 1991 Tunnel Fire was the impetus – which took a decade to implement - behind the initiative to create a radio communications system with reliable, regional, radio interoperability between police and fire responders. There are several pivotal documents that were created following the tunnel fire that are relevant to understanding the scope of not participating in the established regional communications system.

From the United States Fire Administration's (USFA) Technical Report Series, *"The Oakland and East Bay Regional Park District units were having difficulty coordinating their efforts, since each agency's units were on their own radio channels. Passing messages via the dispatchers, then by telephone from one communications center to the other, proved to be a problem."* When responding companies were asked to use the few mutual aid channels that were common to all agencies, *"The mutual aid radio channel was hopelessly jammed with communications, and they were unable to make contact with the Command Post."* This resulted in chaos as *"It was difficult to determine*

*resource deployment because so many units were engaged in actions that were unknown to the Command Post. They were engaged in different areas, had no radio contact with the command structure, and were operating on their own initiative."*

The USFA report goes on to state *"The shortcomings of the communications system were also a major obstacle to effective incident management. The radio system proved to be inadequate for the scale of operations that was necessary, even for the initial stages of the incident. These factors made effective coordination or control of the mutual aid resources that arrived during the first five hours impossible."* With the frequency of large, disastrous fires that sweep through entire cities become more commonplace, maintaining every operational advantage that has been hard found for following loss of life and property is essential to our mission moving forward. *"When the fire spread into the City of Berkeley...with the Berkeley Fire Department units utilizing their own radio system. This meant that there were [two] incident commands...working with four separate communications centers and unable to effectively communicate with each other."*

In a report published by the National Fire Protection Association (NFPA) titled "The Oakland Berkeley Hills Fire", it is made clear that the previous radio communications systems were unable to handle *"...the sudden and massive buildup of fire fighters summoned to the fire front neighboring departments..."* Additionally the EBSCRA system has near universal coverage in all operational areas of Alameda and Contra Costa Counties, whereas *"The steep hills interfered with radio transmissions, especially those from hand-held radios. Finally, communications between Oakland and Berkeley. were hampered..."* because of inadequate communications technology.

While the fire department is the primary agency responsible for fire suppression and rescue, the police departments are the primary agency responsible for coordinating evacuation. Having common communications between these two professions in these situations is literally critical to protect life. The same NFPA report cites *"The lack of a common radio frequency at the operational level between Oakland fire and police officials hampered evacuation coordination."*

In *The East Bay Hills Fire A Multi-Agency Review of the October 1991 Fire in the Oakland/Berkeley Hills* written by the California Office of Emergency Services (Cal OES), the impact of uncommon and inadequate radio communications is again highlighted *"As one result of the overcrowding of radio channels, field elements turned to self-assigning their units to activities based on their best judgment. They were not part of a centrally directed response. Others turned to alternate means of communicating: using non-fire frequencies or, in at least one case, speaking to an Oakland police officer who relayed information through his Dispatch center to the Fire Dispatch Center."* In a startling vision of how significantly challenged the radio communications system became *"An East Bay Regional Park Police helicopter was used over the fire to direct some of the air traffic and provide intelligence. It was unable*

*to communicate over the radio, so it had to land several times in order to pass on information to the Command Center.”*

Finally, The Alameda County Grand Jury report issued on June 30, 1993 by the Honorable Joseph J Carson cites that *“The failure of the communications system used by the Oakland Fire Department and the Berkeley Fire Department contributed significantly to the chaos of the situation on October 20, 1991.”*

The Sanctuary City Contracting Ordinance, adopted in 2019, prohibits contracting with an entity that provides services to the United States Immigration and Customs Enforcement Department (ICE) unless a waiver is granted by the Council. Section 13.105.030 provides that a waiver can be granted “...based on a specific determination that no reasonable alternative exists, taking into consideration the following:

1. The intent and purpose of this ordinance;
2. The availability of alternative services, goods and equipment; and
3. Quantifiable additional costs resulting from use of available alternatives

The intent and purpose of the Ordinance is to ensure that the City does not financially support any company that provides services that infringes upon the rights of immigrants. Vigilant Solutions is a wholly owned subsidiary of Motorola Solutions, Inc. Motorola's APX 8000/8500 radios that Berkeley is leasing are a completely separate product line from the Vigilant LPR (license plate recognition) products. The data brokering that Vigilant engages with customers such as ICE does not occur with APX radio products.

With respect to availability of alternate manufactures, as explained above, due to the specialized and proprietary nature of Motorola's equipment, no alternate exists to provide the level of services offered by Motorola. All the public safety agencies currently on the EBRCSA network use Motorola for their primary radios and equipment.

In order to remain reliably and efficiently operable on the EBRCSA system, the Police and Fire Department will need to continue to procure Motorola equipment, such as radios, batteries, related equipment, and software services. Using another radio manufacturer will likely result in unreliable connectivity and functionality on the EBRCSA system. The Global Positioning Services and the Emergency Alert Button will not function on a non-Motorola radio. The Fire Department must use intrinsically safe radios (prevents melting or exploding) for the environment firefighters work in. Motorola provides this verification where other manufacturers may not. With Motorola radios any ongoing software-firmware updates can be done wirelessly. Any other manufactured radios will need to be taken out of service and delivered to radio technicians for service. Moreover, using another manufacturer on the EBRCSA network will likely result in additional costs in the tens of millions to function on a Motorola designed and equipped

infrastructure and would not function efficiently or seamlessly and would likely result in constant on going troubleshooting and reliability problems. Additionally, EBRCSA radio technicians are trained exclusively on Motorola equipment which would limit the ability to troubleshoot issues with a non-Motorola radio product (See Exhibit A).

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The ability to push updates to radios over the Motorola secured radio system would save significant staff resources, as well as, associated greenhouse gas emissions savings from not having to deliver each radio to a technician to manually install updates.

#### RATIONALE FOR RECOMMENDATION

The Berkeley Police and Fire Departments require radio equipment provided by Motorola Solutions, Incorporated and no reliable alternative exists.

#### ALTERNATIVE ACTIONS CONSIDERED

Alternative actions were considered including as described above and found to be cost prohibitive, not practicable, and potentially catastrophic to public safety needs during a natural disaster.

