



AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, January 17, 2023

6:00 PM

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

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 – MARK HUMBERT

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION

For in-person attendees, face coverings or masks that cover both the nose and the mouth are required. Physically distanced seating will be available. If you are feeling sick, please do not attend the meeting in person.

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.

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/1610052107>. 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: **161 005 2107**. 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 meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating 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.

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:

Land Acknowledgement Statement: *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

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

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. Persons attending the meeting in-person and wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

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 or Information 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.

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. 7,850-N.S. containing technical edits, corrections and other non-substantive amendments to the following sections of the Zoning Ordinance:

- BMC Section 23.108.020 (Zoning Districts)
- BMC Section 23.202.020 (Allowed Land Uses)
- BMC Section 23.202.140 (R-SMU District)
- BMC Section 23.204.150 (R-BMU District)
- BMC Section 23.204.020 (Allowed Land Uses)
- BMC Section 23.204.060 (C-U District)
- BMC Section 23.204.080 (C-E District)
- BMC Section 23.204.100 (C-SA District)
- BMC Section 23.206.040 (Use-Specific Regulations)
- BMC Section 23.406.050 (Variances)
- BMC Section 23.502.020 (Glossary)

First Reading Vote: All Ayes.

Financial Implications: None

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

2. **Amendment: FY 2023 Annual Appropriations Ordinance**

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,851-N.S. amending the FY 2023 Annual Appropriations Ordinance No. 7,828-N.S. for fiscal year 2023 based upon recommended re-appropriation of committed FY 2022 funding and other adjustments authorized since July 1, 2022, in the amount of \$178,289,951 (gross) and \$172,028,412 (net).

First Reading Vote: All Ayes.

Financial Implications: See Report.

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

Consent Calendar

3. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of November 3 (regular), November 14 (closed), November 15 (special and regular), November 21 (special), November 28 (closed), November 29 (regular), December 6 (regular), December 12 (closed), and December 13, 2022 (special and regular)

Financial Implications: None

Contact: Mark Numainville, Commission Secretary, (510) 981-6900

4. Approval of donated sculpture gift, Queen Shamiram by Fred Parhad, valued at \$225,000, for inclusion in the City of Berkeley's Public Art Collection

From: City Manager

Recommendation: Adopt a Resolution approving the gift of a sculpture by artist Fred Parhad titled Queen Shamiram, valued at \$225,000, donated by Narsai and Venus David to the City of Berkeley's Public Art Collection. The artwork will be installed for permanent display along the pedestrian path at the southeast corner of Maudelle Shirek Building at Martin Luther King Jr. Way and Allston Way as approved by the Civic Arts Commission.

Financial Implications: See report

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 17, 2023

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: \$3,506,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

6. Contract No. 32000146 Amendment: Aramark for Uniforms and Laundering

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000146 with Aramark Uniform Services to continue to meet the uniform-related needs of City departments, extending the term through FY 2025 and increasing the contract amount by \$550,000 for a total not-to-exceed amount of \$1,017,000.

Financial Implications: \$1,017,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

- 7. Contract No. 32300064 Amendment: Tiana Sanchez International, LLC for HHCS Equity Consultant**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32300064 with Tiana Sanchez International, LLC to add \$21,078 and extend the term of the Health, Housing, and Community Services (HHCS) Equity Consultant contract to January 31, 2024 with a not to exceed amount of \$141,078.
Financial Implications: One-Time Grant Fund - \$21,078
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 8. Revenue Grant Agreement: Funding Support from the State of California: California Home Visiting Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit a grant agreement to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the California Home Visiting Program in the projected total amount of \$2,473,611 for July 1, 2022 to June 30, 2028.
Financial Implications: See report.
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 9. ***Item Removed from the Agenda by the City Manager*** Contract No. 32000226 Amendment: MidAmerica Administrative & Retirement Solutions, Third Party Administrator for SRIP I Disability, Police Employees Retiree Income Plan, and Health Reimbursement Accounts for Retiree Health Premium Assistance Plan Reimbursements**
From: City Manager
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
- 10. Establish Classification and Salary – Medical Director**
From: City Manager
Recommendation: Adopt a Resolution to establish the represented classification of Medical Director with a monthly salary range of \$15,671.76 – \$17,802.72.
Financial Implications: See report
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
- 11. Contract: Presidio for Micro-Segmentation**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to award a contract to Presidio for implementing micro-segmentation for a total not to exceed amount of \$822,512, from January 18, 2023 to June 30, 2028.
Financial Implications: See report
Contact: Kevin Fong, Information Technology, (510) 981-6500

Consent Calendar

12. Lease Agreement: Bay Area Hispano Institute for Advancement (BAHIA) at building 1718 8th Street, at James Kenney Park

From: City Manager

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Bay Area Hispano Institute for Advancement (BAHIA) to use the building at 1718 8th Street, adjacent to James Kenney Community Center, in James Kenney Park for a 15-year lease term anticipated to begin March 1, 2023 and ending February 1, 2038, with one 5-year option to renew.

Financial Implications: See report.

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

Council Consent Items

13. Support for SB 4: Affordable Housing on Faith Lands Act

From: Mayor Arreguin (Author)

Recommendation: Adopt a Resolution in support of Senate Bill 4 with amendments, the Affordable Housing on Faith Lands Act, introduced by Senator Scott Weiner. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assemblymember Buffy Wicks.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

14. Twelfth Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

From: Mayor Arreguin (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Recommendation:

1. Adopt a Resolution retroactively co-sponsoring the 12th Annual Martin Luther King Jr. Celebration Breakfast on January 16, 2023.

2. Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguin, to the Berkeley Rotary Endowment, the fiscal sponsor of the 12th Annual Martin Luther King Jr. celebration, with funds 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 - \$250

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Council Consent Items

15. **Amend Contract No. 32200161 with Community Development Partners to extend consulting work associated with Equitable Black Berkeley Initiative**
From: Mayor Arreguin (Author)

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200161 with Community Development Partners (CDP) to add \$75,000 to the existing ideation facilitator contract supporting the Equitable Black Berkeley Initiative for a total contact amount not to exceed \$125,000 and extending the contract term to September 30, 2023.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

16. **Referral for a Security Assessment of the 1700 and 1600 Blocks of San Pablo Avenue**

From: Councilmember Kesarwani (Author)

Recommendation: Refer to the City Manager to conduct a security assessment of the 1700 and 1600 blocks of San Pablo Avenue two months after the City of Berkeley has entered into a lease of real property located at 1720 San Pablo Avenue (hereafter referred to as Berkeley Inn, a 27-room motel). Additional security measures deemed necessary should be implemented as soon as practicable after the security assessment is completed. Recommended aspects of the security assessment and possible security measures are described in the report.

Financial Implications: See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

17. **Resolution in Support of SB-36 (Skinner)**

From: Councilmember Wengraf (Author), Councilmember Harrison (Co-Sponsor), Councilmember Humbert (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Recommendation: Adopt a Resolution in support of SB-36: Out-of-state criminal charges: prosecution related to abortion and gender-affirming care (Skinner) and send copies to Senator Skinner, Assembly Member Wicks and Governor Newsom.

Financial Implications: None

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

18. **Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for Pacific Center for Human Growth**

From: Councilmember Robinson (Author)

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember, including \$1,000 from Councilmember Robinson, to Pacific Center for Human Growth to assist with urgent lease signing and renovation costs.

Financial Implications: Councilmember's Discretionary Funds - \$1,000

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

- 19. Status Report - Berkeley's Financial Condition (FY 2012 - FY 2021): Pension Liabilities and Infrastructure Need Attention (Continued from December 13, 2022)**
From: City Manager
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

Action Calendar – Public Hearings

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

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

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

- 20. Changes to Selected Camps Program Fees**
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution approving new fees and increasing current fees for select recreation programs and facility rentals; and rescinding Resolution No. 70,193 N.S. and all amendatory resolutions.
Financial Implications: See report.
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Action Calendar – Public Hearings

21. Citywide Affordable Housing Requirements

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion:

1. Adopt first reading of an Ordinance to amending the Berkeley Municipal Code Chapter 23.328, updating the citywide Affordable Housing Requirements (AHR) in the Zoning Ordinance, repealing existing administration and zoning code sections that refer to affordable housing requirements, BMC Section 22.20.065, and Section 23.312.040(A)(6), and updating references to BMC Chapter 23.328 throughout the Berkeley Municipal Code, to become effective on April 1, 2023.
2. Adopt a Resolution establishing regulations for a voucher program and establishing an in-lieu fee pursuant to BMC Section 23.328.020(A)(2) upon the effective date of contemporaneously adopted amendments to BMC Section 23.328, and rescind Resolution No. 68,074-N.S. related to fees, exemptions, and administration of inclusionary affordable housing and in-lieu programs upon the effective date of contemporaneously adopted amendments to BMC Section 23.328.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400, Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Action Calendar – Old Business

22. Resolution Supporting Trip Reduction Alternative for BUSD Berkeley High School Tennis and Parking Structure Project *(Continued from December 13, 2022)*

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

Recommendation: Adopt a Resolution in support of a Trip Reduction Alternative to be included in the scope of the Environmental Impact Report for the Berkeley High School Tennis and Parking Structure Project at 2000 Bancroft Way, and send a copy of Resolution to the Berkeley Unified School District (BUSD) Board of Directors.

Financial Implications: None

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

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

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

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***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 January 5, 2023.***

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](#).*

### **Item #21: Citywide Affordable Housing Requirements**

1. Trevor Nestor
2. Jason Martens
3. Jane White
4. Ruth Morgan
5. Medina Lam (2)
6. David Lerman

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

7. Susan Bassein
8. Lynn Cooper
9. Katherine Bierce
10. Sheila Goldmacher
11. Rahel Smith

### **Eviction Moratorium**

12. Yoni Mayeri
13. Susan Marchionna
14. Deborah Finch
15. Rob Gong and Maryan Gong
16. Robert Bahme
17. Leor Beary
18. Bhima Sheridan
19. Vincent Casalaina
20. Ben Davis
21. Debbie Woods
22. Jonatan Weldon
23. William Burton
24. Stan Momtchev
25. Sarah Davis
26. Jessica Bolhack

### **Hopkins Corridor**

27. Susan Taylor
28. Cindi Goldberg
29. Howard Goldberg
30. Michelle Straka
31. Charles Shiflett
32. Mimi Abers
33. Carol Goines
34. Aliza Elias

35. Wanda Warkentin
36. Diana Bohn (2)
37. Vivian Warkentin
38. Susan McKearnan
39. Donna Dediemar and Daniel Cheng
40. Councilmember Hahn
41. Patrick Gordis (2)
42. Virginia Kamp
43. Dorothea Dorenz
44. Graham Crowe
45. Jeanne Friedman
46. Peggy Radel

### **Homelessness**

47. Eve Cowen
48. Friends of Five Creeks (2)
49. Daniel Goldberg
50. Maryann O'Sullivan

### **Warming Centers**

51. Moni Law (3)
52. Robin R.
53. Glenn Turner
54. Nicholas Townsend
55. Katharine Bierce
56. Linda Wulf
57. Juli Dickey
58. Councilmember Harrison
59. Carole Marasovic
60. Arian Thompson-Lastad

### **North Berkeley BART Development**

61. David Brandon
62. Erika Shore
63. Howard Goldberg
64. Carol Hirth

### **Ashby BART Development**

65. Paul Lee
66. David Mendelsohn
67. Teresa Clarke
68. Niloufar Khonsari
69. Jane Scantlebury
70. Susi Marzuola
71. Bhima Sheridan
72. Laura Stevens

**Fire Evacuation**

73. Margot Smith

**Board Vacancies**

74. Hansel Aguilar, on behalf of Police Accountability (2)

**Measure L**

75. Mark Lemkin

**Traffic/Roads/Safety**

76. Seth Kimball

77. Jack Kurzweil

78. Benjamin Chica-Betchart

79. Vicki Sommer

80. Mathew Lewis

81. Tom Gantert

82. Lauren Schiller

83. Eric Friedman

**Guarantee Income Plans**

84. Andrew Hardy

**Parking Regulations in District 2**

85. Cheryl Davila

86. Chadidjah McFall

87. Councilmember Taplin

**Climate Change**

88. Walter Wood

89. Wendy Chou

**Civic Center Report**

90. Margot Smith

**Downtown Building Heights**

91. Erika Shore

**Witness Panel**

92. Jolene Cook

**La Pena Cultural Center**

93. Natalia Neira Retamal

**Berkeley Police Matters**

94. John McMonagle

- 95. Noah Goldberg
- 96. Anais-Olephelia Lino
- 97. Steve Bridges
- 98. Patty Chou

### **Emergency Batteries During Hill Fires**

- 99. Mary Behm-Steinberg

### **People's Park**

- 100. Atma Das
- 101. James Mattson

### **IKE Kiosks**

- 102. Cecilia Schall

### **Alcohol Sales on San Pablo/University Avenues**

- 103. Jeff Vincent

### **Buy Local In Berkeley**

- 104. Bob Flasher

### **Holiday Street Fair Concerns**

- 105. Bob Chan, on behalf of Sizzling Lunch

### **Harm to Residents at 1865 Euclid Avenue**

- 106. Shawn Rosenthal

### **Future Parks**

- 107. James Mattson

### **Adopt A Drain**

- 108. Bryce Nesbitt

### **Center Street Greenway and Strawberry Creek**

- 109. Kirstin Miller

### **URL's Only**

- 110. Vivian Warkentin (4)

### **Supplemental Communications and Reports**

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

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.

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





ORDINANCE NO. 7,850-N.S.

AMENDING TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO CORRECT ERRORS AND MAKE NON-SUBSTANTIVE, TECHNICAL EDITS TO THE ZONING ORDINANCE

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

Section 1. That Berkeley Municipal Code Section 23.108.020 is amended as follows:

A. *Districts.* Berkeley is divided into districts as shown in Table 23.108-1: Zoning Districts. Unique regulations apply within each district as established in Chapters 23.202--23.208 (Zoning Districts).

Table 23.108-1. ZONING DISTRICTS

| DISTRICT SYMBOL              | NAME OF DISTRICT                       |
|------------------------------|----------------------------------------|
| <b>Residential Districts</b> |                                        |
| R-1                          | Single-Family Residential              |
| R-1A                         | Limited Two-family Residential         |
| ES-R                         | Environmental Safety Residential       |
| R-2                          | Restricted Two-family Residential      |
| R-2A                         | Restricted Multiple-family Residential |
| R-3                          | Multiple-family Residential            |
| R-4                          | Multi-family Residential               |
| R-5                          | High Density Residential               |
| R-S                          | Residential Southside                  |
| R-SMU                        | Residential Southside Mixed Use        |
| R-BMU                        | Residential BART Mixed Use             |
| <b>Commercial Districts</b>  |                                        |
| C-C                          | Corridor Commercial                    |
| C-U                          | University Avenue Commercial           |
| C-N                          | Neighborhood Commercial                |

| DISTRICT SYMBOL                | NAME OF DISTRICT            |
|--------------------------------|-----------------------------|
| C-E                            | Elmwood Commercial          |
| C-NS                           | North Shattuck Commercial   |
| C-SA                           | South Area Commercial       |
| C-T                            | Telegraph Avenue Commercial |
| C-SO                           | Solano Avenue Commercial    |
| C-DMU                          | Downtown Mixed-Use          |
| C-W                            | West Berkeley Commercial    |
| C-AC                           | Adeline Corridor Commercial |
| <b>Manufacturing Districts</b> |                             |
| M                              | Manufacturing               |
| MM                             | Mixed Manufacturing         |
| MU-LI                          | Mixed Use-Light Industrial  |
| MU-R                           | Mixed Use-Residential       |
| <b>Special Districts</b>       |                             |
| SP                             | Specific Plan               |
| U                              | Unclassified                |

B. *Undesignated Areas.* Any area not specifically designated as a district on the Zoning Map is subject to the Unclassified (U) district requirements.

C. *Overlay Zones.*

1. The Zoning Ordinance and Zoning Map include the overlay zones shown in Table 23.108-2: Overlay Zones. Overlay zones impose additional regulations on properties beyond what is required by the underlying district. As shown in Table 23.108-2: Overlay Zones, provisions for overlay zones that apply to two or more districts are located in Chapter 23.210 (Overlay Zones). Provisions for overlay zones that apply only in one district are located in the Zoning Ordinance chapter for that district.

**TABLE 23.108-2: OVERLAY ZONES**

| OVERLAY ZONE SYMBOL                                      | NAME OF OVERLAY ZONE | LOCATION IN ZONING ORDINANCE                                          |
|----------------------------------------------------------|----------------------|-----------------------------------------------------------------------|
| <b>Overlay Zones that Apply in Two or More Districts</b> |                      |                                                                       |
| H                                                        | Hillside             | 23.210.020– Hillside Overlay Zone                                     |
| C                                                        | Civic Center         | 23.210.030– Civic Center District Overlay Zone                        |
| <b>Overlay Zones that Apply in One District</b>          |                      |                                                                       |
| DA                                                       | Downtown Arts        | 23.204.130– C-DMU Downtown Mixed-Use District (Arts Overlay District) |

2. If the overlay zone applies a standard to a property that conflicts with the underlying district, the overlay zone standard governs. If the overlay zone is silent on a standard in the underlying district, the underlying district standard applies.