#### CONTACT PERSONS

Jennifer A. Louis, Interim Chief of Police, 981-5700  
Abraham Roman, Interim Fire Chief, 981-5500

#### Attachments:

- 1: Resolution  
    Exhibit A: EBRCSA Sole Source Letter
- 2: Full Grand Jury Final Report
- 3: Cal OES Report
- 4: USFA Technical Report: The East Bay Hills Fire
- 5: Lease
- 6: Motorola Solutions Quote



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

Waiver of Sanctuary City Ordinance for Motorola Solutions Lease

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, the City Council must determine that no reasonable alternative exists based on consideration of three factors; and

WHEREAS, the three factors: the intent and purpose of the act, the availability of alternative service providers and quantifiable additional costs resulting from the use of alternative providers have all been considered; and

WHEREAS, the use of radio equipment and associated services provided by Motorola Solutions, Incorporated is essential to provide Police, Fire, and Emergency Medical Services to the City of Berkeley, in addition to, regional and statewide partners; and

WHEREAS, contracting with Motorola Solutions Incorporated to lease radio equipment and services will not violate the intent of the Ordinance, as all City of Berkeley emergency services are available to everyone, without consideration of citizenship status, to ensure life-saving response and emergency services; and

WHEREAS, the original purchase was as a result of an extensive RFP process in which Motorola was the only respondent that could implement the scope and magnitude of the project; and

WHEREAS, no other contractors are available who can provide the same equipment and services required by this lease; and

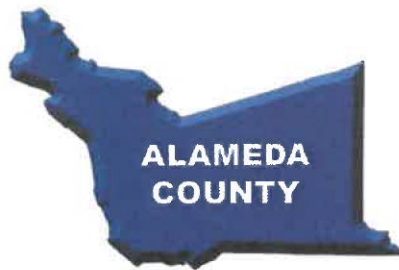
WHEREAS, no other contractor's product will perform with the entire functionality of the equipment and services to work on the EBRCSA system as provided by Motorola Solutions Incorporated under this lease; and

WHEREAS, developing a separate radio system is estimated to cost in excess of \$20 million dollars and result in a loss of interoperability with City of Berkeley Police, Fire, and Emergency Medical Services with local, regional, and state partners previously approved by City Council; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver to the "no-contract" provision of the B.M.C. Section 13.105 is approved because no reasonable alternative exists to the radio equipment and services that will be provided under the lease with Motorola Solutions, Incorporated.

Exhibits

A: EBRCSA Sole Source Letter



**East Bay Regional  
Communications  
System Authority**



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Berkeley, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

925-803-7802

September 30, 2021

Jennifer Louis, Chief of Police  
City of Berkeley  
2100 Martin Luther King Jr. Way  
Berkeley, CA 94596

RE: East Bay Regional Communication System Authority Sole Source with Motorola Solutions Inc.

Dear Chief Louis,

EBRCSA is a shared communications system which was designed to integrate all radio communications amongst the different public safety groups in Alameda and Contra Costa County. EBRCSA provides interoperability so that in day to day interaction or response to a major emergency Public Safety Groups can communicate with each other without delay in connecting or needing any special equipment. A system of this magnitude was complicated and difficult to build with few companies willing to respond to the Request for Proposal (RFP). The initial Contract for the two-county radio system was done through RFP, via Contra Costa County, and Motorola was the only respondent to the RFP.

The East Bay Regional Communications System Authority (EBRCSA) is a Joint Powers Agreement between Alameda County and Contra County providing a radio communication system for Law Enforcement, Fire, Emergency Medical Services, and County and City Service agencies. EBRCSA has 49 member agencies and approximately 22,000 radios in service.

The design and build of the system were reviewed by an independent engineering firm which supported the proposal for EBRCSA and the contract was awarded to Motorola Solutions Inc. based on the review of the response to the RFP.

Motorola was able to replace the various radio systems used by Public Safety agencies in Alameda and Contra Costa County and construct a two county 700/800 MHz system which now serves every Public Safety Organization in both counties. Bay Area Rapid Transit is the only Public Safety not a member of EBRCSA. Immigration and Customs Enforcement (ICE) is not a member or user of the EBRCSA System

Motorola built a Master Site in Dublin at the Alameda County Sheriff's Office of Emergency Services. The sites which connect to the EBRCSA Master Site are all built with Motorola equipment. Motorola provides, through a Service Update Agreement (SUA), upgrades and refreshment of the technology on

**Alameda County Office of Homeland Security and Emergency Services  
4985 Broder Blvd, Dublin CA 94568 • (925) 803-7802 • [www.ebrcsa.org](http://www.ebrcsa.org)**

biennial basis. EBRCSA has a maintenance contract with Motorola to provide response when we have a system problem so that we ensure our Public Safety System is always functioning. The dispatch consoles which are used by the City of Berkeley are Motorola MCC 7500 which is the only console which can be used on the EBRCSA Master Site and are maintained by the Alameda County Department of Information Technology.

The EBRCSA system is Project 25 (P25) digital phase II system and any P25 phase II radio can be used on the system. P25 Phase II is a universal standard for radios that can transmit on the EBRCSA system. A caveat to that is a non-Motorola radio will not provide the access to functionality such as Global Positioning Services (GPS) or in some cases the Emergency Alert Button. These and other functions require a Motorola radio as the software for this is a propriety design by Motorola. One example of the Motorola propriety software allows radios to be updated without returning it to the radio shop. Updates can be sent to the radio via the connectivity from the Master Site to the radio. The best way to explain this is similar to downloading an app or software update to your phone.

The Alameda County Radio Shops provides repair and update services to the City of Berkeley radios and dispatch consoles. EBRCSA has recommended that agencies utilize Motorola radios so that we can ensure the technicians are prepared to work on these radios and have enough replacement parts on hand. We do not have parts for radios manufactured by other companies and the technicians are not trained to repair them. Initial and update training is expensive and timely, so we support the Motorola radios which are used by the majority of our members.

Per the Joint Powers Authority Agreement, the Authority is administered by a Board of Directors consisting of 23 Directors and their respective alternates. Directors and alternates are appointed to ensure equal representation from both counties.

The duties of the Board of Directors include oversight of the acquisition of real property; and the planning, designing, financing, regulation, permitting, environmental evaluation, public outreach, construction, operations, and maintenance of the EBRCSA Project, or any identifiable portion of the EBRCSA Project.

EBRCSA is a shared communications system which was designed to integrate all radio communications amongst the different public safety groups. EBRCSA provides interoperability so that in day to day interaction or response to a major emergency Public Safety Groups can communicate with each other without needing any special equipment or delays in connecting. A system of this magnitude was complicated and difficult to build with few companies willing to respond to the Request for Proposal. The Motorola system has been operating and serving EBRCSA since May 2012.

Sincerely,



Tom McCarthy  
Executive Director  
East Bay Regional Communications System Authority

RESOLUTION NO. 70,052 N.S.

WAIVER OF SANCTUARY CITY ORDINANCE FOR MOTOROLA SOLUTIONS LEASE

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, the City Council must determine that no reasonable alternative exists based on consideration of three factors; and

WHEREAS, the three factors: the intent and purpose of the act, the availability of alternative service providers and quantifiable additional costs resulting from the use of alternative providers have all been considered; and

WHEREAS, the use of radio equipment and associated services provided by Motorola Solutions, Incorporated is essential to provide Police, Fire, and Emergency Medical Services to the City of Berkeley, in addition to, regional and statewide partners; and

WHEREAS, contracting with Motorola Solutions Incorporated to lease radio equipment and services will not violate the intent of the Ordinance, as all City of Berkeley emergency services are available to everyone, without consideration of citizenship status, to ensure life-saving response and emergency services; and

WHEREAS, the original purchase was as a result of an extensive RFP process in which Motorola was the only respondent that could implement the scope and magnitude of the project; and

WHEREAS, no other contractors are available who can provide the same equipment and services required by this lease; and

WHEREAS, no other contractor's product will perform with the entire functionality of the equipment and services to work on the EBRCSA system as provided by Motorola Solutions Incorporated under this lease; and

WHEREAS, developing a separate radio system is estimated to cost in excess of \$20 million dollars and result in a loss of interoperability with City of Berkeley Police, Fire, and Emergency Medical Services with local, regional, and state partners previously approved by City Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver to the "no-contract" provision of the B.M.C. Section 13.105 is approved because no reasonable alternative exists to the radio equipment and services that will be provided under the lease with Motorola Solutions, Incorporated.

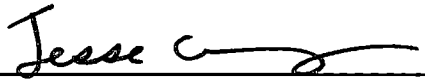
The foregoing Resolution was adopted by the Berkeley City Council on October 5, 2021 by the following vote:

Ayes: Droste, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

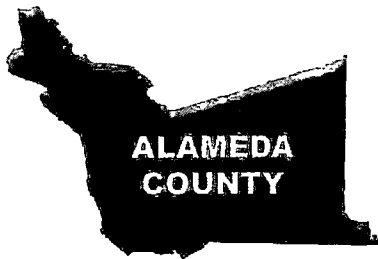
Noes: None.

Abstain: Bartlett and Harrison.

Absent: Hahn.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk



**East Bay Regional  
Communications  
System Authority**



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Berkeley, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

925-803-7802

September 30, 2021

Jennifer Louis, Chief of Police  
City of Berkeley  
2100 Martin Luther King Jr. Way  
Berkeley, CA 94596

RE: East Bay Regional Communication System Authority Sole Source with Motorola Solutions Inc.

Dear Chief Louis,

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biennial basis. EBRCSA has a maintenance contract with Motorola to provide response when we have a system problem so that we ensure our Public Safety System is always functioning. The dispatch consoles which are used by the City of Berkeley are Motorola MCC 7500 which is the only console which can be used on the EBRCSA Master Site and are maintained by the Alameda County Department of Information Technology.

The EBRCSA system is Project 25 (P25) digital phase II system and any P25 phase II radio can be used on the system. P25 Phase II is a universal standard for radios that can transmit on the EBRCSA system. A caveat to that is a non-Motorola radio will not provide the access to functionality such as Global Positioning Services (GPS) or in some cases the Emergency Alert Button. These and other functions require a Motorola radio as the software for this is a propriety design by Motorola. One example of the Motorola propriety software allows radios to be updated without returning it to the radio shop. Updates can be sent to the radio via the connectivity from the Master Site to the radio. The best way to explain this is similar to downloading an app or software update to your phone.

The Alameda County Radio Shops provides repair and update services to the City of Berkeley radios and dispatch consoles. EBRCSA has recommended that agencies utilize Motorola radios so that we can ensure the technicians are prepared to work on these radios and have enough replacement parts on hand. We do not have parts for radios manufactured by other companies and the technicians are not trained to repair them. Initial and update training is expensive and timely, so we support the Motorola radios which are used by the majority of our members.

Per the Joint Powers Authority Agreement, the Authority is administered by a Board of Directors consisting of 23 Directors and their respective alternates. Directors and alternates are appointed to ensure equal representation from both counties.

The duties of the Board of Directors include oversight of the acquisition of real property; and the planning, designing, financing, regulation, permitting, environmental evaluation, public outreach, construction, operations, and maintenance of the EBRCSA Project, or any identifiable portion of the EBRCSA Project.

EBRCSA is a shared communications system which was designed to integrate all radio communications amongst the different public safety groups. EBRCSA provides interoperability so that in day to day interaction or response to a major emergency Public Safety Groups can communicate with each other without needing any special equipment or delays in connecting. A system of this magnitude was complicated and difficult to build with few companies willing to respond to the Request for Proposal. The Motorola system has been operating and serving EBRCSA since May 2012.

Sincerely,



Tom McCarthy  
Executive Director  
East Bay Regional Communications System Authority

**Sweet, Darryl**

---

**From:** Oyekanmi, Henry  
**Sent:** Tuesday, April 26, 2022 12:55 PM  
**To:** Sweet, Darryl  
**Cc:** Roben, Josh  
**Subject:** FW: Please Respond: Violation of Sanctuary Contracting Ordinance

Internal

Darryl-did we deal with this already? I thought we did. Any update?

---

**From:** Williams-Ridley, Dee  
**Sent:** Tuesday, April 26, 2022 11:45 AM  
**To:** Bellow, LaTanya <LBellow@cityofberkeley.info>; Oyekanmi, Henry <HOyekanmi@cityofberkeley.info>  
**Cc:** Brown, Farimah F. <FBrown@cityofberkeley.info>  
**Subject:** FW: Please Respond: Violation of Sanctuary Contracting Ordinance

fyi

---

**From:** Elana Auerbach <[elanarobyn@gmail.com](mailto:elanarobyn@gmail.com)>  
**Sent:** Tuesday, April 26, 2022 11:23 AM  
**To:** All Council <[council@cityofberkeley.info](mailto:council@cityofberkeley.info)>; Berkeley Mayor's Office <[mayor@cityofberkeley.info](mailto:mayor@cityofberkeley.info)>; Williams-Ridley, Dee <[DWilliams-Ridley@cityofberkeley.info](mailto:DWilliams-Ridley@cityofberkeley.info)>; Manager, C <[CManager@cityofberkeley.info](mailto:CManager@cityofberkeley.info)>; Auditor <[CityAuditor@cityofberkeley.info](mailto:CityAuditor@cityofberkeley.info)>  
**Subject:** Please Respond: Violation of Sanctuary Contracting Ordinance

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

YOOHOO. Is anybody out there?

Would someone please respond as to when the report described in the email below will be made public or the reason why the report is not being produced?

Thank you~  
Elana Auerbach

On Thu, Mar 24, 2022 at 1:11 PM Elana Auerbach <[elanarobyn@gmail.com](mailto:elanarobyn@gmail.com)> wrote:

Greetings All~

It has been almost 5 months since I sent the email below that details how the city is in violation of our sanctuary contracting ordinance and the requirement to detail these violations in a written public report.

“By November 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section [13.105.030](#) over the previous year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Section [13.105.030](#), (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.”



Since last fall, I have left voice messages with both the City Manager's office and the City Attorney's office about this issue asking when the required written public report will be made available. I have made public comments at city council meetings. I have spoken to council members. And still, nothing.

When will this report be made public?

Thank you for your attention to this matter~  
Elana Auerbach

On Wed, Oct 27, 2021 at 10:15 AM Elana Auerbach <[elanarobyn@gmail.com](mailto:elanarobyn@gmail.com)> wrote:

Dear City Manager, City Attorney, City Auditor, Mayor and Council,  
This email serves as an official complaint and notice of violation of section [13.105.030](#) of the Sanctuary Contracting Ordinance (SCO) by the City Manager and her designees. The \$6.5M contract with Motorola Solutions violates the SCO as no alternatives to provide Berkeley with public safety radios were considered.

Section 13.105.030 states:

A. No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following: 1. The intent and purpose of this ordinance; 2. The availability of alternative services, goods and equipment; and 3. Quantifiable additional costs resulting from use of available alternatives.

Based on an email from a distributor of JVCKenwood P25 radios and infrastructure that was sent to all council members, the mayor and the city manager, we know that alternatives to Motorola radios exist. Below are excerpts from the email. The email can be found in its entirety at the end of this letter.