D. *Vacated Streets*. Where a public street or alley is officially vacated or abandoned, the land area of the street or alley acquires the district classification of the property to which it reverts.

Section 2. That Berkeley Municipal Code Section 23.202.020 is amended as follows:

23.202.020 Allowed Land Uses.

A. *Allowed Land Uses*. Table 23.202-1: Allowed Land Uses in Residential Districts identifies allowed land uses and required permits in the Residential Districts. All land uses are defined in Chapter 23.502--Glossary. Permit requirements are described in Chapter 23.406--Specific Permit Requirements.

B. *Unlisted Land Uses*. Any land use not listed in Table 23.202-1: Allowed Land Uses in Residential Districts is not permitted in the Residential District.

Table 23.202-1. ALLOWED LAND USES IN RESIDENTIAL DISTRICTS

| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br>**--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D | RESIDENTIAL DISTRICTS                      |        |        |                                      |                                            |        |        |        |        |        |        | USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|--------|--------|--------------------------------------|--------------------------------------------|--------|--------|--------|--------|--------|--------|--------------------------------------------------------------------------------------------------------|----------------------------------------|
|                                                                                                                                                                                                                                                                                     | R-1                                        | R-1A   | ES-R   | R-2                                  | R-2A                                       | R-3    | R-4    | R-5    | R-S    | R-SMU  | R-BMU* |                                                                                                        |                                        |
| <b>Residential Uses</b>                                                                                                                                                                                                                                                             |                                            |        |        |                                      |                                            |        |        |        |        |        |        |                                                                                                        |                                        |
| Accessory Dwelling Unit                                                                                                                                                                                                                                                             | See 23.306--Accessory Dwelling Units       |        | NP     | See 23.306--Accessory Dwelling Units |                                            |        |        |        |        |        |        |                                                                                                        |                                        |
| <b>Dwellings</b>                                                                                                                                                                                                                                                                    |                                            |        |        |                                      |                                            |        |        |        |        |        |        |                                                                                                        |                                        |
| Single-Family                                                                                                                                                                                                                                                                       | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH)                               | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | NP                                                                                                     |                                        |
| Two-Family                                                                                                                                                                                                                                                                          | NP                                         | UP(PH) | NP     | UP(PH)                               | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | NP                                                                                                     |                                        |
| Multi-Family                                                                                                                                                                                                                                                                        | NP                                         | NP     | NP     | UP(PH)                               | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)                                                                                                 |                                        |
| Group Living Accommodation                                                                                                                                                                                                                                                          | NP                                         | NP     | NP     | NP                                   | NP                                         | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)                                                                                                 |                                        |
| Senior Congregate Housing                                                                                                                                                                                                                                                           | NP                                         | NP     | NP     | NP                                   | See 23.302.070.H--Use-Specific Regulations |        |        |        |        |        |        |                                                                                                        |                                        |
| Mixed-Use Residential                                                                                                                                                                                                                                                               | NP                                         | NP     | NP     | UP(PH)                               | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)                                                                                                 |                                        |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                                                                                 |                                            |        |        |                                      |                                            |        |        |        |        |        |        |                                                                                                        |                                        |
| Child Care Center                                                                                                                                                                                                                                                                   | UP(PH)                                     | UP(PH) | NP     | UP(PH)                               | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)                                                                                                 |                                        |
| Club/Lodge                                                                                                                                                                                                                                                                          | UP(PH)                                     | UP(PH) | NP     | UP(PH)                               | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)                                                                                                 |                                        |
| Columbaria                                                                                                                                                                                                                                                                          | AUP*                                       | AUP*   | NP     | AUP*                                 | AUP*                                       | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | NP                                                                                                     | 23.302.070.C--Use-Specific Regulations |
| Community Care Facility                                                                                                                                                                                                                                                             | See 23.202.040.A--Use-Specific Regulations |        |        |                                      |                                            |        |        |        |        |        |        |                                                                                                        |                                        |

| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br>**--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D | RESIDENTIAL DISTRICTS |        |        |        |        |        |            |        |        |        |        | USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------|--------|--------|--------|--------|------------|--------|--------|--------|--------|--------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                     | R-1                   | R-1A   | ES-R   | R-2    | R-2A   | R-3    | R-4        | R-5    | R-S    | R-SMU  | R-BMU* |                                                                                                        |
| Community Center                                                                                                                                                                                                                                                                    | UP(PH)                | UP(PH) | NP     | UP(PH) | UP(PH) | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                                                                                                        |
| Emergency Shelter                                                                                                                                                                                                                                                                   | NP                    | NP     | NP     | NP     | NP     | NP     | See 23.308 |        |        |        |        |                                                                                                        |
| Family Day Care Home, Large                                                                                                                                                                                                                                                         | ZC                    | ZC     | ZC     | ZC     | ZC     | ZC     | ZC         | ZC     | ZC     | ZC     | ZC     |                                                                                                        |
| Family Day Care Home, Small                                                                                                                                                                                                                                                         | ZC                    | ZC     | ZC     | ZC     | ZC     | ZC     | ZC         | ZC     | ZC     | ZC     | ZC     |                                                                                                        |
| Hospital                                                                                                                                                                                                                                                                            | NP                    | NP     | NP     | NP     | NP     | UP(PH) | UP(PH)     | UP(PH) | NP     | UP(PH) | NP     |                                                                                                        |
| Library                                                                                                                                                                                                                                                                             | UP(PH)                | UP(PH) | NP     | UP(PH) | UP(PH) | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                                                                                                        |
| Nursing Home                                                                                                                                                                                                                                                                        | NP                    | NP     | NP     | --     | UP(PH) | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | NP     |                                                                                                        |
| Park/Playground                                                                                                                                                                                                                                                                     | ZC                    | ZC     | UP     | ZC     | ZC     | ZC     | ZC         | ZC     | ZC     | ZC     | ZC     |                                                                                                        |
| Public Safety and Emergency Service                                                                                                                                                                                                                                                 | UP(PH)                | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                                                                                                        |
| Public Utility Substation/Tank                                                                                                                                                                                                                                                      | UP(PH)                | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                                                                                                        |
| Religious Assembly                                                                                                                                                                                                                                                                  | UP(PH)                | UP(PH) | NP     | UP(PH) | UP(PH) | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                                                                                                        |
| School                                                                                                                                                                                                                                                                              | UP(PH)                | UP(PH) | NP     | UP(PH) | UP(PH) | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                                                                                                        |
| <b>Commercial Uses</b>                                                                                                                                                                                                                                                              |                       |        |        |        |        |        |            |        |        |        |        |                                                                                                        |

| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br>**--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D | RESIDENTIAL DISTRICTS |      |      |     |      |     |        |        |        |        |         | USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------|------|-----|------|-----|--------|--------|--------|--------|---------|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
|                                                                                                                                                                                                                                                                                     | R-1                   | R-1A | ES-R | R-2 | R-2A | R-3 | R-4    | R-5    | R-S    | R-SMU  | R-BMU*  |                                                                                                        |                                                          |
| Alcoholic Beverage Service                                                                                                                                                                                                                                                          | NP                    | NP   | NP   | NP  | NP   | NP  | NP     | NP     | NP     | NP     | UP(PH)* | UP(PH)*                                                                                                | 23.310--Alcoholic Beverage Sales and Service             |
| Food Products Store                                                                                                                                                                                                                                                                 | NP                    | NP   | NP   | NP  | NP   | NP  | NP     | NP     | NP     | NP     | UP(PH)* | UP(PH)*                                                                                                | 23.202.140. B.3--R-SMU Residential Southside District    |
| Food Service Establishment                                                                                                                                                                                                                                                          | NP                    | NP   | NP   | NP  | NP   | NP  | NP     | NP     | NP     | NP     | UP(PH)* | UP(PH)*                                                                                                | 23.302.070. E--Use-Specific Regulations                  |
| Group Class Instruction                                                                                                                                                                                                                                                             | NP                    | NP   | NP   | NP  | NP   | NP  | NP     | NP     | NP     | NP     | NP      | UP(PH)*                                                                                                | 23.202.150. C--R-BMU Residential BART Mixed Use District |
| Gym/Health Club                                                                                                                                                                                                                                                                     | NP                    | NP   | NP   | NP  | NP   | NP  | NP     | NP     | NP     | NP     | NP      | UP(PH)*                                                                                                | 23.202.150. C--R-BMU Residential BART Mixed Use District |
| Hotel, Tourist                                                                                                                                                                                                                                                                      | NP                    | NP   | NP   | NP  | NP   | NP  | UP(PH) | UP(PH) | UP(PH) | UP(PH) | NP      |                                                                                                        |                                                          |
| Laundromat and Cleaner                                                                                                                                                                                                                                                              | NP                    | NP   | NP   | NP  | NP   | NP  | NP     | NP     | NP     | NP     | UP(PH)  | UP(PH)                                                                                                 |                                                          |
| Office                                                                                                                                                                                                                                                                              | NP                    | NP   | NP   | NP  | NP   | NP  | UP(PH) | UP(PH) | NP     | UP(PH) | UP(PH)* |                                                                                                        | 23.202.150. C--R-BMU                                     |

| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br>**--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D | RESIDENTIAL DISTRICTS |         |         |         |         |         |         |         |         |         |         | USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                     | R-1                   | R-1A    | ES-R    | R-2     | R-2A    | R-3     | R-4     | R-5     | R-S     | R-SMU   | R-BMU*  |                                                                                                                |
|                                                                                                                                                                                                                                                                                     |                       |         |         |         |         |         |         |         |         |         |         | Residential BART Mixed Use District                                                                            |
| Parking Lot/Structure                                                                                                                                                                                                                                                               | UP(PH)*               | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | 23.302.070. G-- Unenclosed Accessory Structures in Residential Districts<br>23.322.100--On-site Loading Spaces |
| Personal and Household Service, General                                                                                                                                                                                                                                             | NP                    | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP      | ZC*     | ZC*     | 23.202.140. B.2--R-SMU Residential Southside District                                                          |
| Retail, General                                                                                                                                                                                                                                                                     | NP                    | NP      | NP      | NP      | NP      | NP      | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | 23.202.040. B--Use-Specific Regulations                                                                        |
| Veterinary Clinic                                                                                                                                                                                                                                                                   | NP                    | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | UP(PH)  |                                                                                                                |
| Theater                                                                                                                                                                                                                                                                             | NP                    | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  |                                                                                                                |
| Video Tape/Disk Rental                                                                                                                                                                                                                                                              | NP                    | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | NP      |                                                                                                                |

|                                                                                                                                                                                                                                                                                     |                                               |        |        |        |        |        |        |        |        |        |        |                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------------------------------------------------------------------------------------------------------------|
| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br>**--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D | <b>RESIDENTIAL DISTRICTS</b>                  |        |        |        |        |        |        |        |        |        |        | <b>USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)</b> |
|                                                                                                                                                                                                                                                                                     | R-1                                           | R-1A   | ES-R   | R-2    | R-2A   | R-3    | R-4    | R-5    | R-S    | R-SMU  | R-BMU* |                                                                                                               |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                                                                         |                                               |        |        |        |        |        |        |        |        |        |        |                                                                                                               |
| Commercial Excavation                                                                                                                                                                                                                                                               | UP(PH)                                        | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)                                                                                                        |
| <b>Other Uses</b>                                                                                                                                                                                                                                                                   |                                               |        |        |        |        |        |        |        |        |        |        |                                                                                                               |
| Accessory Uses                                                                                                                                                                                                                                                                      | See 23.302.020.A--General Use Regulations     |        |        |        |        |        |        |        |        |        |        |                                                                                                               |
| Art/Craft Studio                                                                                                                                                                                                                                                                    | NP                                            | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | ZC                                                                                                            |
| ATM: Exterior and Attached to Bank or Interior or Exterior and Not With Bank                                                                                                                                                                                                        | NP                                            | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | AUP                                                                                                           |
| Home Occupations                                                                                                                                                                                                                                                                    | See 23.302.040--Home Occupations              |        |        |        |        |        |        |        |        |        |        |                                                                                                               |
| Live/Work                                                                                                                                                                                                                                                                           | NP                                            | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | UP(PH)*<br>23.312--Live/Work                                                                                  |
| Public Market, Open Air                                                                                                                                                                                                                                                             | NP                                            | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | AUP                                                                                                           |
| Public Market, Enclosed                                                                                                                                                                                                                                                             | NP                                            | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | AUP                                                                                                           |
| Short-Term Rental                                                                                                                                                                                                                                                                   | ZC*                                           | ZC*    | NP     | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | 23.314--Short-Term Rentals                                                                                    |
| Temporary Uses                                                                                                                                                                                                                                                                      | See 23.302.030--Temporary Uses and Structures |        |        |        |        |        |        |        |        |        |        |                                                                                                               |
| Urban Agriculture, Low-Impact                                                                                                                                                                                                                                                       | ZC*                                           | ZC*    | NP     | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | 23.318--Urban Agriculture                                                                                     |



| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br>**--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D | RESIDENTIAL DISTRICTS                         |      |      |      |      |      |      |      |      |       |        | USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|------|------|------|------|------|------|------|------|-------|--------|--------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                     | R-1                                           | R-1A | ES-R | R-2  | R-2A | R-3  | R-4  | R-5  | R-S  | R-SMU | R-BMU* |                                                                                                        |
| Urban Agriculture, High-Impact                                                                                                                                                                                                                                                      | AUP*                                          | AUP* | NP   | AUP* | AUP* | AUP* | AUP* | AUP* | AUP* | AUP*  | AUP*   | 23.318--Urban Agriculture                                                                              |
| Wireless Telecommunication Facility                                                                                                                                                                                                                                                 | See 23.332--Wireless Communication Facilities |      |      |      |      |      |      |      |      |       |        |                                                                                                        |

C. *Use-Specific Regulations.* Uses subject to supplemental regulations are shown in Table 23.202-1: Allowed Land Uses in Residential Districts with an asterisk (\*) following the permit requirement (e.g., UP\*). The Use-Specific Regulations column in Table 23.202-1: Allowed Land Uses in Residential Districts identifies the location of these regulations in the Zoning Ordinance.

Section 3. That the title of Berkeley Municipal Code 23.202.140 is amended as follows:

23.202.140 R-SMU Residential Southside Mixed Use District

Section 4. That the Berkeley Municipal Code 23.202.150.B.1 is amended as follows:

1. *Dwelling Units per Acre:* The quotient resulting from the total number of dwelling units on a site divided by the Lot Area.

Section 5. That Berkeley Municipal Code 23.202.150.C.1 is amended as follows:

1. *General.* See Section 23.202.020 (Allowed Land Uses), which indicates identified allowed land uses and which are prohibited.

(a) The initial establishment of a land use in a new building will follow the R-BMU Master Development Plan process outlined in Section 23.202.150.G below.

(b) The change of use of an existing building or portion of a building will require the permits indicated in Section 23.202.020 and Table 23.202-1 for the R-BMU District.

(c) Any use not listed in Table 23.202-1 for the R-BMU District can be approved through the Master Development Plan process outlined in Section 23.202.150.G below for the initial establishment of a land use in a new building.

(d) Uses subject to supplemental regulations are shown in Table 23.202-1 with an asterisk (\*) following the permit requirement (e.g., ZC\*). The Use-Specific Regulations column in Table 23.202-1 identifies the location of these regulations in the Zoning Ordinance.