- 1) You do not have to buy Motorola radios. Kenwood P25 radios are designed for and are compatible with, and already operate on systems using the P25 standard protocol and interoperate with Motorola radios, whether encrypted [or] not.
- 2) Unlike Motorola, BK and Harris P25 radios, ours are not sold to ICE- purchasing our radios will keep the City in compliance with your laws and rules.
- 3) Our radios can be equipped as a standard option with the encryption asked for by CA-DOJ to protect individual's private information, and still leave other channels 'open' to scrutiny.

As stated in section 13.105.040 of the SCO:

"By November 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section [13.105.030](#) over the previous year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Section [13.105.030](#), (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance."

We look forward to your decision that the current intent to contract with Motorola Solutions be withdrawn and/or reversed, followed by implementation of standard procedures by issuing a Request for Proposal for the City's public safety radio requirements.

Thank you for your prompt attention to this important matter.

Sincerely,  
Elana Auerbach, Karl Knobler, Negeene Mosaed & Rivka Polatnick

From: Bill Ballowe <[bill@epicmarketing.com](mailto:bill@epicmarketing.com)>  
Date: October 6, 2021 at 2:19:18 PM PDT  
To:  
Subject: P25 radio Venders for the City of Berkeley

Dear Councilmember,

I read the attached article about the City of Berkeley's need for additional radios and the issues being discussed about the potential vendor and would like to comment to you first in writing.

My name is William Ballowe and I am the regional manager for northern California for the P25 radios and infrastructure from the EF Johnson division of JVCKenwood. I am officed in San Ramon, CA.

I would like to quickly and easily state our position to the issues brought about in the article.

- 1) You do not have to buy Motorola radios. Kenwood P25 radios are designed for and are compatible with, and already operate on systems using the P25 standard protocol and interoperate with Motorola radios, whether encrypted not.
- 2) Unlike Motorola, BK and Harris P25 radios, ours are not sold to ICE- purchasing our radios will keep the City in compliance with your laws and rules.
- 3) Our radios can be equipped as a standard option with the encryption asked for by CA-DOJ to protect individual's private information, and still leave other channels 'open' to scrutiny.
- 4) It was stated in the article about this vendor, Motorola, that "practically has a monopoly on the public safety sector". This thinking is also replicated by an investment management firm, Wedewood Partners in Motorola, earlier this year in this article: <https://www.yahoo.com/now/why-motorola-msi-continues-top-165308836.html>
- 5) If you are not familiar with your vendor and their quarterly need for banking orders and profits, I do suggest that the discount offered was not because they like you; but rather Sept 30th is the last day of the quarter for this public traded company. Indeed, Motorola has some of the oldest technology on the market at some of the highest prices. We encourage the City to obtain a quote from us before proceeding with this purchase.

Hopefully the 'rest of the story' will allow the Berkeley police dept to look into obtaining their compatible and fairly priced P25 radios from another vendor and stay compliant with the City's rules and laws.

Thank you and hope to see you soon.

<https://www.dailycal.org/say-no-to-waiving-berkeleys-sanctuary-contracting-ordinance/>

Best Regards,

"Put us to work for you"  
[www.epicmarketing.co](http://www.epicmarketing.co)

William Ballowe | Manufacturers Representative | 3 Crow Canyon Ct., Suite 100 | San Ramon, CA | 925-552-1820 office | 925-552-1829 direct

**ANNOTATED AGENDA  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL**

**Tuesday, June 21, 2022  
4:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81179114559>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 811 7911 4559. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

*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, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. 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:** 4:01 p.m.

**Present:** Kesarwani, Taplin, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Bartlett, Harrison

Councilmember Bartlett present at 4:12 p.m.

Councilmember Harrison present at 4:17 p.m.

## Action Calendar – Old Business

1. **Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software** (*Continued from June 14, 2022*)  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a Contract with Axon Enterprise, Incorporated to provide body worn cameras, equipment, software, and services for an amount not to exceed \$1,115,000 over the next five years through Fiscal Year 2027.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** 6 speakers. M/S/C (Arreguin/Wengraf) to adopt Resolution No. 70,415–N.S.  
**Vote:** All Ayes.
  
2. **Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report** (*Continued from June 14, 2022*) (*Item contains supplemental material*)  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Controlled Equipment Impact Statements, Associated Equipment Use Policies and Equipment.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** 8 speakers. M/S/C (Arreguin/Hahn) to adopt the recommendation in the revised material from Councilmember Harrison in Supplemental Communications Packet #2 and further revised as follows:
  1. Adopt Resolution No. 70,416–N.S. approving the revised Controlled Equipment Impact Statements and Policy 303 (Control Devices and Techniques) from Supplemental Communications Packet #2, conforming to local and state law.
  2. Refer the Annual Equipment Use Report to the Police Accountability Board for review and recommendation within 60 days following City Council approval of the remaining use policies.
  3. Refer all other internal policies relevant to controlled equipment to the Police Accountability Board and Berkeley Police Department to review and conform to the approved Controlled Equipment Impact Statements, and local/state laws for City Council consideration by July 26, 2022.**Vote:** Ayes – Taplin, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Wengraf, Droste; Absent – None.

## Adjournment

**Action:** M/S/C (Arreguin/Robinson) to adjourn the meeting.

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

Adjourned at 6:02 p.m.

Councilmember Harrison absent at 6:01 p.m.

## Communications

### **Item #2: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**

1. Berkeley Friends Meeting
2. Police Accountability Board

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

### **Item #2: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**

3. Revised material, submitted by Councilmember Harrison
4. Kitt Saginor

## Supplemental Communications and Reports 3

### **Item #1: Contract: Axon Enterprise, Incorporated for Body Worn Cameras, Storage and Software**

5. Diana Bohn
6. Elana Auerbach
7. Cheryl Davila

### **Item #2: Police Equipment & Community Safety Ordinance Impact Statements, Associated Equipment Policies and Annual Equipment Use Report**

8. Phoebe Anne Sorgen

RESOLUTION NO. 70,415-N.S.

CONTRACT: AXON ENTERPRISE, INCORPORATED FOR BODY WORN CAMERAS  
ALONG WITH RELATED HARDWARE, SOFTWARE, AND STORAGE

WHEREAS, The Berkeley Police Department is required to provide evidence in criminal investigations and continues to document police interactions with the community; and

WHEREAS, Charter section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City is using pricing obtained by another public entity through a competitive process; and

WHEREAS, Cooperative purchasing agreements are available for purchasing by state and local governments; and

WHEREAS, the Cooperative purchasing agreements with vendors, provide lower costs on commodities and equipment to participating public agencies; and

WHEREAS, the Berkeley Police Department and Finance-General Services determined available cooperative purchasing agreements meet the needs of the Police Department; and

WHEREAS, the cost of cameras, related hardware, software licenses, storage and support for 5 years will not exceed \$1,115,000.00 and funds are available in the Berkeley Police Department's baseline budget in FY 2023 as follows: \$223,000.00 in budget code 011-71-705-820-0000-000-421-666110 and for each fiscal year through FY 2027.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized under Charter section 67.2 to execute a contract and any amendments to purchase body worn cameras along with the related hardware, software licenses, storage and support for five years from Axon Enterprise, Incorporated through a cooperative purchasing agreement in an amount not to exceed \$1,115,000.00 and for a 5-year term through fiscal year 2027.

The foregoing Resolution was adopted by the Berkeley City Council on June 21, 2022 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Rose Thomsen, Deputy City Clerk







Environment and Climate Commission

## INFORMATION CALENDAR

September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Environment and Climate Commission (ECC)

Submitted by: Ben Gould, Chairperson, ECC

Subject: Environment and Climate Commission 2022 Work Plan

### INTRODUCTION

The Environment and Climate Commission (ECC) is responsible for advising the City Council on matters related to environmental sustainability and climate change. The commission's scope includes work to advance the goals of: advancing green buildings and resource efficiency; decarbonizing buildings and transportation; engaging and educating the community; addressing the impacts and welfare of all species, including animals, insects, and plants; reducing greenhouse gas emissions; reducing toxics and preventing pollution; and supporting environmental justice. The commission works closely with the Planning & Development Department's Office of Energy & Sustainable Development (OESD).

First established in 2022, ECC was formed by merging the Community Environmental Advisory Commission (CEAC) and the Energy Commission (EC). ECC commissioners bring a wide range of expertise, with backgrounds in government, academia, nonprofit, and private sector environmental work. These backgrounds inform ECC's work and help it to consider diverse and equitable approaches to addressing the City's environmental challenges.

This work plan is intended to provide a guide to the work ECC plans to take on in 2022. As additional items or issues arise, or are referred to the Commission from Council, ECC will adjust this plan accordingly.

### CURRENT SITUATION AND ITS EFFECTS

The Environment and Climate Commission has a very broad scope and a duty to continue and build upon past work done by both CEAC and EC. However, as a new commission, ECC also has numerous vacancies and limited institutional knowledge.

At its July 27, 2022 meeting the Environment and Climate Commission approved the work plan to send to the City Council as follows: Motion/second to approve the workplan with amendments to add current project for 2022 to explore banning gas delivery vehicles and amend climate literacy description (Gould, Ranney). The motion carried 3-

0-1-2; Ayes: Ranney, McGuire, Gould. Noes: None. Abstain: Guliasi. Absent: Tahara, Lunaparra.

### BACKGROUND

Both CEAC and EC prepared memos for ECC to review past projects and suggest future items. The table below indicates those workplan items to follow up on and suggestions for new projects from the previous commissions:

#### **Environment and Climate Commission 2022 Work Plan**

<b>Project</b>	<b>Status</b>	<b>Description</b>	<b>Source</b>
Bird Safety	Existing item, needs follow-up	Proposal to require new development to meet bird safety standards for glass. Track progress of item through Planning Commission and back to Council	CEAC
Gas Station CO <sub>2</sub> Labeling	Existing item, needs follow-up	Requirement for gas stations to display warning labels notifying buyers that burning gasoline causes climate change. Pending finalization at City Attorney's office	CEAC
Ban sale of used gas cars	Existing item, needs follow-up	Proposal to ban the sale of existing (used) gas cars within city limits by 2040 (except to be sold as scrap). Pending finalization at City Attorney's office	CEAC
Hazardous Waste	Potential new item	CEAC received multiple emails in 2021-22 about hazardous waste, but there are no drop-off sites within City limits due to BMC 11.50	CEAC
VMT targets	Potential new item	Set specific, measurable VMT reduction targets and identify and implement strategies to achieve them	CEAC
Sidewalk Condition Index	Potential new item	Adopting a "sidewalk condition index" metric, similar to pavement condition index, to quantify the quality of Berkeley's sidewalks and measure improvements in pedestrian infrastructure	CEAC
Public Space Re-allocation	Potential new item	Re-allocate public street space away from auto-centric uses towards pedestrians, bicyclists, and buses, even more than currently envisioned in the bicycle and pedestrian master plans	CEAC
Building Decarbonization	Potential new item	Berkeley's building decarbonization plan is only a start; more work is needed to identify and effectively implement strategies to decarbonize: <ul style="list-style-type: none"> <li>- Single-family ownership residences</li> <li>- Single-family rental residences</li> </ul>	CEAC

		<ul style="list-style-type: none"> <li>- Rent-controlled multifamily residences</li> <li>- Non-rent-controlled multifamily residences</li> <li>- Commercial spaces</li> </ul>	
De-zoning gas stations	Potential new item	Berkeley should remove gas stations as a permitted use from all City zoning codes.	CEAC
Banning gas-powered delivery vehicles	Potential new item	The ECC should explore opportunities to require last-mile delivery vehicles to use zero- emission alternatives.	CEAC
OESD input: Transportation	Potential new item	<p>Ensure the City is adequately staffed to implement transportation-related activities that reduce carbon emissions. Ensure staff:</p> <ul style="list-style-type: none"> <li>- Conducts a mobility needs assessment</li> <li>- Convenes an electric mobility roadmap implementation working group</li> <li>- Pursues discounts and digital access strategies for electric shared mobility options</li> </ul> <p>Track progress and provide input on implementation of the Electric Mobility Roadmap, the Bicycle Master Plan, the Pedestrian Plan, Vision Zero, and other City plans to encourage non-car mobility.</p>	EC
Alternative Transportation	Potential new item	<ul style="list-style-type: none"> <li>- Study and support expanding transportation measures to reduce GHG emissions associated with car travel.</li> <li>- Promote safe and convenient cycling through a protected and connected bike lane network, docked and dockless bike share systems, public e-bike charging, and secure bike parking.</li> <li>- Promote safe routes to schools, beginning with opportunities for the Energy Commission to contribute to the 2x2 committee (Council and BUSD board).</li> <li>- Research the feasibility of a zero-emissions zone, or a car-free zone for Berkeley.</li> <li>- Investigate opportunities to cut emissions through mass transit, such as more frequent service, new routes, zero-carbon fuels, and lower fare prices.</li> <li>- Investigate new approaches to public, curbside, or neighborhood charging for residents without access to on-site charging, focusing on commercial or public ownership</li> </ul>	EC

		of chargers, dedicated street parking spots for EV charging, and/or low-cost connections to the grid. Collaborate with Transportation and Public Works commissions.	
Integrate Climate + Transportation policymaking	Potential new item	Ensure integration of the climate aspects of transportation with other transportation issues in Transportation and Public Works work.	EC
Bond measure for transportation	Potential new item	Engage with Council to include language in City bond measures to finance and build low-carbon, equitable, safe, and convenient transportation infrastructure.	EC
OESD input: Buildings	Potential new item	<ul style="list-style-type: none"> <li>- Track progress and provide input on implementation of the Berkeley Existing Building Electrification Strategy (BEBES), including funding for the equity pilot program, staffing needs, and renovation reach codes.</li> <li>- Support municipal building electrification and energy efficiency upgrades and development of municipal green building programs, including the City’s work with EBCE to install solar + storage systems on critical facilities to provide resilience during outages.</li> </ul>	EC
Electrification cost reduction	Potential new item	Develop recommendations to reduce the cost of electrification and for partial electrification measures, such as codes that require two-way heat pumps instead of central air conditioners, deployment of portable heat pumps and low voltage water heaters, and “Watt diet” measures to avoid electrical panel upgrades.	EC
Building sale requirements	Potential new item	Investigate and advance time of sale opportunities for electrification and energy efficiency, including a transfer tax rebate program for energy improvements and the allocation of transfer tax revenues towards expanding building electrification in LMI and renter communities.	EC
Electrification mandates	Potential new item	Investigate and advance electrification mandates, such as through the Building Energy Savings Ordinance (BESO)	EC
Defund natural gas	Potential new item	Explore ways to redirect funds used to maintain PG&E’s fossil gas distribution network to support building electrification.	EC
OESD Input: Climate Action	Potential new item	Track and provide input on implementation of the Pilot Climate Equity Action Fund and seek funding sources to provide ongoing support. Identify options to support the Fund from existing	EC