Section 6. That Berkeley Municipal Code Section 23.202.150.F Table 23.202-27 is amended as follows:

Table 23.202-28 Permitted Street-Facing Ground Floor Uses

| FRONTAGE LOCATIONS                                                                                                                                                                                                                                                                                                                                               | PERMITTED STREET-FACING GROUND FLOOR USES                                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Along Ashby and MLK                                                                                                                                                                                                                                                                                                                                              | Non-Residential Uses or non-residential accessory spaces to residential buildings, such as community rooms. At least 50% of the combined frontage of MLK and Ashby must include active ground -floor uses.[1] Active uses at corner locations are encouraged. |
| Along Adeline                                                                                                                                                                                                                                                                                                                                                    | Non-Residential Uses or non-residential accessory spaces to residential buildings, such as community rooms                                                                                                                                                    |
| Along Woolsey, Tremont [2], or fronting interior public spaces                                                                                                                                                                                                                                                                                                   | Residential or Non-Residential Uses                                                                                                                                                                                                                           |
| Along Sacramento, along the Ohlone Greenway, or within 50 feet of any street corner                                                                                                                                                                                                                                                                              | Residential or Non-Residential Uses                                                                                                                                                                                                                           |
| Along Delaware, Acton, or Virginia                                                                                                                                                                                                                                                                                                                               | Residential Uses                                                                                                                                                                                                                                              |
| <p>[1] Active uses are commercial uses which generate regular and frequent foot traffic; such uses include businesses in the following use categories: Retail; Personal and Household Services; Food and Alcohol Service, and Entertainment.</p> <p>[2] Public entrances for non-residential uses fronting Tremont Street must be located on Woolsey Street.</p> |                                                                                                                                                                                                                                                               |

Section 7. That Berkeley Municipal Code Section 23.202.150.F Table 23.202-28 is amended as follows:

Table 23.202-29 R-BMU Development Standards

|                   |            | Supplemental Standards |
|-------------------|------------|------------------------|
| Lot Area, Minimum | No Minimum | 23.304.020             |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                            |            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|------------|
| Private Usable Open Space, Minimum [1][2]                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                            | 23.304.090 |
| Per Dwelling Unit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 40 sf/DU                   | 23.304.090 |
| Per Group Living Accommodation Resident                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 15 sf/resident             | 23.304.090 |
| Public Open Space, Minimum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                            |            |
| Per Dwelling Unit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 35 sf/DU                   |            |
| Per Group Living Accommodation Resident                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 18 sf/resident             |            |
| Floor Area Ratio (FAR), Maximum                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 4.2                        |            |
| Main Building height, Maximum [3]                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 80 feet and 7 stories      | 32.304.050 |
| Residential Density, Minimum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 75 dwelling units per acre |            |
| <p><b>[1]</b> Private Usable Open Space may be provided as any combination of personal and common private space.</p> <p><b>[2]</b> 50% of the Private Usable Open Space requirement may be fulfilled through the provision of an equal amount of additional Public Open Space.</p> <p><b>[3]</b> Building Height Measurement: In the case of a roof with a parapet wall, building height shall be measured to the top of the roof and parapets may exceed the height limits by up to five feet by right.</p> |                            |            |

Section 8. That Berkeley Municipal Code Section 23.202.150.F.3.b.iv is amended as follows:

- iv. Adjacent publicly owned space may contribute to the minimum public space requirement for the project, if it is designed, integrated and maintained as part of the project and complies with all other requirements for public space design identified in this section 23.202.150(F)3(b).

Section 9. That Berkeley Municipal Code Section 23.202.150.F.3.c is amended as follows:

- (c) *Rooftop Open Space.* Rooftops may be utilized as Private Usable Open Space or Public Open Space meeting the requirements of 23.202.150.F.3.a (Additional Open Space Requirements--Definitions). Rooftop space designated Public Open Space must also meet the requirements of 23.202.150.F.3.b (Public Space Design). No more than 25% of Public Open Space requirements can be

met with Rooftop Open Space, and such Public Open Space must be independently accessible from the public circulation network.

Section 10. That Berkeley Municipal Code Section 23.202.150.G.4.c is amended as follows:

(c) The Board shall determine whether the proposal conforms to the permit criteria set forth in Section 23.202.150.G.8, and may approve or disapprove the application and the accompanying Preliminary Development Plan or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria and regulations. In so doing, the Board may, in its discretion, authorize submission of the Final Development Plan in stages corresponding to different units or elements of the development. It may do so only upon evidence assuring completion of the entire development in accordance with the Preliminary Development Plan and staged development schedule.

Section 11. That Berkeley Municipal Code Section 23.202.150.G.5.b is amended as follows:

(b) The public notice and hearing process for a Final Development Plan shall be the same as for Use Permits as defined in BMC Section 23.406.040, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property.

Section 12. That Berkeley Municipal Code Section 23.202.150.G.7 is amended as follows:

7. *Appeal to Council.* The process for appeal to Council for a Master Development Permit, Preliminary Development Plan and/or Final Development Plan shall be the same as for Use Permits as defined in BMC Chapter 23.410.

Section 13. That Berkeley Municipal Code Section 23.204.020 Table 23.204-1 is amended as follows:

Table 23.204-1. Allowed Uses in Commercial Districts

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see 23.204.020(B)<br>[#] = Table Note Permit Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS                 |         |        |        |        |         |        |        |        |                     |        | USE-SPECIFIC REGULATIONS                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|---------|--------|--------|--------|---------|--------|--------|--------|---------------------|--------|-------------------------------------------|
|                                                                                                                                                                                                                                  | C-C                                  | C-U     | C-N    | C-E    | C-NS   | C-SA    | C-T    | C-SO   | C-DMU  | C-W                 | C-AC   |                                           |
| <b>Residential Uses</b>                                                                                                                                                                                                          |                                      |         |        |        |        |         |        |        |        |                     |        |                                           |
| Accessory Dwelling Unit                                                                                                                                                                                                          | See 23.306--Accessory Dwelling Units |         |        |        |        |         |        |        |        |                     |        |                                           |
| Dwellings                                                                                                                                                                                                                        |                                      |         |        |        |        |         |        |        |        |                     |        |                                           |
| Single-Family                                                                                                                                                                                                                    | UP(PH)                               | UP(PH)* | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH)              | UP(PH) | 23.204.060<br>.B.3                        |
| Two-Family                                                                                                                                                                                                                       | UP(PH)                               | UP(PH)* | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH)              | UP(PH) | 23.204.060<br>.B.3                        |
| Multi-Family                                                                                                                                                                                                                     | UP(PH)                               | UP(PH)* | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH)              | UP(PH) | 23.204.060<br>.B.3                        |
| Group Living Accommodation                                                                                                                                                                                                       | UP(PH)                               | UP(PH)* | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH)              | UP(PH) | 23.204.060<br>.B.3                        |
| Hotel, Residential                                                                                                                                                                                                               | UP(PH)                               | UP(PH)* | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH)              | UP(PH) | 23.204.060<br>.B.3                        |
| Mixed-Use Residential                                                                                                                                                                                                            | UP(PH)                               | UP(PH)* | UP(PH) | UP(PH) | UP(PH) | UP(PH)* | UP(PH) | UP(PH) | UP(PH) | See Table 23.204-41 | UP(PH) | 23.204.060<br>.B.3;<br>23.204.100<br>.B.4 |
| Senior Congregate Housing                                                                                                                                                                                                        | See 23.302.070.H                     |         |        |        |        |         |        |        |        |                     |        |                                           |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                              |                                      |         |        |        |        |         |        |        |        |                     |        |                                           |
| Child Care Center                                                                                                                                                                                                                | UP(PH)                               | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH)              | UP(PH) |                                           |
| Cemetery/Crematory/Mausoleum                                                                                                                                                                                                     | NP                                   | NP      | NP     | NP     | NP     | NP      | NP     | NP     | NP     | NP                  | NP     |                                           |
| Club/Lodge                                                                                                                                                                                                                       | UP(PH)                               | UP(PH)  | UP(PH) | UP(PH) | NP     | UP(PH)  | UP(PH) | NP     | UP(PH) | UP(PH)              | UP(PH) |                                           |
| Columbaria                                                                                                                                                                                                                       | See 23.302.070.C                     |         |        |        |        |         |        |        |        |                     |        |                                           |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see 23.204.020(B)<br>[#] = Table Note Permit Requirement<br>* Use-Specific Regulations Apply | COMMERCIAL DISTRICTS          |        |        |        |                                 |        |        |        |        |        |        | USE-SPECIFIC REGULATIONS |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--------|--------|--------|---------------------------------|--------|--------|--------|--------|--------|--------|--------------------------|
|                                                                                                                                                                                                                                  | C-C                           | C-U    | C-N    | C-E    | C-NS                            | C-SA   | C-T    | C-SO   | C-DMU  | C-W    | C-AC   |                          |
| Community Care Facility                                                                                                                                                                                                          | AUP                           | AUP    | AUP    | AUP    | AUP                             | AUP    | AUP    | AUP    | AUP    | ZC     | AUP    |                          |
| Community Center                                                                                                                                                                                                                 | UP(PH)                        | UP(PH) | UP(PH) | UP(PH) | UP(PH)                          | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Emergency Shelter                                                                                                                                                                                                                | See 23.308—Emergency Shelters |        | –      | –      | See 23.308 – Emergency Shelters |        |        |        |        |        |        |                          |
| Family Day Care Home, Large                                                                                                                                                                                                      | ZC                            | ZC     | ZC     | ZC     | ZC                              | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     |                          |
| Family Day Care Home, Small                                                                                                                                                                                                      | ZC                            | ZC     | ZC     | ZC     | ZC                              | ZC     | ZC     | ZC     | ZC     | ZC     | ZC     |                          |
| Hospital                                                                                                                                                                                                                         | UP(PH)                        | UP(PH) | NP     | NP     | NP                              | NP     | NP     | NP     | UP(PH) | UP(PH) | NP     |                          |
| Library                                                                                                                                                                                                                          | UP(PH)                        | UP(PH) | UP(PH) | UP(PH) | UP(PH)                          | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Mortuaries and Crematories                                                                                                                                                                                                       | UP(PH)                        | UP(PH) | NP     | NP     | NP                              | NP     | NP     | NP     | NP     | UP(PH) | NP     |                          |
| Municipal Animal Shelter                                                                                                                                                                                                         | –                             | –      | –      | –      | –                               | –      | –      | –      | –      | –      | --     |                          |
| Nursing Home                                                                                                                                                                                                                     | UP(PH)                        | UP(PH) | UP(PH) | UP(PH) | UP(PH)                          | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Park/Playground                                                                                                                                                                                                                  | ZC                            | ZC     | ZC     | ZC     | ZC                              | ZC     | ZC     | ZC     | ZC     | AUP    | ZC     |                          |
| Public Safety and Emergency Service                                                                                                                                                                                              | UP(PH)                        | UP(PH) | UP(PH) | UP(PH) | UP(PH)                          | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Public Utility Substation/Tank                                                                                                                                                                                                   | UP(PH)                        | UP(PH) | UP(PH) | UP(PH) | UP(PH)                          | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                          |
| Religious Assembly                                                                                                                                                                                                               | UP(PH)                        | UP(PH) | UP(PH) | UP(PH) | UP(PH)                          | UP(PH) | UP(PH) | UP(PH) | UP(PH) | AUP    | UP(PH) |                          |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|--------------------------------------------------------------------------|
|                                                                                                                                                                                                                                  | C-C                  | C-U     | C-N     | C-E     | C-NS    | C-SA    | C-T     | C-SO    | C-DMU   | C-W     | C-AC    |                                                                          |
| School                                                                                                                                                                                                                           | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  |                                                                          |
| School, Vocational                                                                                                                                                                                                               | AUP                  | AUP     | AUP     | AUP     | AUP     | AUP     | AUP     | AUP     | AUP     | UP(PH)  | AUP     |                                                                          |
| <b>Retail Uses</b>                                                                                                                                                                                                               |                      |         |         |         |         |         |         |         |         |         |         |                                                                          |
| Alcoholic Beverage Retail Sale                                                                                                                                                                                                   | UP(PH)*              | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | NP      | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | 23.204.060 .B.2; 23.310                                                  |
| Cannabis Retailer                                                                                                                                                                                                                | ZC*                  | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | 23.320; 12.21; and 12.22                                                 |
| Cannabis Retailer, Delivery Only                                                                                                                                                                                                 | ZC*                  | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | ZC*     | --      | 23.320; 12.21; and 12.22                                                 |
| Firearm/Munitions Business                                                                                                                                                                                                       | UP(PH)*              | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | NP      | UP(PH)  | UP(PH)* | 23.302.070 .D                                                            |
| Industrial and Mining Products                                                                                                                                                                                                   | --                   | --      | --      | --      | --      | --      | --      | --      | --      | --      | --      |                                                                          |
| Pawn Shop/Auction House                                                                                                                                                                                                          | UP(PH)               | --      | NP      | NP      | NP      | NP      | NP      | NP      | UP(PH)  | UP(PH)  | NP      |                                                                          |
| Pet Store                                                                                                                                                                                                                        | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | ZC [3]  | UP(PH)  |                                                                          |
| Retail, General                                                                                                                                                                                                                  | ZC [1]               | ZC [1]  | ZC* [2] | ZC* [2] | ZC* [2] | ZC [1]  | ZC      | ZC* [2] | ZC      | ZC* [3] | ZC*     | 23.204.040 .E (for department stores)<br>23.204.040 .F (for drug stores) |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------|---------|---------|---------|---------|---------|---------|--------|---------|---------|---------------------------------------------------------|
|                                                                                                                                                                                                                                  | C-C                  | C-U     | C-N     | C-E     | C-NS    | C-SA    | C-T     | C-SO    | C-DMU  | C-W     | C-AC    |                                                         |
| Smoke Shop                                                                                                                                                                                                                       | UP(PH)*              | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | UP(PH)* | NP     | UP(PH)* | UP(PH)* | 23.302.070 .I                                           |
| <b>Personal and Household Service Uses</b>                                                                                                                                                                                       |                      |         |         |         |         |         |         |         |        |         |         |                                                         |
| Personal and Household Services, General                                                                                                                                                                                         | ZC [1]               | ZC [1]  | ZC [2]  | ZC [2]  | ZC [2]  | ZC [1]  | ZC      | ZC [2]  | ZC     | ZC [5]  | ZC      |                                                         |
| Kennels and Pet Boarding                                                                                                                                                                                                         | NP                   | NP      | NP      | NP      | NP      | NP      | NP      | NP      | NP     | UP(PH)  | NP      |                                                         |
| Laundromats and Cleaners                                                                                                                                                                                                         | AUP                  | AUP     | UP(PH)  | UP(PH)  | UP(PH)  | AUP     | AUP     | UP(PH)  | UP(PH) | AUP [4] | AUP     |                                                         |
| Veterinary Clinic                                                                                                                                                                                                                | UP(PH)               | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH) | UP(PH)  | UP(PH)  |                                                         |
| Video Tape/Disk Rental                                                                                                                                                                                                           | ZC [1]               | ZC [1]  | ZC [2]  | AUP     | ZC [2]  | -       | ZC      | ZC [2]  | ZC     | ZC [5]  | NP      |                                                         |
| <b>Office Uses</b>                                                                                                                                                                                                               |                      |         |         |         |         |         |         |         |        |         |         |                                                         |
| Business Support Services                                                                                                                                                                                                        | ZC [1]               | ZC [1]  | ZC [2]  | ZC [2]  | ZC [2]  | ZC [1]  | ZC*     | ZC [2]  | ZC     | ZC [5]  | ZC [6]  | 23.204.110 .B.6                                         |
| Banks and Financial Services, Retail                                                                                                                                                                                             | AUP                  | AUP     | UP(PH)  | UP(PH)  | UP(PH)  | ZC [1]  | AUP*    | UP(PH)  | ZC*    | AUP     | ZC      | 23.204.110 .B.6;<br>23.204.130 .B.3;<br>23.204.130 .D.3 |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents                                                                                                                                                             | ZC [1]               | ZC [1]  | ZC* [2] | ZC* [2] | ZC* [2] | ZC [1]  | ZC*     | ZC* [2] | ZC*    | ZC [5]  | ZC [6]  | 23.204.040 .D;<br>23.204.110 .B.6;<br>23.204.130 .D.3   |



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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------|---------|------|---------|---------|---------|--------|---------|---------|--------|----------------------------------------------------|
|                                                                                                                                                                                                                                  | C-C                  | C-U     | C-N     | C-E  | C-NS    | C-SA    | C-T     | C-SO   | C-DMU   | C-W     | C-AC   |                                                    |
| Medical Practitioners                                                                                                                                                                                                            | ZC [1]               | ZC [1]  | AUP     | NP   | UP(PH)  | ZC [1]  | AUP*    | UP(PH) | ZC*     | ZC [5]  | ZC [6] | 23.204.040.D;<br>23.204.110.B.6;<br>23.204.130.D.3 |
| Non-Chartered Financial Institutions                                                                                                                                                                                             | UP(PH)*              | UP(PH)* | NP      | NP   | NP      | UP(PH)* | UP(PH)* | NP     | NP      | UP(PH)* | UP(PH) | 23.302.070.F<br>23.204.110.B.6                     |
| Office, Business and Professional                                                                                                                                                                                                | ZC [1]               | ZC [1]  | AUP*    | AUP* | AUP*    | ZC [1]  | AUP*    | AUP*   | ZC*     | ZC [5]  | ZC [6] | 23.204.040.B;<br>23.204.110.B.6;<br>23.204.130.D.3 |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                                                                                                                                                       |                      |         |         |      |         |         |         |        |         |         |        |                                                    |
| Adult-oriented Business                                                                                                                                                                                                          | UP(PH)*              | UP(PH)* | NP      | NP   | NP      | NP      | NP      | NP     | UP(PH)* | UP(PH)* | NP     | 23.302.070.A                                       |
| Amusement Device Arcade                                                                                                                                                                                                          | See 23.204.040.A     |         |         |      |         |         |         |        |         |         |        | 23.302.070.B                                       |
| Bar/Cocktail Lounge/Tavern                                                                                                                                                                                                       | UP(PH)*              | UP(PH)* | UP(PH)* | -    | NP      | UP(PH)* | UP(PH)* | NP     | UP(PH)* | UP(PH)* | UP(PH) | 23.204.100.B.3;<br>23.204.110.B.2;<br>23.310       |
| Commercial Recreation Center                                                                                                                                                                                                     | See 23.204.040.A     |         |         |      |         |         |         |        |         |         |        |                                                    |
| Dance/Exercise/Martial Arts/Music Studio                                                                                                                                                                                         | ZC [1]               | ZC [1]  | ZC [2]  | AUP  | AUP [4] | ZC [1]  | ZC      | AUP    | ZC      | ZC [7]  | ZC     |                                                    |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|---------|--------|--------|--------|----------|--------|-----------------------------------|
|                                                                                                                                                                                                                                  | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA    | C-T    | C-SO   | C-DMU  | C-W      | C-AC   |                                   |
| Entertainment Establishment                                                                                                                                                                                                      | UP(PH)               | UP(PH) | UP(PH) | NP     | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH)   | UP(PH) |                                   |
| Food Service Establishment                                                                                                                                                                                                       | See 23.302.070.E     |        |        |        |        |         |        |        |        |          |        |                                   |
| Group Class Instruction                                                                                                                                                                                                          | ZC [1]               | ZC [1] | AUP    | AUP    | AUP*   | ZC [1]  | ZC*    | AUP    | ZC*    | ZC       | ZC     | 23.204.040.B                      |
| Gym/Health Club                                                                                                                                                                                                                  | See 23.204.040.C     |        |        |        |        |         |        |        |        |          |        |                                   |
| Hotels, Tourist                                                                                                                                                                                                                  | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH)   | UP(PH) |                                   |
| Motels, Tourist                                                                                                                                                                                                                  | UP(PH)               | UP(PH) | NP     | NP     | NP     | NP      | NP     | NP     | UP(PH) | UP(PH)   | NP     |                                   |
| Theater                                                                                                                                                                                                                          | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | NP     | UP(PH)  | UP(PH) | NP     | AUP    | UP(PH)   | UP(PH) |                                   |
| <b>Vehicle Service and Sales Uses</b>                                                                                                                                                                                            |                      |        |        |        |        |         |        |        |        |          |        |                                   |
| Alternative Fuel Station                                                                                                                                                                                                         | UP(PH)               | UP(PH) | UP(PH) | NP     | UP(PH) | UP(PH)  | NP*    | UP(PH) | NP     | AUP*     | UP(PH) | 23.204.110.B.4;<br>23.204.140.B.3 |
| Electric Vehicle Charging Station                                                                                                                                                                                                | AUP                  | AUP    | AUP    | AUP    | AUP    | AUP     | AUP    | AUP    | AUP    | AUP*     | AUP    |                                   |
| Gasoline Fuel Stations                                                                                                                                                                                                           | UP(PH)               | UP(PH) | UP(PH) | NP     | UP(PH) | UP(PH)  | NP*    | UP(PH) | NP     | UP(PH)*  | UP(PH) | 23.204.140.B.3                    |
| Large Vehicle Sales and Rental                                                                                                                                                                                                   | AUP                  | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP     | AUP* [8] | NP     | 23.204.140.B.3                    |
| Small Vehicle Sales and Service                                                                                                                                                                                                  | AUP                  | NP     | NP     | NP     | NP     | UP(PH)* | NP     | NP     | UP(PH) | UP(PH)*  | NP     | 23.204.100.B.5;<br>23.204.140.B.3 |
| Tire Sales and Service                                                                                                                                                                                                           | UP(PH)               | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP     | UP(PH)*  | NP     | 23.204.140.B.3                    |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|---------|--------|--------|--------|----------|--------|---------------------------------------------------------|
|                                                                                                                                                                                                                                  | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA    | C-T    | C-SO   | C-DMU  | C-W      | C-AC   |                                                         |
| Vehicle Parts Store                                                                                                                                                                                                              | ZC [1]               | NP     | ZC [2] | ZC [2] | ZC [2] | ZC [1]  | ZC     | ZC [2] | NP     | AUP* [8] | ZC     |                                                         |
| Vehicle Rentals                                                                                                                                                                                                                  | AUP                  | NP     | NP     | NP     | NP     | NP      | NP     | NP     | UP(PH) | AUP* [8] | NP     | 23.204.140 .B.3                                         |
| Vehicle Repair and Service                                                                                                                                                                                                       | AUP                  | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP     | AUP* [8] | NP     |                                                         |
| Vehicle Sales, New                                                                                                                                                                                                               | AUP                  | NP     | NP     | NP     | NP     | UP(PH)* | NP     | NP     | UP(PH) | AUP* [8] | NP     | 23.204.100 .B.5<br>23.204.140 .B.3                      |
| Vehicle Sales, Used                                                                                                                                                                                                              | AUP                  | NP     | NP     | NP     | NP     | UP(PH)* | NP     | NP     | UP(PH) | UP(PH)*  | NP     | 23.204.100 .B.5;<br>23.204.140 .B.3;<br>23.204.140 .D.4 |
| Vehicle Wash                                                                                                                                                                                                                     | UP(PH)               | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP     | UP(PH)*  | NP     | 23.204.140 .B.3                                         |
| Vehicle Wrecking                                                                                                                                                                                                                 | NP                   | NP     | NP     | NP     | NP     | NP      | NP     | NP     | NP     | NP       | NP     |                                                         |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                      |                      |        |        |        |        |         |        |        |        |          |        |                                                         |
| Bus/Cab/Truck/Public Utility Depot                                                                                                                                                                                               | --                   | --     | --     | --     | --     | --      | --     | --     | --     | --       | --     |                                                         |
| Commercial Excavation                                                                                                                                                                                                            | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)  | UP(PH) | UP(PH) | --     | NP       | UP(PH) |                                                         |
| Contractors Yard                                                                                                                                                                                                                 | --                   | --     | --     | --     | --     | --      | --     | --     | --     | AUP      | --     |                                                         |
| Dry Cleaning and Laundry Plant                                                                                                                                                                                                   | UP(PH)               | UP(PH) | NP     | --     | UP(PH) | NP      | NP     | NP     | UP(PH) | NP       | NP     |                                                         |
| Laboratory                                                                                                                                                                                                                       |                      |        |        |        |        |         |        |        |        |          |        |                                                         |
| Commercial Physical or Biological                                                                                                                                                                                                | AUP                  | AUP    | NP     | NP     | NP     | NP      | NP     | NP     | AUP    | NP       | NP     |                                                         |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|--------|--------|--------|---------|---------|--------|--------------------------|
|                                                                                                                                                                                                                                  | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA   | C-T    | C-SO   | C-DMU   | C-W     | C-AC   |                          |
| Cannabis Testing                                                                                                                                                                                                                 | AUP                  | AUP    | NP     | NP     | NP     | NP     | NP     | NP     | AUP     | AUP [9] | NP     |                          |
| Manufacturing                                                                                                                                                                                                                    |                      |        |        |        |        |        |        |        |         |         |        |                          |
| Construction Products                                                                                                                                                                                                            | --                   | --     | --     | --     |        | --     | --     | --     | --      | UP(PH)  | --     |                          |
| Light Manufacturing                                                                                                                                                                                                              | --                   | --     | --     | --     |        | --     | --     | --     | --      | AUP [8] | --     |                          |
| Pesticides/Herbicides/Fertilizers                                                                                                                                                                                                | --                   | --     | --     | --     |        | --     | --     | --     | --      | UP(PH)  | --     |                          |
| Petroleum Refining and Products                                                                                                                                                                                                  | --                   | --     | --     | --     |        | --     | --     | --     | --      | UP(PH)  | --     |                          |
| Pharmaceuticals                                                                                                                                                                                                                  | --                   | --     | --     | --     |        | --     | --     | --     | --      | UP(PH)  | --     |                          |
| Primary Production Manufacturing                                                                                                                                                                                                 | --                   | --     | --     | --     | NP     | --     | --     | --     | --      | UP(PH)  | --     |                          |
| Semiconductors                                                                                                                                                                                                                   | --                   | --     | --     | --     | NP     | --     | --     | --     | --      | UP(PH)  | --     |                          |
| Material Recovery Enterprise                                                                                                                                                                                                     | --                   | --     | --     | --     | --     | --     | --     | --     | --      | --      | --     |                          |
| Media Production                                                                                                                                                                                                                 | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)* | AUP     | UP(PH) | 23.204.130 .B.4          |
| Mini-storage                                                                                                                                                                                                                     | UP(PH)               | NP     | NP     | NP     | NP     | NP     | NP     | --     | UP(PH)  | NP      | NP     |                          |
| Recycled Materials Processing                                                                                                                                                                                                    | --                   | --     | --     | --     | --     | --     | --     | --     | --      | --      | --     |                          |
| Recycling Redemption Center                                                                                                                                                                                                      | AUP                  | AUP    | AUP    | AUP    | AUP    | AUP    | AUP    | AUP    | AUP     | AUP     | AUP    |                          |
| Repair Service, Non-Vehicle                                                                                                                                                                                                      | --                   | --     | --     | --     | --     | --     | --     | --     | --      | AUP     | --     |                          |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|--------|--------|--------|--------|--------|--------|--------|---------|--------|--------------------------|--------------|
|                                                                                                                                                                                                                                  | C-C                  | C-U    | C-N    | C-E    | C-NS   | C-SA   | C-T    | C-SO   | C-DMU  | C-W     | C-AC   |                          |              |
| Research and Development                                                                                                                                                                                                         | -                    | -      | -      | -      | -      | -      | -      | -      | -      | -       | -      |                          |              |
| Services to Buildings and Dwellings                                                                                                                                                                                              | -                    | -      | -      | -      | -      | -      | -      | -      | -      | AUP     | -      |                          |              |
| Warehouse                                                                                                                                                                                                                        | UP(PH)               | NP     | NP     | NP     | NP     | NP     | NP     | -      | UP(PH) | NP      | NP     |                          |              |
| Warehouse-Based Non-Store Retailer                                                                                                                                                                                               | -                    | -      | -      | -      | -      | -      | -      | -      | -      | -       | -      |                          |              |
| Wholesale Trade                                                                                                                                                                                                                  | -                    | -      | -      | -      | -      | -      | -      | -      | -      | AUP [8] | -      |                          |              |
| <b>Incidental Uses</b>                                                                                                                                                                                                           |                      |        |        |        |        |        |        |        |        |         |        |                          |              |
| Amusement Devices                                                                                                                                                                                                                | AUP*                 | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*    | AUP*   | UP(PH)                   | 23.302.070.B |
| Alcoholic Beverage Service                                                                                                                                                                                                       | See 23.310           |        |        |        |        |        |        |        |        |         |        |                          |              |
| Cafeteria, On-Site                                                                                                                                                                                                               | UP(PH)               | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | AUP     | UP(PH) |                          |              |
| Columbaria                                                                                                                                                                                                                       | See 23.302.070.C     |        |        |        |        |        |        |        |        |         |        |                          |              |
| Food and Beverage for Immediate Consumption                                                                                                                                                                                      | ZC                   | ZC     | AUP    | UP(PH) | UP(PH) | ZC     | AUP    | UP(PH) | ZC     | ZC      | ZC     |                          |              |
| Food Service Establishment                                                                                                                                                                                                       | See 23.302.070.E     |        |        |        |        |        |        |        |        |         |        |                          |              |
| Live Entertainment                                                                                                                                                                                                               | See 23.302.020.D     |        |        |        |        |        |        |        |        |         |        |                          |              |
| Manufacturing                                                                                                                                                                                                                    | AUP                  | AUP    | UP(PH) | UP(PH) | NP     | UP(PH) | AUP    | AUP    | AUP    | AUP     | AUP    |                          |              |
| Retail Sale of Goods Manufactured On-Site                                                                                                                                                                                        | ZC [1]               | ZC [1] | ZC [2] | ZC [2] | ZC [2] | ZC [1] | ZC     | ZC [2] | ZC     | AUP     | ZC     |                          |              |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|---------|---------|------------|--------|--------|--------|------------|---------|--------|--------------------------|
|                                                                                                                                                                                                                                  | C-C                  | C-U    | C-N     | C-E     | C-NS       | C-SA   | C-T    | C-SO   | C-DMU      | C-W     | C-AC   |                          |
| Storage of Goods (>25% gross floor area)                                                                                                                                                                                         | AUP*                 | AUP*   | AUP*    | AUP*    | AUP*       | AUP*   | AUP*   | AUP*   | AUP*       | AUP*    | AUP*   | 23.302.020.C             |
| Wholesale Activities                                                                                                                                                                                                             | AUP*                 | AUP*   | UP(PH)* | UP(PH)* | NP         | AUP*   | AUP*   | AUP*   | AUP*       | AUP     | AUP    | 23.204.080.B.3           |
| <b>Other Miscellaneous Uses</b>                                                                                                                                                                                                  |                      |        |         |         |            |        |        |        |            |         |        |                          |
| Art/Craft Studio                                                                                                                                                                                                                 | AUP                  | AUP    | AUP     | AUP     | AUP        | AUP    | AUP    | AUP    | AUP        | AUP     | ZC [6] |                          |
| ATM, Exterior and Attached to Bank                                                                                                                                                                                               | AUP                  | AUP    | AUP     | UP(PH)  | AUP        | AUP    | AUP    | AUP*   | AUP        | AUP     | AUP    | 23.204.120.B.2           |
| ATM, Interior or Exterior and Not With Bank                                                                                                                                                                                      | UP(PH)               | UP(PH) | UP(PH)  | NP      | UP(PH)     | UP(PH) | UP(PH) | NP     | UP(PH)*    | AUP     | UP(PH) | 23.204.130.B.2           |
| Circus/Carnival                                                                                                                                                                                                                  | UP(PH)               | UP(PH) | UP(PH)  | UP(PH)  | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH)     | UP(PH)  | UP(PH) |                          |
| Drive-in Uses                                                                                                                                                                                                                    | UP(PH)               | NP     | NP      | NP      | UP(PH)     | UP(PH) | NP     | UP(PH) | NP         | NP      | UP(PH) |                          |
| Home Occupations                                                                                                                                                                                                                 | See 23.302.040       |        |         |         |            |        |        |        |            |         |        |                          |
| Live/Work                                                                                                                                                                                                                        | See 23.312           |        |         |         |            |        |        |        |            |         |        |                          |
| Parking Lot/Structure                                                                                                                                                                                                            | See 23.302.070.G     |        |         |         |            |        |        |        |            |         |        |                          |
| Public Market, Open Air                                                                                                                                                                                                          | AUP                  | AUP    | AUP     | AUP     | AUP        | AUP    | AUP    | AUP    | AUP        | UP(PH)  | AUP    |                          |
| Public Market, Enclosed                                                                                                                                                                                                          | AUP                  | AUP    | AUP     | AUP     | AUP        | AUP    | AUP    | AUP    | AUP        | AUP [9] | AUP    |                          |
| Short-Term Rental                                                                                                                                                                                                                | See 23.314           |        | NP      | NP      | See 23.314 |        |        | NP     | See 23.314 |         | NP     |                          |
| Urban Agriculture, Low-Impact                                                                                                                                                                                                    | ZC*                  | ZC*    | ZC*     | ZC*     | ZC*        | ZC*    | ZC*    | ZC*    | ZC*        | ZC      | ZC     | 23.318                   |
| Urban Agriculture, High-Impact                                                                                                                                                                                                   | AUP*                 | AUP*   | AUP*    | AUP*    | AUP*       | AUP*   | AUP*   | AUP*   | AUP*       | AUP     | AUP    | 23.318                   |

|                                                                                                                                                                                                                                  |                                               |            |            |            |             |             |            |             |              |            |                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|------------|------------|------------|-------------|-------------|------------|-------------|--------------|------------|---------------------------------|
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|                                                                                                                                                                                                                                  | <b>C-C</b>                                    | <b>C-U</b> | <b>C-N</b> | <b>C-E</b> | <b>C-NS</b> | <b>C-SA</b> | <b>C-T</b> | <b>C-SO</b> | <b>C-DMU</b> | <b>C-W</b> |                                 |
| Wireless Telecommunication Facility                                                                                                                                                                                              | See 23.332--Wireless Communication Facilities |            |            |            |             |             |            |             |              |            |                                 |

Notes:

- [1] Change of use of floor area over 3,000 square feet requires an AUP.
- [2] Change of use of floor area over 2,000 square feet requires an AUP.
- [3] Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft.
- [4] Requires a Use Permit if 5,000 sq. ft. or more.
- [5] Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft.
- [6] Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline.
- [7] Requires a Use Permit if 7,500 square feet or more.
- [8] Requires a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area.
- [9] Requires a Use Permit if more than 10,000 sq. ft.

**Section 14.** That Berkeley Municipal Code Section 23.204.060.D.1 Table 23.204-12 is amended as follows:

Table 23.204-12. C-U SETBACK STANDARDS

| LOT LINE & PROJECT CONDITIONS                                                                           | REQUIRED SETBACK                                                                     |
|---------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Front                                                                                                   |                                                                                      |
| Ground-floor non-residential uses fronting University Avenue                                            | Average 2 ft.<br>2 ft. at all sidewalk pedestrian entries                            |
| Ground-floor residential uses fronting University Avenue                                                | Average 2 ft.<br>Maximum 10 ft.[1]                                                   |
| Fronting a street other than University Avenue and confronting a non-residential district               | No min.                                                                              |
| Rear                                                                                                    |                                                                                      |
| Lots on south side of University Avenue abutting lot in residential district                            | Average 20 ft. [2] [3]                                                               |
| Lots on north side of University Avenue                                                                 | See 23.204.060.D.5--C-U University Commercial District (Solar Access)                |
| All other lots                                                                                          | 10 ft. or 10% of lot depth, whichever is greater                                     |
| Interior Side                                                                                           | No minimum                                                                           |
| Street Side                                                                                             | 2 ft. average                                                                        |
| All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue | As required by 23.304.030.C.2--Setbacks (Lots Adjacent to Residential Districts) [4] |

Notes:

- [1] A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.
- [2] Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.
- [3] See 23.304.030.C.2.b for allowed reductions.
- [4] If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.