		<p>or expanded City revenues. Solicit input from experts and conduct public meetings to study funding mechanisms, such as a gross-receipts tax, parcel tax, utility users tax, or building emissions tax. Explore options to split the collection of the Utility Users Tax to make it possible to charge separate rates for natural gas and electricity.</p> <p>Review and provide input on staff's annual report to Council on Climate Action Plan progress and recommend further actions. Explore the feasibility of expanding the Plan to cover "scope 3" or consumption-based emissions that occur outside of city limits, and research policies to reduce them. Work with staff to better measure and track progress and create a public dashboard to report key metrics.</p>	
Renewable energy advocacy	Potential new item	Promote the use of renewable energy by advising Council on EBCE activities including electricity mix, default offerings, local programs, and opportunities to advance City priorities.	EC

ECC commissioners, as well as OESD staff, have also proposed other ideas not listed above for items for the commission to work on.

ECC is planning to take on the following projects in 2022:

Project	Goal	Outputs	Target Date	Lead
Climate Literacy Advocacy	Request for state of CA to fund large \$\$ to do climate education work statewide, and look for opportunities to engage with BUSD colleagues in work of commission	Sign-on letter for Council	Dec 2022	Ranney
Land Use Change for Zero Emission Vehicles (ZEVs)	Provide recommendation to Council and Planning Commission on zoning / land use planning changes to support switching to ZEVs	Rec. for Council	Dec 2022	Gould

Building Decarbonization	Explore strategies for building decarbonization: point of sale, building code, prescriptive requirements, tax, etc.	Rec. for Council	Dec 2022	Tahara
Sustainable transport infrastructure	Allocate public street spaces towards more sustainable uses and away from auto-centrism	Rec. for Council	Dec 2022	Gould
OESD support – Climate Action Plan (CAP) tracking	Work with OESD staff to develop approach to track CAP implementation, based on recommendation under review at FITES	Rec. for Council	Dec 2022	Gould
Ban gas-powered delivery vehicles	Explore opportunities to require last-mile delivery vehicles to use zero-emission alternatives.	Rec. for Council	Dec 2022	McGuire

*Climate Literacy Advocacy:* A letter in collaboration with other local & statewide advocacy efforts around climate education in K-12 schools.

*Land Use Change for ZEVs:* Provide strategies for changing land use policies to discourage the use of fossil fuels and encourage sustainable transportation alternatives. Possible approaches: removing gas stations from permissible land use, expanding commercial EV charging, density bonus + fee to incentivize conversion of gas, while the help fund just transitions for workers no longer employed in fossil fuels and related industries.

*Building Decarbonization Efforts:* Review & recommend strategies for building decarbonization. Explore point-of-sale requirements, building code update(s), prescriptive requirements, local tax on direct CO<sub>2</sub> emissions, etc.

*Sustainable Transport Infrastructure:* Review & recommend strategies for realigning public right of way / infrastructure to support sustainable transportation. Consider suggestion to reopen the Transportation Element to close streets to cars, add bike lanes to more side streets & bus lanes to more major streets, narrow streets / add parks & parklets & bioswales, etc.

*OESD support - CAP tracking:* Support OESD staff in identifying key performance indicators (KPIs) for tracking CAP implementation & progress.

ENVIRONMENTAL SUSTAINABILITY

The projects which ECC is working on will improve environmental sustainability through a wide variety of methods.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Future action items that ECC may send to City Council could require staff time to develop, finalize, and/or implement. ECC strives to ensure proposals provide significant net triple bottom line benefits to the City when evaluating total costs and benefits across environmental, social, and economic impacts.

CONTACT PERSON

Billi Romain, Secretary, Environment and Climate Commission,  
[BRomain@cityofberkeley.info](mailto:BRomain@cityofberkeley.info).







Planning Commission

## INFORMATION CALENDAR

September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Planning Commission  
 Submitted by: Elisa Mikiten, Chairperson, Planning Commission  
 Subject: Planning Commission Fiscal Year 2022-23 Work Plan

### INTRODUCTION

The City of Berkeley Planning Commission (PC) hereby submits a work plan for Fiscal Year 2022-23.

### GOALS

The Planning Commission will focus mainly on issues of housing supply and affordability as dictated by City Council referrals, changes to State law, and planning requirements from the State Department of Housing and Community Development (HCD). Large projects include Objective Standards and Missing Middle Housing (Council referrals), and the update of the Housing Element (HCD requirement).

The attached spreadsheet identifies several other projects that have been assigned to staff, such as a Bird Safe Glass regulations, various fee and nexus studies, and development guidance for San Pablo Avenue.

### RESOURCES

Significant staff time is required to conduct research, prepare reports, and draft zoning language. In some cases, consultants assist staff. Currently, there are only three staff members on the long-range planning team, which makes their productivity level around BART, Objective Standards, the Housing Element, and the Zoning Ordinance Revision Project (ZORP) all the more remarkable.

The Land Use Planning Department has begun recruitment for the two open positions in the Long-Range Policy Group (Principal Planner and Associate Planner), and there were several requests for staff positions and consultant services included the new City budget, which was adopted on June 28, 2022.

Calendar constraints are often imposed by State law and deadlines. BART zoning and the Housing Element Update are just two examples.

COUNCIL REFERRALS

The Planning Department and PC have approximately 54 referrals from Council. The PC's work is almost exclusively dictated by these ranked referrals. Thus, the PC has less latitude than other City commissions in establishing and prioritizing its workload.

The Commission's Work Plan Subcommittee discussed recommending some referrals be deleted from the Work Plan. Council has accepted deletions or closed referrals in the past, although a few have come around again. Nevertheless, here are referrals we have deleted from our Work Plan with explanations for why these referrals should be closed:

1. Lower Discretion for Internal Remodeling: The Housing Element work proposes to lower discretionary permitting generally, which will address this issue.
2. Deny Permits to Code Violators: This referral is from 2014, and would be complicated by property rights issues.
3. Not allowing Cannabis uses in Live Work Unit: Cannabis is highly regulated by the State and the City of Berkeley. Currently, there are no Storefront Retail permits available, and cultivation is restricted to the Manufacturing District. Processing is considered a Light Manufacturing use, and is regulated as such. Test Labs are regulated as any other lab, and Distribution is regulated as Wholesale Trade.

PC ADDITIONS

This year, the PC, at the recommendation of the Chair, has added two items to the Work Plan:

1. Conduct a Zoning Adjustments Board (ZAB) Listening Session. The PC Chair will attend a ZAB meeting to hear from ZAB members what is working, what regulations need clarification, and what regulations, if any, does ZAB recommend that the PC revisit. If appropriate, the PC will discuss the items, and make recommendations to Council for future referrals. The goal is to close the loop between the policy and permit bodies. This will not become a staff work item without a Council referral.
2. Review MUR regulations to identify any barriers to converting space to artists' use. The Chair will undertake this work herself, and submit a memorandum to the PC for consideration. The goal is to better enable the district to satisfy its purpose in the arts. This will not become a staff work item without a Council referral.

STRATEGIC OUTCOME AREAS

Products will include:

1. Recommendation to City Council on Objective Standards.
2. Recommendation to City Council on the Housing Element.
3. Two memos from the Chair to the PC (see PC Additions).

Policy objectives include:

1. *Increased housing options and improved affordability.* Allowing greater density and lower levels of discretionary review in residential districts should have substantial cumulative impacts over the coming decade. The Planning Commission can review the volume of completed projects and the average approval period for applications within two years of revised regulations.
2. *Promote healthy, livable communities.* This includes ensuring Berkeley residents live in safe, healthy, and accessible communities with parks, schools, local businesses, and cultural institutions, and promoting healthy mobility options for all resident.
3. *Support community economic development and commercial vitality.* This includes preserving and enhancing Berkeley's neighborhood commercial areas, and ensuring a vibrant downtown.

### BACKGROUND

The mission of the PC, as outlined in the City Charter, reads:

*"The Commission recommends modifications to the City of Berkeley General Plan and related policy documents. All Zoning Ordinance amendments are developed through this Commission and recommended to the City Council. Other purviews include subdivision map consideration and review and comments on substantial projects from surrounding jurisdictions."*

At its meeting of July 6, 2022, the PC voted to adopt this Work Plan (Vote: 8-0-0-1. Motion/Second: Mikiten/Hauser. Ayes: Ghosh, Hauser, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Kapla.).

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The PC's work plan advances the City's sustainability and greenhouse gas reduction goals by focusing on creating housing and business opportunities in areas of high resources and frequent transit.

### POSSIBLE FUTURE ACTION

Based on recommendations received from PC, City Council may refer additional work to the City Manager.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Additional referrals to the City Manager will require staff support.

### CONTACT PERSON

Alene Pearson, Secretary to the Planning Commission, Planning and Development Department, 510-981-7489  
Work Plan Subcommittee of the Planning Commission: Jeff Vincent, Barnali Ghosh, Albert Twu, and Elisa Mikiten, Chair.

Attachments:

1: Planning Commission Work Plan Table 2022-2023

WORKING DOCUMENT -- Planning Commission & Policy Group Work Matrix --- WORKING DOCUMENT

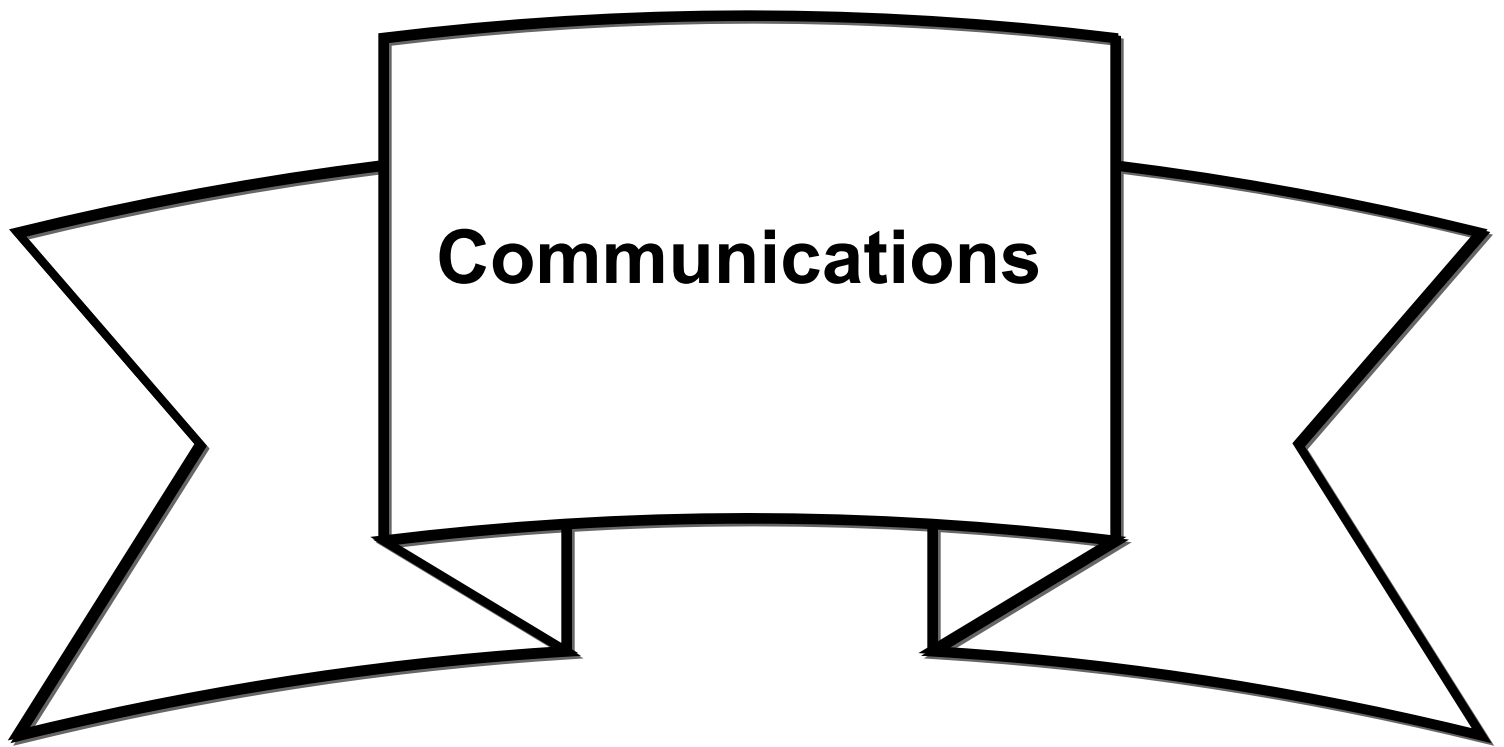
Grouping Description (Approach/Status/Sequencing)	Referral	Referral Look Up	Rank		Staff Lead	2022					2023												
			RRV (2022)	HAP		J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N
a  <u>Housing Element Update</u>  <u>Southside Zoning Amendments</u>  <u>Objective Standards</u>	C-T: Community Benefits (focus on Labor Practice and AH)	Referral from 7/12/16	started	3	GW/JH																		
	Increase 20' height and FAR in SS	Referral from 10/31/17	started		GW/JH																		
	Convert Groundfloor Com to Res in SS	Referral from 4/4/17 & 1/20/15	started		GW/JH																		
	C-T: Pilot Density Bonus (DB Phase 2)	Referral from 5/30/17	started		GW/JH																		
	More Student Housing Now & SB1227	Referral from 11/27/18	started	4	GW/JH																		
	Housing Element (HE) Update	state mandated work	started		Grace Wu																		
	1. Density by parcel; 2.Healthy/safety detriments; 3.Design review; 4. View-shadow impacts (DB Phase 3/JSISHL)	HAP	started	5	Grace Wu																		
	Implement State Law HAA & SB-35	state mandated work	started		Grace																		
	ZORP Phase 2 - Objective Standards	Direction from Council per staff request 1/26/16	started		Grace Wu																		
	ZORP Phase 2 - Substantive Changes	Direction from Council per staff request 1/26/16	started		Justin Horner																		
	Refer to City Manager and PlanComm to include specific concepts to end exclusionary zoning within next Housing Element update		started		Grace Wu																		
	Missing Middle	Referral from 3/25/21 Special mtg Item #1; see Supp 3																					
	Direct City Manager to include Participatory Planning concepts within work to update next Housing Element	Referral from 4/23/19; see annotated agenda for full direction.																					
	Non-commercial groundfloor uses	Referral from 3/25/21 Special mtg Item #1; see Supp 2	started		Grace Wu																		
Refer to City Mgr and PlanComm to consider Affordable Housing overlay, to allow increased height/density for 100% affordable projects, to be integrated within current H.E. update cycle	Referral from 5/1/18; see also annotated agenda	started	18	Grace Wu																			
b  <u>Long Range or Mandated Projects</u>	Adeline Implementation	Referral from 11/9/21	started		Grace Wu																		
	BART Zoning // AB 2923	Plan Implementation	started		Alisa Shen																		
	Guide Development on San Pablo	state mandated work	started		Alisa Shen																		
	2022 Annual Progress Report	COB commitment for designated PDA	started		Alisa Shen																		
	2022 DOF Unit Tracking	state mandated work	state mandate		Zoe Covello																		
	Housing Pipeline Report	state mandated work	state mandate		Zoe Covello																		
	Parking Reform: TDM/RPP Implementation	council request	CC request		Zoe Covello																		
		Ordinance Implementation	CC request		Justin Horner																		
c  <u>Fees and Nexus Studies</u>	Reform AHMF (fees per unit vs gfa)	Referral from 4/23/19	started		Alisa Shen																		
	Decrease AHMF (Affordable Housing Mitigation Fee) for TIC (Tenancy-in-Common) conversions	Referral from 11/27/18. See also annotated agenda	started		Alisa Shen																		
	Inclusionary Units for Live Work	Referral from 9/13/18	started		Alisa Shen																		
	Analyze feasibility of onsite affordable units vs payment of AHMF	Referral from 9/10/19	started		Alisa Shen																		
	Demolition Ordinance	HAP	started	16	SB																		
d  <u>Business-Related Referrals</u>	Sign Ordinance (ZOA Part 1)	Referral from 10/15/19	started		TBD																		
	Arcades in the Elmwood	Referral from 6/25/19	started		TBD																		
	Beer and Wine in the M-District	Referral from 12/4/18 within action (see annotated agenda)	15																				
	Refer to PlanComm to consider Zoning Ord modifications to streamline review processes for the benefit of new and existing small businesses (ZOA Part 2)	Referral from 10/15/19	17																				
e  <u>Other Long Range // Special Projects</u>	Pacific Steel Visioning	Referral from 4/20/21	1																				
	WB Service Center	Referral from 5/28/19.	5																				
	STR Ord Updates	Referral from 7/28/20; see Item 42 on annotated agenda																					
	Alta Bates Zoning	dormant																					