Section 15. That Berkeley Municipal Code Section 23.204.080.B Table 23.204-20 is amended as follows:

Table 23.204-20. C-E LAND USE NUMBER AND SIZE LIMITATIONS

| USE                                                                  | NUMBER LIMIT | MAXIMUM SIZE  | PERMIT REQUIRED |
|----------------------------------------------------------------------|--------------|---------------|-----------------|
| Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops             | No limit     | 1,500 sq. ft. | ZC              |
| Bookstores, Periodical Stands                                        | No limit     | 2,000 sq. ft. | ZC              |
| Food Service Establishments [1]                                      | 25 total     | No max.       | AUP             |
| Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services | No limit     | 1,000 sq. ft. | ZC              |

Notes:

[1] Excludes food service uses accessory to a food product store. Secondary food service uses associated with all other principal uses are subject to limitations in Table 23.204-20.

[2] Change of use of over 3,000 square feet requires Use Permit.

Section 16. That Berkeley Municipal Code Section 23.204.100.D.2 is amended as follows:

2. Modification for Mixed Use and Residential Projects. The ZAB may modify development standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29, and Table 23.204-30 – excluding FAR – for a mixed-use or residential-only project with a Use Permit, upon making one of the following findings:

- (a) The project encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building;
- (b) The modification allows consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose;
- (c) The modification facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines; or
- (d) The modification provides consistency with the purposes of the district as listed in Section 23.204.100.A (District Purpose).

Section 17. That Berkeley Municipal Code Section 23.206.040.A is amended as follows:

A. *Art/Craft Studios in the M and MM Districts.* Art/craft studios are allowed in the M and MM districts only as workspaces. Live/work is not permitted.

Section 18. That Berkeley Municipal Code Section 23.406.050.F.2 is amended as follows:

2. The ZAB shall deny a Variance if it determines that it is unable to make any of the required findings.

Section 19. That Berkeley Municipal Code Section 23.502.020.R.8 is amended as follows:

8. *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.

Section 20: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 13, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Harrison, Humbert, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

ORDINANCE NO. 7,851-N.S.

AMENDING THE ANNUAL APPROPRIATIONS ORDINANCE NO. 7,828–N.S. FOR FISCAL YEAR 2023

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

Section 1. That the Annual Appropriations Ordinance based on the budget for FY 2023 submitted by the City Manager and passed by the City Council be amended as follows and as summarized in Exhibit A:

|                                                |                    |
|------------------------------------------------|--------------------|
| A. General Fund (Funds 001-099)                | 311,704,720        |
| B. Special Funds (Funds 100-199)               | 157,166,324        |
| C. Grant Funds (Funds 300-399)                 | 108,999,308        |
| D. Capital Projects Funds (Funds 500-550)      | 91,665,849         |
| E. Debt Service Fund (Funds 551-599)           | 9,804,404          |
| F. Enterprise Funds (Funds 600-669)            | 178,118,684        |
| G. Internal Service Funds (Funds 146, 670-699) | 59,656,349         |
| H. Successor Agency (Funds 760-769)            | 145,166            |
| I. Agency Funds (Funds 771-799)                | 7,966,427          |
| J. Other Funds (Funds 800-899)                 | 7,239,344          |
| <u>K. Total</u>                                |                    |
| Total General Fund                             | 311,704,720        |
| Add: Total Other Than General Fund             | 620,761,855        |
| <b>Gross Revenue Appropriated</b>              | <b>932,466,575</b> |
| Less: Dual Appropriations                      | -81,673,325        |
| Less: Revolving/Internal Service Funds         | -59,656,349        |
| <b>Net Revenue Appropriated</b>                | <b>791,136,901</b> |

Section 2. The City Manager is hereby permitted, without further authority from the City Council, to make the following transfers by giving written notice to the Director of Finance:

- a. From the General Fund to the General Fund – Stability Reserve Fund; Catastrophic Reserve Fund; Paramedic Tax Fund; Health State Aid Realignment; Fair Election Fund; Capital Improvement Fund; Phone System Replacement; Equipment Replacement Fund; Public Liability Fund; Catastrophic Loss Fund; Police Employee Retiree Health Assistance Plan; Safety Members Pension Fund; and Sick Leave Entitlement Fund.
- b. To the General Fund from the General Fund – Stability Reserves Fund; Catastrophic Reserves Fund; Community Development Block Grant Fund; Street Lighting Assessment District Fund; Zero Waste Fund; Marina Operations and Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Unified Program (CUPA); IT Cost Allocation Fund; and Health State Aid Realignment Fund.
- c. To the First Source Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- d. From Gilman Sports Field Fund to Gilman Field Reserve Fund
- e. From Measure FF Fund to Paramedic Tax Fund.
- f. From the American Rescue Plan Fund to the General Fund; Sports Field Fund; Playground Camp Fund; Marina Fund; Off-Street Parking Fund; and Parking Meter Fund.
- g. From Capital Improvement Fund to PERS Savings Fund; Berkeley Repertory Theater Fund; and 2010 COP (Animal Shelter) Fund.
- h. To the Public Art Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- i. To CFD#1 District Fire Protection Bond (Measure Q) from Special Tax Bonds CFD#1 ML-ROOS.
- j. To Private Sewer Lateral Fund from Sanitary Sewer Operation Fund.
- k. To Catastrophic Loss Fund from Permit Service Center Fund.
- l. To Catastrophic Loss Fund from Unified Program (CUPA) Fund.
- m. To the Building Purchases and Management Fund from General Fund; Health (General) Fund; Rental Housing Safety Program Fund; Measure B Local Streets & Road Fund; Employee Training Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building

Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Health State Aide Realignment Trust Fund.

- n. To Equipment Replacement Fund from General Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.
- o. To the Equipment Maintenance Fund from General Fund; Health (General) Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Library - Discretionary Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; FEMA Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.
- p. To the Building Maintenance Fund from the General Fund; Health (General) Fund; Health (Short/Doyle) Fund; Measure B Local Street & Road Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Mental Health State Aid Realignment Fund.
- q. To the Central Services Fund from the General Fund; First Source Fund; Health (Short/Doyle) Fund; Library-Discretionary Fund; Playground Camp Fund; Rent Stabilization Board Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Mental Health State Aid Realignment Fund.
- r. To Information Technology Cost Allocation Plan Fund from General Fund; Target Case Management/Linkages Fund; Health (Short/Doyle); Library Fund; Playground Camp Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Equipment Maintenance Fund; Building Maintenance Fund; Information Technology Cost Allocation Plan Fund; Health

State Aid Realignment Trust Fund; and Mental Health State Aid Realignment Fund.

- s. To the Workers' Compensation Self-Insurance Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.
- t. To the Sick Leave and Vacation Leave Accrual Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure

F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers’ Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

- u. To the Payroll Deduction Trust Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; Fair Election Fund; Measure U1 Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers’ Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund;

Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

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 Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 13, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Harrison, Humbert, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.



**Attachment for Annual Appropriations Ordinance - Fiscal Year 2023**

**REVOLVING FUNDS/INTERNAL SERVICE FUNDS**

Appropriations are identified with revolving and internal service funds. Such funds derive revenue by virtue of payment from other fund sources as benefits are received by such funds, and the total is reflected in the "Less Revolving Funds and Internal Service Funds" in item I. The funds are:

**Revolving/Internal Service Funds**

|                                           |               |
|-------------------------------------------|---------------|
| Employee Training Fund                    | 949,429       |
| Equipment Replacement Fund                | 11,947,462    |
| Equipment Maintenance Fund                | 10,211,653    |
| Building Maintenance Fund                 | 5,045,988     |
| Central Services Fund                     | 413,953       |
| Workers' Compensation Fund                | 6,488,740     |
| Public Liability Fund                     | 4,458,560     |
| Information Technology Fund               | 20,140,564    |
| Subtotal Revolving/Internal Service Funds | \$ 59,656,349 |

**Dual Appropriations**

Transfers to the General Fund

Indirect Cost Reimbursement

|                                       |              |
|---------------------------------------|--------------|
| CDBG Fund                             | 176,194      |
| Street Light Assessment District Fund | 155,018      |
| Zero Waste Fund                       | 2,727,548    |
| Marina Enterprise Fund                | 456,077      |
| Sanitary Sewer Fund                   | 1,352,519    |
| Clean Storm Water Fund                | 302,661      |
| Permit Service Center Fund            | 1,979,790    |
| Unified Program (CUPA) Fund           | 88,337       |
| Subtotal Transfers to General Fund:   | \$ 7,238,144 |

|                                                                                               |                       |
|-----------------------------------------------------------------------------------------------|-----------------------|
| Transfer to Safety Members Pension Fund from General Fund                                     | 551,804               |
| Transfer to Measure U1 Fund from General Fund                                                 | 4,900,000             |
| Transfer to Stability Reserve Fund from General Fund                                          | 3,025,000             |
| Transfer to Catastrophic Reserve Fund from General Fund                                       | 2,475,000             |
| Transfer to PERS Savings Fund from General Fund                                               | 2,000,000             |
| Transfer to Health State Aid Realignment from General Fund                                    | 1,953,018             |
| Transfer to Fair Election Fund from General Fund                                              | 505,002               |
| Transfer to Capital Improvement Fund (CIP) from General Fund                                  | 19,000,905            |
| Transfer to Phone System Replacement - VOIP from General Fund                                 | 449,408               |
| Transfer to Equipment Replacement Fund from General Fund                                      | 1,081,699             |
| Transfer to Public Liability Fund from General Fund                                           | 3,895,888             |
| Transfer to Catastrophic Loss Fund from General Fund                                          | 5,025,184             |
| Transfer to IT Cost Allocation Fund from General Fund                                         | 71,335                |
| Transfer to Police Employee Retiree Health Assistance Plan from General Fund                  | 400,136               |
| Transfer to Sick Leave Entitlement Fund from General Fund                                     | 201,501               |
| Transfer to Employee Training from GF-Payroll Deduction Trust                                 | 750,000               |
| Transfer to General Fund from Health State Aid Realignment Fund                               | 2,643,280             |
| Transfer to Paramedic Tax Fund from Measure FF - Public Safety Fund                           | 757,925               |
| Transfer to General Fund from Amercian Rescue Plan Fund                                       | 12,271,612            |
| Transfer to Paramedic Tax Fund from American Rescue Plan Fund                                 | 2,614,331             |
| Transfer to Marina Fund from American Rescue Plan Fund                                        | 1,150,000             |
| Transfer to Off-Street Parking Fund from American Rescue Plan Fund                            | 200,000               |
| Transfer to Parking Meter Fund from American Rescue Plan Fund                                 | 2,700,000             |
| Transfer from CIP Fund to PERS Savings Fund                                                   | 151,632               |
| Transfer to Berkeley Repertory Theater Debt Service Fund from CIP Fund                        | 499,802               |
| Transfer from CIP Fund to 2010 COP (Animal Shelter) Fund                                      | 402,613               |
| Transfer to Private Sewer Lateral Fund from Sewer Fund                                        | 90,501                |
| Transfer to Catastrophic Loss Fund from Permit Service Center Fund                            | 50,555                |
| Transfer to Catastrophic Loss Fund from Unified Program (CUPA) Fund                           | 5,082                 |
| Transfer to General Fund from Parking Meter Fund                                              | 1,742,288             |
| Transfer to General Fund from IT Cost Allocation Fund                                         | 438,968               |
| Transfer from Special Tax Bonds CFD#1 ML-ROOS to CFD#1 District Fire Protect Bond (Measure Q) | 2,048,940             |
| Transfer to GF - Payroll Deduction Trust Fund from Sick Leave Entitlement Fund                | 273,854               |
| Transfer to First Source Fund from Parks Tax Fund                                             | 6,675                 |
| Transfer to First Source Fund from Capital Improvement Fund                                   | 29,943                |
| Transfer to First Source Fund from Marina Fund                                                | 2,625                 |
| Transfer to Public Art Fund from Parks Tax Fund                                               | 11,681                |
| Transfer to Public Art Fund from Capital Improvement Fund                                     | 52,400                |
| Transfer to Public Art Fund from Marina Fund                                                  | 4,594                 |
| Subtotal Transfers to Other Funds:                                                            | 74,435,181            |
| Sub-Total Dual Appropriations                                                                 | \$ 81,673,325         |
| <b>Grand Total Dual Appropriations</b>                                                        | <b>\$ 141,329,674</b> |

SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                         | FY 2023<br>Adopted | 1st AAO                 |                        |                      |                 | FY 2022<br>Revised #1 |
|---------------------------------------------|--------------------|-------------------------|------------------------|----------------------|-----------------|-----------------------|
|                                             |                    | Encumbered<br>Rollovers | Unencum.<br>Carryovers | Other<br>Adjustments | Total<br>Amend. |                       |
| 11 General Fund Discretionary               | 280,671,294        | 12,162,503              | 6,351,969              | 4,090,297            | 22,604,768      | 303,276,062           |
| 16 Measure U1 - Housing                     | 6,184,542          | 1,594,116               | -                      | 50,000               | 1,644,116       | 7,828,658             |
| 17 Climate Equity Action                    | -                  | -                       | 600,000                | -                    | 600,000         | 600,000               |
| 101 Library - Tax                           | 24,538,247         | 568,733                 | -                      | -                    | 568,733         | 25,106,980            |
| 103 Library - Grants                        | 66,330             | 525                     | -                      | -                    | 525             | 66,854                |
| 104 Library - Friends & Gift                | 150,000            | 208                     | -                      | -                    | 208             | 150,208               |
| 105 Library - Foundation                    | 200,000            | -                       | -                      | -                    | -               | 200,000               |
| 106 Asset Forefeiture                       | 201,000            | -                       | -                      | -                    | -               | 201,000               |
| 107 Special Tax Measure E                   | 1,590,735          | -                       | -                      | -                    | -               | 1,590,735             |
| 108 First Source Fund                       | 48,500             | -                       | -                      | -                    | -               | 48,500                |
| 110 Sec 108 Loan Gty Asst.                  | 587,612            | -                       | -                      | -                    | -               | 587,612               |
| 111 Fund Raising Activities                 | 55,115             | 958                     | -                      | 55,000               | 55,958          | 111,073               |
| 113 Gilman Sports Field                     | 280,063            | 48,857                  | -                      | -                    | 48,857          | 328,920               |
| 115 Animal Shelter                          | 52,480             | 10,525                  | -                      | -                    | 10,525          | 63,005                |
| 116 Paramedic Tax                           | 5,218,195          | 3,595                   | -                      | -                    | 3,595           | 5,221,790             |
| 117 CA Energy                               | -                  | 44,249                  | -                      | -                    | 44,249          | 44,249                |
| 119 Domestic Violence Prev - Vit Stat       | 26,102             | -                       | -                      | -                    | -               | 26,102                |
| 120 Affordable Housing Mitigation           | 2,805,896          | 4,368,720               | -                      | -                    | 4,368,720       | 7,174,616             |
| 121 Affordable Child Care                   | 13,275             | 6,637                   | -                      | -                    | 6,637           | 19,912                |
| 122 Inclusionary Housing Program            | 587,147            | 34                      | -                      | -                    | 34              | 587,181               |
| 123 Condo Conversion                        | 121,339            | -                       | -                      | -                    | -               | 121,339               |
| 125 Playground Camp                         | 3,596,951          | 4,229,569               | 1,784,275              | 313,996              | 6,327,840       | 9,924,791             |
| 126 State-Prop 172 Pub.Safety               | 434,773            | 263,790                 | -                      | 500,000              | 763,790         | 1,198,563             |
| 127 State Transportation Tax                | 6,562,677          | 126,442                 | 2,678,890              | 311,274              | 3,116,605       | 9,679,283             |
| 128 CDBG                                    | 4,882,923          | 2,210,842               | -                      | -                    | 2,210,842       | 7,093,765             |
| 129 Rental Housing Safety Program           | 1,902,671          | 71,597                  | 16,578                 | -                    | 88,175          | 1,990,846             |
| 130 Measure B - Local St & Road             | 769,249            | 399,485                 | 322,739                | 5,000                | 727,224         | 1,496,473             |
| 131 Measure B - Bike and Pedestrian         | 129,471            | 45,869                  | 14,473                 | -                    | 60,342          | 189,813               |
| 132 Measure B - Paratransit                 | 36,797             | 17,606                  | -                      | -                    | 17,606          | 54,403                |
| 133 Measure F Alameda County VRF St & Rd    | 1,353,067          | 4,966                   | 366,918                | -                    | 371,884         | 1,724,951             |
| 134 Measure BB - Local St & Road            | 12,737,784         | 1,421,718               | 4,524,099              | 855,511              | 6,801,328       | 19,539,112            |
| 135 Measure BB - Bike & Pedestrian          | 758,193            | 238,075                 | 684,439                | 553,455              | 1,475,969       | 2,234,162             |
| 136 Measure BB - Paratransit                | 934,031            | 19,317                  | -                      | -                    | 19,317          | 953,349               |
| 137 Onetime FD                              | -                  | 19,080                  | -                      | -                    | 19,080          | 19,080                |
| 138 Parks Tax                               | 16,247,510         | 1,489,000               | 1,201,596              | 36,400               | 2,726,996       | 18,974,506            |
| 140 Measure GG - Fire Prep Tax              | 5,276,233          | 233,527                 | -                      | -                    | 233,527         | 5,509,760             |
| 142 Streetlight Assesment District          | 3,312,730          | 391,043                 | 91,800                 | 435,905              | 918,748         | 4,231,478             |
| 143 Berkeley Bus Ec Dev                     | 156,387            | 64,557                  | -                      | 365,470              | 430,027         | 586,414               |
| 145 Bayer                                   | -                  | 952                     | -                      | -                    | 952             | 952                   |
| 146 Employee Training                       | 834,947            | 114,482                 | -                      | -                    | 114,482         | 949,429               |
| 147 UC Settlement                           | 4,563,664          | 540,765                 | -                      | 1,338,441            | 1,879,206       | 6,442,870             |
| 148 Cultural Trust                          | 92,663             | 25,440                  | 954,872                | -                    | 980,312         | 1,072,975             |
| 149 Private Party Sidewalks                 | 100,000            | -                       | 150,000                | 500,000              | 650,000         | 750,000               |
| 150 Public Art Fund                         | 104,775            | 6,000                   | 99,367                 | -                    | 105,367         | 210,142               |
| 152 Vital & Health Statistics Trust Fund    | 74,903             | -                       | -                      | -                    | -               | 74,903                |
| 156 Hlth State Aid Realign Trust            | 3,961,045          | -                       | -                      | -                    | -               | 3,961,045             |
| 157 Tobacco Cont.Trust                      | 379,256            | -                       | -                      | -                    | -               | 379,256               |
| 158 Mental Health State Aid Realign         | 4,061,702          | 640,401                 | -                      | -                    | 640,401         | 4,702,104             |
| 159 Citizens Option Public Safety Trust     | 262,093            | 63,100                  | -                      | 200,000              | 263,100         | 525,193               |
| 161 Alameda Cty Abandoned Vehicle Abatement | 133,993            | 3,263                   | -                      | -                    | 3,263           | 137,256               |
| 164 Measure FF                              | 8,160,000          | 3,187,938               | -                      | -                    | 3,187,938       | 11,347,938            |
| 165 Fair Elections                          | 510,868            | -                       | -                      | -                    | -               | 510,868               |
| 302 Operating Grants - State                | 64,437             | 3,534,400               | 2,500,000              | 912,213              | 6,946,613       | 7,011,050             |
| 305 Capital Grants - Federal                | 1,364,500          | 698,882                 | -                      | -                    | 698,882         | 2,063,382             |
| 306 Capital Grants - State                  | 8,723,370          | 192,584                 | 508,325                | 1,202,766            | 1,903,675       | 10,627,045            |
| 307 Capital Grants - Local                  | 837,000            | 138,718                 | 383,145                | 1,824,000            | 2,345,863       | 3,182,863             |
| 309 OTS DUI Enforcement Education Prg.      | 137,060            | -                       | -                      | 180,000              | 180,000         | 317,060               |
| 310 HUD/Home                                | 806,549            | 5,000                   | -                      | -                    | 5,000           | 811,549               |
| 311 ESGP                                    | 271,587            | 345,846                 | -                      | -                    | 345,846         | 617,433               |
| 312 Health (General)                        | 3,370,574          | 6,632                   | 23,818                 | 117,529              | 147,978         | 3,518,552             |
| 313 Target Case Management Linkages         | 936,341            | 50,525                  | -                      | 24,300               | 74,825          | 1,011,166             |
| 314 Alameda County Tay Tip                  | 35,812             | -                       | -                      | -                    | -               | 35,812                |
| 315 Mental Health Service Act               | 12,441,437         | 2,174,487               | -                      | (1,035,428)          | 1,139,059       | 13,580,495            |
| 316 Health (Short/Doyle)                    | 5,080,644          | 418,178                 | -                      | 1,576,142            | 1,994,320       | 7,074,965             |
| 317 EPSDT Expansion Proposal                | 500,241            | -                       | -                      | -                    | -               | 500,241               |
| 318 Alcoholic Bev Ctr OTS/UC                | 55,639             | 17                      | -                      | 72,449               | 72,466          | 128,105               |
| 319 Youth Lunch                             | 68,451             | 211,013                 | -                      | -                    | 211,013         | 279,464               |
| 320 Sr. Nutrition Title III                 | 119,884            | -                       | -                      | 26,903               | 26,903          | 146,787               |
| 321 CFP Title X                             | 39,527             | 790                     | -                      | 100,000              | 100,790         | 140,317               |
| 324 BUSD Grant                              | 392,232            | -                       | -                      | -                    | -               | 392,232               |
| 325 Vector Control                          | 276,025            | 9,792                   | -                      | -                    | 9,792           | 285,817               |
| 326 Alameda County Grants                   | 788,215            | 725                     | -                      | 2,406                | 3,131           | 791,346               |
| 327 Senior Supportive Social Services       | 83,453             | -                       | -                      | 40,950               | 40,950          | 124,403               |
| 328 Family Care Support Program             | 86,662             | -                       | -                      | 4,703                | 4,703           | 91,365                |

## SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                             | FY 2023<br>Adopted | 1st AAO                 |                        |                      |                 | FY 2022<br>Revised #1 |
|-------------------------------------------------|--------------------|-------------------------|------------------------|----------------------|-----------------|-----------------------|
|                                                 |                    | Encumbered<br>Rollovers | Unencum.<br>Carryovers | Other<br>Adjustments | Total<br>Amend. |                       |
| 329 CA Integrated Waste Management              | 5,244              | 461                     | -                      | 15,806               | 16,267          | 21,511                |
| 331 Housing Mitigation                          | 1,126,763          | 479,120                 | -                      | -                    | 479,120         | 1,605,883             |
| 333 CALHOME                                     | 363,100            | -                       | -                      | -                    | -               | 363,100               |
| 334 Community Action                            | 293,817            | 88,972                  | 187,297                | -                    | 276,269         | 570,086               |
| 336 One-Time Grant: No Cap Exp                  | 5,132,743          | 8,267,841               | 787,887                | 5,001,834            | 14,057,562      | 19,190,305            |
| 338 Bay Area Air Quality Management             | 117,000            | -                       | -                      | -                    | -               | 117,000               |
| 339 MTC                                         | 393,029            | 299,298                 | 120,221                | -                    | 419,519         | 812,548               |
| 340 FEMA                                        | 954,621            | 1,272                   | 114,916                | 287,250              | 403,438         | 1,358,059             |
| 341 Alameda Cty Waste Mgt.                      | 285,000            | 27,565                  | -                      | 850,000              | 877,565         | 1,162,565             |
| 343 State Dept Conserv/Recygl                   | 28,000             | -                       | -                      | -                    | -               | 28,000                |
| 344 CALTRANS Grant                              | 131,908            | 57,852                  | 700                    | -                    | 58,552          | 190,460               |
| 346 Safe Routes                                 | -                  | 9,757                   | -                      | -                    | 9,757           | 9,757                 |
| 347 Shelter+Care HUD                            | 6,348,109          | 469                     | -                      | -                    | 469             | 6,348,578             |
| 348 Shelter+Care County                         | 886,153            | -                       | -                      | -                    | -               | 886,153               |
| 349 JAG Grant                                   | 55,650             | -                       | -                      | -                    | -               | 55,650                |
| 350 Bioterrorism Grant                          | 327,550            | 5,564                   | 345,427                | 252,400              | 603,391         | 930,941               |
| 351 UASI                                        | -                  | 1,345                   | -                      | -                    | 1,345           | 1,345                 |
| 354 ARPA - Local Fiscal Recovery Fund           | 20,023,436         | 993,283                 | 1,599,199              | -                    | 2,592,482       | 22,615,918            |
| 501 Capital Improvement Fund                    | 24,012,302         | 3,234,486               | 6,520,561              | 84,847               | 9,839,894       | 33,852,196            |
| 502 Phone System Replacement                    | 449,408            | 29,386                  | -                      | -                    | 29,386          | 478,794               |
| 503 FUNDS\$ Replacement                         | 3,221,742          | 1,640,454               | -                      | -                    | 1,640,454       | 4,862,196             |
| 504 PEG-Public, Education & Government          | 100,000            | -                       | -                      | -                    | -               | 100,000               |
| 506 Meas M - Streets and Watershed Improvements | -                  | -                       | -                      | 926,720              | 926,720         | 926,720               |
| 511 Measure T1 - Infra & Facil.                 | 17,858,315         | 4,427,301               | 4,612,928              | 415,818              | 9,456,047       | 27,314,362            |
| 512 Measure O                                   | 6,445,567          | 17,382,469              | 303,545                | -                    | 17,686,014      | 24,131,581            |
| 552 09 Measure FF Debt Service                  | 1,343,638          | -                       | -                      | -                    | -               | 1,343,638             |
| 553 2015 GORBS                                  | 2,051,966          | -                       | -                      | -                    | -               | 2,051,966             |
| 554 2012 Lease Revenue Bonds BJPFA              | 502,238            | -                       | -                      | -                    | -               | 502,238               |
| 555 2015 GORBS - 2002 G.O. Refunding Bonds      | 379,561            | -                       | -                      | -                    | -               | 379,561               |
| 556 2015 GORBS (2007, Series A)                 | 142,865            | -                       | -                      | -                    | -               | 142,865               |
| 557 2015 GORBS (2008 Measure I)                 | 481,286            | -                       | -                      | -                    | -               | 481,286               |
| 558 2010 COP (Animal Shelter)                   | 406,991            | -                       | -                      | -                    | -               | 406,991               |
| 559 Measure M GO Street & Water Imps            | 740,738            | -                       | -                      | -                    | -               | 740,738               |
| 560 Infrastructure & Facilities Measure T1      | 1,731,181          | -                       | -                      | -                    | -               | 1,731,181             |
| 561 Measure O - Housing Bonds                   | 2,023,940          | -                       | -                      | -                    | -               | 2,023,940             |
| 601 Zero Waste                                  | 56,177,214         | 4,325,867               | -                      | 30,105               | 4,355,972       | 60,533,186            |
| 607 Dept. of Boat and Waterways                 | -                  | 49,000                  | -                      | -                    | 49,000          | 49,000                |
| 608 Marina Operation                            | 8,499,369          | 1,443,141               | 1,961,379              | 62,700               | 3,467,220       | 11,966,589            |
| 611 Sewer                                       | 35,226,521         | 13,821,731              | 989,119                | 180,680              | 14,991,530      | 50,218,051            |
| 612 Private Sewer Lateral FD                    | 172,628            | -                       | -                      | -                    | -               | 172,628               |
| 616 Clean Storm Water                           | 6,123,689          | 782,484                 | 480,718                | 20,680               | 1,283,882       | 7,407,571             |
| 621 Permit Service Center                       | 21,981,180         | 1,432,970               | 155,323                | 482,981              | 2,071,274       | 24,052,454            |
| 622 Unified Program (CUPA)                      | 877,919            | 1,495                   | 50,000                 | -                    | 51,495          | 929,413               |
| 627 Off Street Parking                          | 6,790,627          | 626,166                 | -                      | 30,920               | 657,086         | 7,447,713             |
| 631 Parking Meter                               | 10,557,178         | 470,446                 | 350,306                | 109,079              | 929,831         | 11,487,009            |
| 636 Building Purchases and Management           | 3,832,733          | 22,337                  | -                      | -                    | 22,337          | 3,855,070             |
| 671 Equipment Replacement                       | 6,676,989          | 5,249,198               | -                      | 21,274               | 5,270,473       | 11,947,462            |
| 672 Equipment Maintenance                       | 9,573,258          | 622,885                 | -                      | 15,510               | 638,395         | 10,211,653            |
| 673 Building Maintenance Fund                   | 4,798,308          | 94,169                  | 145,000                | 8,510                | 247,679         | 5,045,988             |
| 674 Central Services                            | 391,386            | 22,567                  | -                      | -                    | 22,567          | 413,953               |
| 676 Workers Compensation                        | 6,440,039          | 48,701                  | -                      | -                    | 48,701          | 6,488,740             |
| 678 Public Liability                            | 3,797,298          | 232,003                 | 343,439                | 85,819               | 661,261         | 4,458,560             |
| 680 Information Technology                      | 17,498,246         | 1,343,727               | 328,592                | 970,000              | 2,642,319       | 20,140,564            |
| 722 RETMED IBE                                  | -                  | 1,445                   | -                      | -                    | 1,445           | 1,445                 |
| 723 RETMED LC1                                  | -                  | 14,704                  | -                      | -                    | 14,704          | 14,704                |
| 724 RETMED Z1                                   | -                  | 1,467                   | -                      | -                    | 1,467           | 1,467                 |
| 725 RETMED Z26                                  | -                  | 6,053                   | -                      | -                    | 6,053           | 6,053                 |
| 726 RETMED 535                                  | -                  | 21,015                  | -                      | -                    | 21,015          | 21,015                |
| 727 RETMED 790                                  | -                  | 19,839                  | -                      | -                    | 19,839          | 19,839                |
| 731 POL EE RET                                  | -                  | 6,967                   | -                      | -                    | 6,967           | 6,967                 |
| 736 FIRE MEDIC                                  | -                  | 16,557                  | -                      | -                    | 16,557          | 16,557                |
| 762 Successor Agency - Savo DSF                 | 57,120             | -                       | -                      | -                    | -               | 57,120                |
| 776 Thousand Oaks Underground                   | 98,448             | -                       | -                      | -                    | -               | 98,448                |
| 777 Measure H - School Tax                      | 500,000            | 2                       | -                      | -                    | 2               | 500,002               |
| 778 Measure Q - CFD#1 Dis. Fire Protect Bond    | 1,362,705          | 37,292                  | -                      | -                    | 37,292          | 1,399,997             |
| 779 Spl Tax Bds. CFD#1 ML-ROOS                  | 2,824,802          | -                       | -                      | -                    | -               | 2,824,802             |
| 781 Berkeley Tourism BID                        | 416,667            | -                       | -                      | 216,037              | 216,037         | 632,704               |
| 782 Elmwood Business Improvement District       | 30,000             | 1                       | -                      | 33,518               | 33,519          | 63,519                |
| 783 Solano Ave BID                              | 25,000             | -                       | -                      | 10,082               | 10,082          | 35,082                |
| 784 Telegraph Avenue Bus. Imp. District         | 583,315            | -                       | -                      | -                    | -               | 583,315               |
| 785 North Shattuck BID                          | 210,363            | -                       | -                      | -                    | -               | 210,363               |
| 786 Downtown Berkeley Prop & Improv. District   | 1,383,139          | -                       | -                      | 235,057              | 235,057         | 1,618,196             |
| 801 Rent Board                                  | 6,697,755          | 541,589                 | -                      | -                    | 541,589         | 7,239,344             |
| GROSS EXPENDITURE:                              | 754,176,624        | 110,628,784             | 42,653,858             | 25,007,309           | 178,289,951     | 932,466,575           |

SUMMARY OF APPROPRIATIONS BY FUND

| ERMA<br>Fund # Fund                | FY 2023<br>Adopted | 1st AAO                 |                        |                      | FY 2022<br>Revised #1 |                 |
|------------------------------------|--------------------|-------------------------|------------------------|----------------------|-----------------------|-----------------|
|                                    |                    | Encumbered<br>Rollovers | Unencum.<br>Carryovers | Other<br>Adjustments |                       | Total<br>Amend. |
| Dual Appropriations                | (79,688,975)       | -                       | -                      | (1,984,350)          | (1,984,350)           | (81,673,325)    |
| Revolving & Internal Service Funds | (50,010,472)       | (6,317,301)             | (1,443,311)            | (131,113)            | (4,277,189)           | (59,656,349)    |
| NET EXPENDITURE:                   | 624,477,177        | 104,311,483             | 41,210,547             | 22,891,846           | 172,028,412           | 791,136,901     |





Office of the City Manager

CONSENT CALENDAR  
January 17, 2023

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 November 3 (regular), November 14 (closed), November 15 (special and regular), November 21 (special), November 28 (closed), November 29 (regular), December 6 (regular), December 12 (closed), and December 13, 2022 (special and regular)

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. November 3, 2022 – Regular Council Meeting
2. November 14, 2022 – Special Closed Council Meeting
3. November 15, 2022 – Special Council Meeting
4. November 15, 2022 – Regular Council Meeting
5. November 21, 2022 – Special Council Meeting
6. November 28, 2022 – Special Closed Council Meeting
7. November 29, 2022 – Regular Council Meeting
8. December 6, 2022 – Regular Council Meeting
9. December 12, 2022 – Special Closed Council Meeting
10. December 13, 2022 – Special Council Meeting
11. December 13, 2022 – Regular Council Meeting

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Thursday, November 3, 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/84033716377>. 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: **840 3371 6377**. 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:** 6:04 p.m.

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

**Absent:** Taplin

Councilmember Taplin present at 6:13 p.m.

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

### Ceremonial Matters:

1. Recognition of the Acacia Neighborhood as Berkeley's First Firewise USA Site
2. Adjourned in Memory of William Evans, Berkeley Resident

### City Auditor Comments:

The City Auditor noted the reports on the agenda for the audit update statuses.

**City Manager Comments:** None.

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

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 8 speakers.

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

**Vote:** All Ayes.

## Consent Calendar

- 1. Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement**  
**From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt second reading of Ordinance No. 7,837-N.S. Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** Staff time  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140  
**Action:** Adopted second reading of Ordinance No. 7,837–N.S.
- 2. Referral Response: Amendments to the Zoning Ordinance to clarify and streamline the permit process for Amusement Device Arcades**  
**From: City Manager**  
**Recommendation:** Adopt second reading Ordinance No. 7,838-N.S., Zoning Ordinance amendments to provide consistency for the incidental use of Amusement Devices and regulate Amusement Device Arcades as Commercial Recreation Centers.  
**First Reading Vote:** Ayes – Kesarwani, Taplin, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Adopted second reading of Ordinance No. 7,838–N.S.
- 3. 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, June 28, 2022, July 26, 2022, and September 20, 2022.  
**Financial Implications:** To be determined  
Contact: Farimah Brown, City Attorney, (510) 981-6950  
**Action:** Adopted Resolution No. 70,565–N.S.

## Consent Calendar

**4. 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, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, and October 11, 2022.

**Financial Implications:** To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

**Action:** Adopted Resolution No. 70,566–N.S.

**5. 2022 Annual Commission Attendance and Meeting Frequency Report**

**From: City Manager**

**Recommendation:** Review and accept the 2022 annual commission attendance and meeting frequency report.

**Financial Implications:** None

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

**Action:** Approved recommendation.

**6. Contract No. 32200039 Amendment: Townsend Public Affairs, Inc. for Legislative and Funding Advocacy Strategy**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200039 with Townsend Public Affairs, Inc., for an ongoing tailored legislative and funding advocacy strategy, increasing the contract amount by \$72,000, for an amount not-to-exceed \$117,000, and extending the contract from December 31, 2022 to December 31, 2023.

**Financial Implications:** General Fund - \$72,000

Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000

**Action:** Adopted Resolution No. 70,567–N.S.

## Consent Calendar

- 7. Contract No. 32100186 Amendment: Mildred Howard Public Art Commission for Adeline Street and Martin Luther King Jr. Way**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100186 with artist Mildred Howard in order to increase the size of the public art commission “Untitled” to 11’ tall as directed by the Civic Arts Commission. The art work is slated to be installed in the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way. The artwork budget is to increase by \$144,000 for a total contract amount not to exceed \$354,000.  
**Financial Implications:** Cultural Trust Fund - \$144,000  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530  
**Action:** Adopted Resolution No. 70,568–N.S.
- 8. Renewal of the Solano Avenue BID for Calendar Year 2023**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Solano Avenue Business Improvement District Advisory Board’s (hereafter “Solano BID Advisory Board” or “the Advisory Board”) recommendation that Council: 1) approve the 2022 Annual Report and preliminary budget on proposed improvements in the District for calendar year 2023; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2023; and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 29, 2022.  
**Financial Implications:** See report  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530  
**Action:** Adopted Resolution No. 70,569–N.S.
- 9. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 3, 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 - \$75,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Approved recommendation.

## Consent Calendar

- 10. Contract: Restoration Family Counseling Center for Counseling, Education and Support**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a contract with Restoration Family Counseling Center Inc. (RFCC) for counseling, education and support, for a total amount not to exceed \$80,000 from December 1, 2022 through November 30, 2024.  
**Financial Implications:** See report  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 70,570–N.S.
- 11. Contract No. 32200227 Amendment: Fire Aside for Mobile Vegetation Management Inspection Software**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200227 Mobile Vegetation Management Inspection Software for the Fire Department (Department); increasing the contract amount by \$100,000 for an amended total contract amount not to exceed \$260,000.  
**Financial Implications:** See Report  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 70,571–N.S.
- 12. Contract No. 32200083 Amendment: Ganey Scientific for Project Management & Consulting**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200083 project management and consulting services for the Fire Department (Department); increasing the contract amount by \$500,000 for an amended total contract amount not to exceed \$1.4 million.  
**Financial Implications:** See report  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 70,572–N.S.
- 13. Purchase Order: Bauer Compressors Inc. for Self-Contained Breathing Apparatus and Related Accessories**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to issue purchase orders with Bauer Compressors Inc. using the General Services Agency's (GSA) contract No. EE08-19 for an amount not to exceed \$1.7 million through July 31, 2023 for the purchase of self-contained breathing apparatus (SCBA) and related accessories.  
**Financial Implications:** UC Settlement Fund - \$1.7 million  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 70,573–N.S.

## Consent Calendar

### 14. Revenue Contracts: Fiscal Year 2023 Aging Services Programs

**From: City Manager**

**Recommendation:** Adopt five Resolutions authorizing the City Manager or her designee to execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals, family caregiver support, senior center activities and information and assistance services to seniors for the following programs for Fiscal Year 2023 (FY 2023):

- a. Congregate Meals in the amount of \$40,000;
- b. Home Delivered Meals in the amount of \$84,000;
- c. Family Caregiver Support Program in the amount of \$41,383;
- d. Senior Center Activities in the amount of \$30,000; and
- e. Information and Assistance Services in the amount of \$100,000.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 70,574–N.S. (Congregate Meals); Resolution No. 70,575–N.S. (Home Delivered Meals); Resolution No. 70,576–N.S. (Family Caregiver Support); Resolution No. 70,577–N.S. (Senior Center Activities); and Resolution No. 70,578–N.S. (Information and Assistance).

### 15. Contract No. 32000240 Amendment: Berkeley Unified School District (BUSD) for Mental Health MHSA-Funded Programs

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000240 with Berkeley Unified School District (BUSD) to provide Mental Health Services Act (MHSA) funded programs in local schools through June 30, 2023 in an amount not to exceed \$1,394,167. This amendment will add \$401,389 in funding to the contract in order to continue three mental health programs for an additional year and add a fourth for the same time period.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 70,579–N.S.

### 16. Greater Bay Area Regional Partnership Workforce, Education and Training Grant – California Mental Health Services Authority

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to enter into a Participation Agreement and any amendments with the California Mental Health Services Authority (CalMHSA) for the Greater Bay Area (GBA) Regional Partnership Workforce, Education and Training (WET) Grant, and to allocate local Mental Health Services Act (MHSA) funds in an amount not to exceed \$42,609, through June 30, 2025.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 70,580–N.S.

## Consent Calendar

- 17. Fiscal Year 2023 Meals on Wheels of Alameda County Donations for the Berkeley Meals on Wheels Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting donations, totaling approximately \$175,000, for the Berkeley Meals on Wheels Program from the Meals on Wheels of Alameda County (MOWAC) agency, for Fiscal Year 2023 (FY 2023).  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,581–N.S.
- 18. Contract: Robert Half International/Protiviti for Professional Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to increase spending authority with Robert Half International/Protiviti for professional services in support of the following City Departments: Fire (Administration, Prevention, Wildland Urban Interface, Emergency Medical Services and Training), Human Resources, and Information Technology in the Fiscal Year (FY) 2023 using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an annual increase not to exceed \$750,000 through June 30, 2023.  
**Financial Implications:** Various Funds - \$750,000  
Contact: Donald E. Ellison, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 70,582–N.S.
- 19. Contract No. 32000281 Amendment: ConvergeOne for on-site Avaya Administration, Maintenance and Support**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000281 to increase the spending authority with ConvergeOne (previously named Integration Partners), for Avaya on-site administration and maintenance, increasing the amount by \$165,000 for a total not to exceed amount of \$892,821, from July 1, 2020 to June 30, 2024.  
**Financial Implications:** IT Cost Allocation Fund - \$165,000  
Contact: Kevin Fong, Information Technology, (510) 981-6500  
**Action:** Adopted Resolution No. 70,583–N.S.
- 20. Contract No. 32000223 Amendment: Gray Quarter, Inc. for Accela Professional Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000223 with Gray Quarter, Inc. for professional services, increasing the amount by \$50,000, for a total not-to-exceed amount of \$299,500 through December 31, 2023.  
**Financial Implications:** IT Cost Allocation Fund - \$50,000  
Contact: Kevin Fong, Information Technology, (510) 981-6500  
**Action:** Adopted Resolution No. 70,584–N.S.

## Consent Calendar

**21. Adoption of Berkeley Building Codes, including Local Amendments to California Building Standards Code**

**From: City Manager**

**Recommendation:**

1. Adopt first reading of an Ordinance repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions; and schedule a Public Hearing for the second reading on November 29, 2022 pursuant to state law; and
2. Adopt a Resolution setting forth findings of local conditions that justify more stringent regulations than those provided by the 2022 California Building Standards Code, and rescinding Resolution No. 69,170-N.S.

**Financial Implications:** See report

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

**Action:** 1. Adopted first reading of Ordinance No. 7,839–N.S. Second reading scheduled for November 29, 2022. 2. Adopted Resolution No. 70,585–N.S.

**22. Re-enactment of the Berkeley Housing Code; Repealing Chapter 12.48 and Repealing and Re-enacting Chapter 19.40**

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance repealing Berkeley Municipal Code (BMC) Chapter 12.48 (Residential Rental Housing Safety Program), and repealing and re-enacting BMC 19.40 (Berkeley Housing Code), incorporating BMC Chapter 12.48 into BMC Chapter 19.40; and schedule a Public Hearing for the second reading on November 29, 2022, pursuant to state law.

**Financial Implications:** None

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

**Action:** Adopted first reading of Ordinance No. 7,840–N.S. Second reading scheduled for November 29, 2022.

**23. Revenue Grant Contract: Fiscal Year 2022-23 Alcoholic Beverage Control Grant**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager and/or Chief of Police, to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$72,449 for one fiscal year, July 1, 2022 through June 30, 2023.

**Financial Implications:** Alcoholic Beverage Control Fund - \$72,449 (grant)

Contact: Jennifer Louis, Police, (510) 981-5900

**Action:** Adopted Resolution No. 70,586–N.S.



## Consent Calendar

- 24. Reappointment of Andrea Prichett and Edward Opton to the Mental Health Commission**  
**From: Mental Health Commission**  
**Recommendation:** Adopt a Resolution approving the re-appoint Andrea Prichett to the Mental Health Commission, as representative of the general public interest category, for a second- three-year term beginning November 4, 2022 and ending November 3, 2025. And re-appoint Edward Opton as a representative of the general public interest category, for his first term ending January 21, 2023 and his second-term beginning January 22, 2023 to January 21, 2026.  
**Financial Implications:** None  
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400  
**Action:** Adopted Resolution No. 70,587–N.S.  
Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Robinson, Droste, Arreguin; Noes – None; Abstain – Hahn, Wengraf.

## Council Consent Items

- 25. Referral to Conduct an Automatic Traffic Calming Review for the Area Immediately Surrounding the Project at 1201-1205 San Pablo Avenue**  
**From: Councilmember Kesarwani (Author)**  
**Recommendation:** Refer to the City Manager to conduct an automatic traffic calming review for the area immediately surrounding the streets of the project located at 1201-1205 San Pablo Avenue within six (6) months of the building's occupancy reaching 90 percent of its capacity with the intent of expediting the traffic calming process for neighbors impacted by the development of this project. The traffic calming review should include the following intersections: Gilman and Kains; Gilman and Stannage; Harrison and San Pablo; Harrison and Kains; Harrison and Stannage.  
**Financial Implications:** See report  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110  
**Action:** Approved recommendation.

## Council Consent Items

- 26. Budget Referral: Down Payment Assistance (DPA) and Closing Cost Assistance Revolving Loan Fund Pilot**  
**From: Councilmember Taplin (Author), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer to the budget process \$500,000 for a local Down Payment Assistance (DPA) and Closing Cost Assistance Revolving Loan Fund Pilot Program, providing third-lien shared appreciation loans (SALs) to cover down payments and closing costs for qualifying applicants in a racial equity and reparative justice framework consistent with regulations for local, state, federal, and nonprofit DPA programs including, but not limited to: California Dream For All (CalHFA), AC Boost (Alameda County), Community Seconds (Fannie Mae), and Black Wealth Builders Fund. The City should aim spend no more than 10-20% on administrative costs if existing resources are insufficient.  
**Financial Implications:** See report  
 Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Councilmember Bartlett added as a co-sponsor. Approved recommendation.

- 27. Budget Referral: No Right on Red Signs**  
**From: Councilmember Taplin (Author), Councilmember Wengraf (Co-Sponsor)**  
**Recommendation:** That the City Council refers to the City Manager the implementation of "No Right on Red" signs to all intersections with traffic lights. Refer the necessary appropriations of \$135,000 to the 2022 November Annual Appropriations Ordinance.  
**Financial Implications:** See report  
 Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Mayor Arreguin and Councilmember Robinson added as cosponsors. Approved recommendation as revised below.

*Refer to the City Manager to develop policy recommendations for council consideration that would expand limitations on "right turns on red" for the purposes of pedestrian safety. Staff should consider prohibiting right turns on red in commercial districts, on high-injury corridors, and/or citywide. Staff should engage the Transportation & Infrastructure Commission for feedback and review of possible recommendations. Staff is also requested to coordinate with AC Transit regarding impacts on transit services. Refer the necessary appropriations of \$135,000 to the 2022 November Annual Appropriations Ordinance.*

- 28. Budget Referral: Commitment to La Peña Cultural Center**  
**From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer to the AAO#1 Budget Process \$150,000 to support the recovery and renovations of La Peña Cultural Center, a cultural hub and historic community building space within the city of Berkeley.  
**Financial Implications:** See report  
 Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130  
**Action:** Vice-Mayor Harrison added as a co-sponsor. Approved recommendation.

## Council Consent Items

29. **Budget Referral: Commitment to the Completion of Affordable Housing at 1638 Stuart Street**  
**From: Councilmember Bartlett (Author), Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer to the AAO#1 Budget Process \$50,000 to support the Completion of Affordable Housing at 1638 Stuart Street so it can complete exterior renovations and continue to provide eight units of permanently affordable housing for households earning less than 80% of area median income.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130  
**Action:** Approved recommendation.
30. **Resolution and Referral Supporting Local Implementation of SB 379: Online Instant Solar Permitting Process For Residential Solar And Solar-Plus-Storage Energy Systems**  
**From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor), Mayor Arreguin (Co-Sponsor)**  
**Recommendation:**  
1. Adopt Resolution supporting local implementation of SB 379 requiring cities to adopt online instant solar permitting process for residential solar and solar-plus-storage energy systems; and  
2. Refer to the City Manager and Planning Department, consistent with SB 379 and climate goals, to explore and move swiftly to apply for applicable grants and implement automated solar permitting platforms to reduce permit review time for solar energy and battery storage systems.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140  
**Action:** Councilmember Bartlett added as a co-sponsor. 1. Adopted Resolution No. 70,588–N.S. 2. Approved recommendation.

## Action Calendar

31. **Harriet Tubman Terrace Tenant Support** *(Continued from October 11, 2022)*  
**From: Housing Advisory Commission**  
**Recommendation:** Recommend City Council take the following actions:  
-Review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;  
-Direct the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace; and  
-City Council request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs.  
**Financial Implications:** See report  
Contact: Mike Uberti, Commission Secretary, (510) 981-7400  
**Action:** 10 speakers. M/S/C (Bartlett/Arreguin) to approve the recommendation of the Housing Advisory Commission and include a budget referral of up to \$100,000 to fund a tenant advocate position for Harriet Tubman Terrace. Further request that the City Manager develop a role for a larger position for general tenant advocacy.  
**Vote:** All Ayes.

Recess 8:31 p.m. – 8:42 p.m.

32. **Resolution Accepting the Annual Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles (UAV's) and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.  
**Financial Implications:** None  
Contact: Jennifer Louis, Police, (510) 981-5900; Liam Garland, Public Works, (510) 981-6300; LaTanya Bellow, City Manager's Office, (510) 981-7000  
**Action:** Moved to Consent Calendar. Adopted Resolution No. 70,589–N.S. with a revision to the Exhibit to correct the number of drone use instances from three to two to reflect new information that a drone was not deployed by Albany Police into the City of Berkeley during the Solano Stroll event.

## Action Calendar – Public Hearings

33. **ZAB Appeal: 2018 Blake Street, Use Permit #ZP2021-0095** *(Continued from October 11, 2022)*

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units (including two Low-Income units), and dismiss the appeal.

**Financial Implications:** None

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

**Action:** M/S/C (Arreguin/Hahn) to continue the public hearings for the ZAB Appeal for 2018 Blake Street and the ZAB Appeal for 1643-1647 California Street to November 15, 2022.

**Vote:** All Ayes.

34. **ZAB Appeal: 1643-1647 California Street, Use Permit #ZP2021-0001**

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0001 to: 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout resulting in a 3,763 square foot duplex on an existing property, and dismiss the appeal.

**Financial Implications:** None

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

**Action:** See action for Item 33.

## Action Calendar

- 35. Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**  
*(Continued from October 11, 2022) (Reviewed by the Health, Life Enrichment, Equity & Community Committee) (Item contains revised material)*
- From: Commission on Labor**
- Recommendation:** Adopt first reading of the proposed Fair Workweek Ordinance, adding Berkeley Municipal Code Chapter 13.102.
- Financial Implications:** See report
- Contact: Margot Ernst, Commission Secretary, (510) 981-5400
- Action:** M/S/C (Arreguin/Harrison) to accept supplemental materials from Councilmember Wengraf for Item 35.
- Vote:** All Ayes.
- Action:** M/S/C (Hahn/Harrison) to suspend the rules and extend the meeting to 11:45 p.m.
- Vote:** Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – None; Abstain – None; Absent - Robinson.
- Action:** M/S/Failed (Arreguin/Harrison) to suspend the rules and extend the meeting to 12:00 a.m.
- Vote:** Ayes – Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Taplin, Wengraf, Droste; Abstain – None; Absent – None.
- Action:** M/S/Carried (Arreguin/Harrison) to call for the previous question.
- Vote:** Ayes – Bartlett, Harrison, Hahn, Robinson, Droste, Arreguin; Noes – Taplin, Wengraf; Abstain – None; Absent – Kesarwani.
- Action:** 25 speakers. Meeting adjourned at 11:45 p.m.

## Action Calendar

- 36. Recommendation on Climate, Building Electrification, and Sustainable Transportation Budget Priorities for Fiscal Year 2023 and 2024** *(Reviewed by the Budget & Finance Committee)*  
**From: Energy Commission**  
**Recommendation:** The Energy Commission recommends that the Berkeley City Council prioritize and include in the City's budget for the Fiscal Years Ending (FYE) 2023 and 2024 several staff positions, pilot projects, investments in electric vehicles and charging infrastructure, and other measures to ensure that the City's budget is aligned with and provides adequate and needed funding to implement the City's adopted Climate Action Plan, Electric Mobility Roadmap, Building Emissions Saving Ordinance, 2019 ban on gas in new construction, and the Existing Buildings Electrification Strategy.  
*Policy Committee Recommendation: No action was taken by the Budget & Finance Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.*  
**Financial Implications:** See report  
Contact: Billi Romain, Commission Secretary, (510) 981-7400  
**Action:** Moved to Consent Calendar. Referred to the Budget & Finance Committee for review.

## Information Reports

- 37. Fiscal Year (FY) 2023 Civic Arts Grant Awards**  
**From: City Manager**  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530  
**Action:** Received and filed.
- 38. Fire Prevention Inspections Audit Status Report**  
**From: City Manager**  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Received and filed.
- 39. Update: HR Response: Audit Directive(s) for Comprehensive Domestic Violence Policy to Support City Employees**  
**From: City Manager**  
Contact: Donald E. Ellison, Human Resources, (510) 981-6800  
**Action:** Received and filed.
- 40. LPO NOD: 2065 Kittredge Street/#LMSAP2021-0004**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.

## Information Reports

- 41. Audit Status Report: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress towards the Year 2020 Zero Waste Goal**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Referred to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee.
- 42. Audit Status Report: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Referred to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee.
- 43. Audit Status Report – Lease Audit: Conflicting Directives Hinder Contract Oversight**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Received and filed.
- 44. Audit Status Reports: Fleet Replacement Fund Short Millions & Rocky Road: Berkeley Streets At Risk and Significantly Underfunded**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Referred to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee.
- 45. Audit Recommendation Status -Data Analysis of the City of Berkeley's Police Response**  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** Received and filed.
- 46. Audit Recommendation Status - 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale**  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** Received and filed.

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

## Adjournment

Adjourned at 11:45 p.m.



## Communications

### Item #31: Harriet Tubman Terrance Tenant Support

1. Darinxoso Oyamasela
2. Elaine Bloom

### Item #34: ZAB Appeal: 1643-1647 California Street, Use Permit: #ZP2021-0001

3. Sunny Grewal, on behalf of studio g+s Architects

### Item #35: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102

4. Francisco De Sena

### Measure L

5. Joel Libove
6. Finance Department

### Crime

7. David Lerman (3)
8. Terrence Regan
9. Barbara Gilbert
10. Brian Edquist
11. Bryce Nesbit

### Pedestrian Safety

12. David Lerman
13. Naren Dev

### SPARK RV Site

14. Diana Bohn (2)

### Parking and Traffic Issues

15. Barbara Gilbert

### IKE Kiosks

16. Cielo Rios, on behalf of Emerson Elementary (2)
17. Jeffrey Church
18. Kieron Slaughter, Chief Strategist, Economic Innovation

### Residential Zoning Changes

19. Bruce Feingold
- ### 1201-1205 San Pablo Development
20. Yvette Bozzini (2)

**Codornices Creek Issue – Homeless Disturbed People**

- 21. Friends of Five Creeks (2)
- 22. Thomas Williams
- 23. Brian Beall

**Thoughts of Global Safety and People’s Park**

- 24. Peter Bruce DuMont

**Scooters on Sidewalks**

- 25. Kathleen Krier

**Adeline Redesign**

- 26. Scott Owades
- 27. Igor Tregub
- 28. Teresa Clarke
- 29. John Givens
- 30. Pablo Diaz-Gutierrez
- 31. Aaron Foxworthy

**Parking Rates at City Garages**

- 32. Zipporah Collins

**Finn Hall**

- 33. Phil Allen

**Urban Heat Island, Dark Surfaces, Extreme Heat Events**

- 34. Kelly Hammargren

**City Clean Up Idea**

- 35. Crystal Ngo

**Chinese Berkeleyans and Civic Center Park**

- 36. Richard Schwartz

**Unable to Pay Rent**

- 37. Kenneth Melson

**Okinawa Requesting Support**

- 38. Diana Bohn

**Hopkins Corridor**

- 39. Alan Jencks
- 40. Dorothea Dorenz
- 41. Lauren Moore
- 42. Mary Lai

**Berkeley Housing Element Draft Environmental Impact Report**

- 43. Adolfo Cabral
- 44. Walter Wood

**Day to Night Festival Noise Complaint**

- 45. Heather Way
- 46. Kelly Zito
- 47. Cressy

**People's Park**

- 48. Chrissy Hoffman
- 49. Max Ventura

**Downtown Parking**

- 50. Kenneth Stein

**Supplemental Communications and Reports 1**

**Item #18: Contract: Robert Half International/Protiviti for Professional Services**

- 51. Russell Cowan

**Item #33: ZAB Appeal: 2018 Blake Street, Use Permit #AP2021-0095**

- 52. Supplemental material, submitted by Planning and Development

**Item #34: ZAB Appeal: 1643-1647 California Street, Use Permit #ZP2021-0001**

- 53. Adam Safir

**Item #35: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

- 54. Gail Silvan

**Supplemental Communications and Reports 2**

**Item #22: Re-enactment of the Berkeley Housing Code; Repealing Chapter 12.48 and Repealing and Re-enacting Chapter 19.40**

- 55. Housing Advisory Commission

**Item #30: Resolution and Referral Supporting Local Implementation of SB 379: Online Instant Solar Permitting Process For Residential Solar and Solar-Plus-Storage Energy Systems**

- 56. Igor Tregub, on behalf of California Solar & Storage Association

**Item #33: ZAB Appeal: 2018 Blake Street, Use Permit #AP2021-0095**

- 57. Alison Huetter

**Item #34: ZAB Appeal: 1643-1647 California Street, Use Permanent #ZP2021-0001**

- 58. Minh Tsai
- 59. Adam Safir

**Item #35: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

- 60. Revised material, submitted by Councilmember Harrison

- 61. Ryan Allain, on behalf of the California Retailers Association
- 62. Zipporah Collins
- 63. Andrea Mullarkey, on behalf of SEIU 1021, et al (2)
- 64. Cecilia Lunaparra, on behalf of the Cal Berkeley Democrats, et al
- 65. Alan Bern

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

#### **Item #27: Budget Referral: No Right on Red Signs**

- 66. Isabelle Gaston (2)

#### **Item #33: ZAB Appeal: 2018 Blake Street, Use Permit #AP2021-0095**

- 67. Toni Mester

#### **Item #35: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

- 68. Supplemental material, submitted by Councilmember Wengraf
- 69. Margaret Pritt
- 70. Diana Bohn
- 71. Elizabeth Ferguson
- 72. Andrea Mullarkey, on behalf of SEIU 1021 (2)
- 73. Matt Sutton, on behalf of the California Restaurant Association
- 74. Igor Tregub, on behalf of the Sierra Club
- 75. Barbara Gilbert
- 76. Doug Jones
- 77. Soumaya Lhamous
- 78. XiLin Choi
- 79. Sharanya Sahu
- 80. Theo Wyss-Flamm
- 81. 29 similarly-worded form letters

**MINUTES  
BERKELEY CITY COUNCIL  
SPECIAL MEETING**

**MONDAY, NOVEMBER 14, 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.*

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*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free); enter Meeting ID: 853 4793 6644. 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:** 4:33 p.m.

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

**Absent:** Taplin, Bartlett, Harrison

Councilmember Taplin arrived at 4:39 pm.

Councilmember Bartlett arrived at 4:40 pm.

**Public Comment - Limited to items on this agenda only – 0 speakers**

## CLOSED SESSION:

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

### 1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1):

- a. Ruegg & Ellsworth v. City of Berkeley, Alameda County Superior Court, Case No. RG18930003

**Action:** No reportable action taken.

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

- a. Significant exposure to litigation pursuant to Section 54956.9(d)(3): One (1) case. See attached letter from the City Attorney regarding the threat of litigation as required by *Fowler v. City of Lafayette*, 46 Cal. App. 5th 360 (2020).

**Action:** No reportable action taken.

## OPEN SESSION:

No reportable action taken.

## Adjournment

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

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

Adjourned at 6:00 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on November 14, 2022 as approved by the Berkeley City Council.

---

Sarah K. Bunting, Assistant City Clerk

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

**Tuesday, November 15, 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

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## Preliminary Matters

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

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

**Absent:** Bartlett, Hahn

Councilmember Hahn present at 4:08 p.m.

Councilmember Bartlett present at 4:11 p.m.

## Worksession

- 1. Referral Response: Amnesty Program for Unpermitted Dwelling Units**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** 2 speakers. Presentation made and discussion held.

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 5:37 p.m.

## Communications

- None

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

**Item #1: Referral Response: Amnesty Program for Unpermitted Dwelling Units**

1. Kelly Hammargren

## Supplemental Communications and Reports 3

**Item #1: Referral Response: Amnesty Program for Unpermitted Dwelling Units**

2. Presentation, submitted by Planning and Development



**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, November 15, 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

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## Preliminary Matters

**Roll Call:** 6:05 p.m.

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

**Absent:** Kesarwani, Taplin

Councilmember Kesarwani present at 6:06 p.m.

Councilmember Taplin present at 6:06 p.m.

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

## Ceremonial Matters:

1. Recognition of the Alameda County Healthy Homes Department receiving the U.S. Department of Housing and Urban Development (HUD) 2022 Secretary Award
2. Recognition of and Adjourned in Memory of Barbara Ann White, Social Justice Advocate, and former Employee with the Department of Health, Housing, and Community Services in the Mental Health Division

**City Manager Comments:** None.

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

**Action:** M/S/C (Arreguin/Taplin) to accept an urgency item from Councilmember Robinson pursuant to Government Code Section 54954.2(b)(2) entitled Resolution and Letter in Support of UC Academic Workers' Ongoing Contract Negotiations and Strike Actions.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Robinson) to accept an urgency item from Councilmember Taplin pursuant to Government Code Section 54954.2(b)(2) entitled Budget Referral: Berkeley Junior Jackets Field Use Expenses.

**Vote:** All Ayes.

## Consent Calendar

**Action:** M/S/C (Arreguin/Droste) to accept revised material from the Fire Department on Item 23.

**Vote:** All Ayes.

**Public Comment on Consent Calendar and Information Items Only:** 30 speakers.

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

**Vote:** All Ayes.

## Consent Calendar

**Urgent Item: Resolution and Letter in Support of UC Academic Workers' Ongoing Contract Negotiations and Strike Actions**

**From:** Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Mayor Arreguin (Co-Sponsor)

**Recommendation:** Adopt a Resolution in support of UAW 2865, UAW 5810, and SRU-UAW's ongoing contract negotiations and strike actions at UC Berkeley and across all UC campuses, and send a letter of support to UC President Michael Drake and Provost Michael Brown.

**Financial Implications:** None

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

**Action:** Adopted Resolution No. 70,590–N.S.

**Urgent Item: Budget Referral: Berkeley Junior Jackets Field Use Expenses**

**From:** Councilmember Taplin (Author)

**Recommendation:** That the City Council refers \$6000 to the November Annual Appropriations Ordinance to provide Berkeley Junior Jackets' the necessary funds to cover expenses associated with the use of Berkeley Unified School District facilities in the operation of their youth sports program.

**Financial Implications:** None

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

**Action:** Councilmembers Bartlett and Harrison added as co-sponsors. Approved recommendation.

### 1. Minutes for Approval

**From:** City Manager

**Recommendation:** Approve the minutes for the Council meetings of September 6 (closed), September 13 (special and regular), September 19 (closed), September 20 (closed, special and regular), September 29 (closed and regular), October 11 (special and regular), October 20 (closed), and October 28 (closed).

**Financial Implications:** None

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

**Action:** Approved the minutes as submitted.

## Consent Calendar

### 2. **Appointment of the Chief of Police**

**From: City Manager**

**Recommendation:** Adopt a Resolution confirming the appointment of Jennifer Louis as the Chief of Police to be effective November 27, 2022 at an annual salary of \$256,125.

**Financial Implications:** See report

Contact: Dee Williams-Ridley, City Manager, (510) 981-7000

**Action:** Moved to Action Calendar. Item 2 removed from the agenda by the City Manager.

### 3. **Renewal of the Elmwood Avenue BID for Calendar Year 2023**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the Elmwood Business Improvement District Advisory Board's (hereafter "Elmwood BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2022 Annual Report and preliminary budget for proposed improvements in the District for calendar year 2023; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2023 and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for December 6, 2022.

**Financial Implications:** See report

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

**Action:** Adopted Resolution No. 70,591–N.S. with revisions to the first paragraph of Section 6 to include the option for in-person participation at the public hearing on December 6, 2022.

### 4. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 15, 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 - \$11,384,039

Contact: Henry Oyekanmi, Finance, (510) 981-7300

**Action:** Approved recommendation.

### 5. **Contract: Station Automation Inc., DBA PSTrax for Real-time, Paperless Check-off and Asset Management Software**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a contract with Station Automation Inc., DBA PSTrax for real-time, paperless check-off and asset management software, for a total amount not to exceed \$125,000.

**Financial Implications:** Measure Q Fund - \$125,000

Contact: David Sprague, Fire, (510) 981-3473

**Action:** Adopted Resolution No. 70,592–N.S.

## Consent Calendar

6. **Contract No. 32000116 Amendment Genasys, Inc. for Outdoor Warning System**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000116 with Genasys, Inc. for Outdoor Warning System, increasing the amount by \$200,000 for a total not to exceed amount of \$2,174,457.  
**Financial Implications:** Measure FF Public Safety - \$200,000  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 70,593–N.S.
7. **Contract: Harold Dichoso for Providing Temporary Consulting Services for the Health, Housing, and Community Services (HHCS) Department.**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with Harold Dichoso for providing consulting services to the Department of Health, Housing, and Community Services Office of the Director related to the Health Justice Internship Program for a term of 8 months. The total not-to-exceed contract amount is \$90,000.  
**Financial Implications:** Bioterrorism Grant Fund - \$90,000  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,594–N.S.
8. **Measure P: Contract No. 31900273 Amendment- Bay Area Community Services (BACS) North County Housing Resource Center – Shallow Subsidy Program and Contract No. 32200051 Amendment: WeHOPE for Mobile Showers and Laundry Services**  
**From: City Manager**  
**Recommendation:**  
1. Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900273 with Bay Area Community Services (BACS) to amend the scope of work to shift up to \$637,550 in unspent funds from the Measure P General Fund - funded Shallow Subsidy Program to a Flexible Funding Pool Program.  
2. Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32200051 with WeHOPE to add \$127,380 for an amount not to exceed \$375,667 to provide mobile shower and laundry services through June 30, 2023.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,595–N.S. (BACS), and Resolution No. 70,596–N.S. (WeHOPE).

## Consent Calendar

9. **New Classification Deputy City Attorney IV**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution to expand the Deputy City Attorney series by establishing the Deputy City Attorney IV classification with a monthly stepped salary range of \$15,936.37 - \$19,593.60 effective November 15, 2022.  
**Financial