WORKING DOCUMENT -- Planning Commission & Policy Group Work Matrix --- WORKING DOCUMENT

Grouping Description (Approach/Status/Sequencing)	Referral	Referral Look Up	Rank		Staff Lead	2022					2023																
			RRV (2022)	HAP		J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D			
<b>e</b>	<u>Other Long Range / Special Projects</u>		UC Berkeley LRDP (City Attorney lead)	<i>interdepartment coordination</i>																							
		Berkeley Marina Master Plan (PRW lead)	<i>interdepartment coordination</i>																								
		TIF / TSF Nexus Fee (Transportation lead)	Special Council 7/7/16.																								
		Berkeley Transfer Station (PW lead)	<i>interdepartment coordination</i>																								
<b>f</b>	<b>Miscellaneous</b>	Bird Safe Construction	Referral from 11/12/19; see also annotated agenda		started		Zoe Covello																				
		Refer to City Manager to streamline ADU process, inclu Universal checklist and webpage, pre-approved designs, and an "ADU Ally" staff position	from 12/14/21.		8																						
		Refer to City Mgr and PlanComm to streamline remediation of toxic sites in manufacturing districts with a single application for Land Use and Toxics, and for PC to reconsider related previous 2012 referral.	Referral from 2/22/22		12																						
		<del>Flex Conversion to Mini Dorms-</del>	Referral from 9/13/18; also see supplemental memo.		20																						
		Refer to CM including environmental mitigations within enhanced Use Permit review process in Manufacturing Zone, e.g. Air Quality monitoring	Referral from 9/28/21		26																						
		Refer to CMO, PlannComm and HAC: Civic Arts Comm ideas to promote artists housing, including use of ground floor retail space, and to include it in the Housing Element update process	Referral from 1/25/22		27																						
		100% Sustainable Trips by 2040	Referral from 9/15/20		29																						
		<del>Refer to PlannComm allowing certain internal remodeling activities with an AUP, rather than a UP, when existing non-conforming max lot coverage would not be increased (part 2 re: ZO)</del>	Referral from 2/27/18.		31																						
		<del>Not allowing Cannabis as a Live/Work Use</del>	Referral from 4/2/19, under larger cannabis item; see annotated agenda		36																						
		Air Pollution Performance Standards	Referral from 7/11/17		39																						
		<del>Deny permits to code violators</del>	Referral from 9/9/14		41																						
Gentrification/Displacement Study	Referral from 4/30/19. Duplicate referral also sent to HHCS		43			HAC/PC																					
<del>Lower discretion for internal remodeling</del>	Referral from 2/27/18.																										
<b>g</b>	<b>PC Additions</b>	ZAB Listening Session	PC Recommendation																								
		MUR's Ability to Support Conversion to Artists' Use	PC Recommendation																								

**ABBREVIATIONS**

AHMF = Affordable Housing Mitigation Fee	MSHN = More Student Housing Now
cc = City Council	NR = not ranked
EIR = Environmental Impact Report	pc = Planning Commission
GF = groundfloor	pw = public workshop
HAA = Housing Accountability Act	PDA = Priority Development Area
HAP = Housing Action Plan	ph = public hearing
HTF = Housing Trust Fund	RFP = Request for Proposals
IHO = Inclusionary Housing Ordinance	RRV = Reweighted Range Voting
LLA = Lot-line adjustment	sc = Subcommittee of the Planning Commission



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

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<https://records.cityofberkeley.info/>

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4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF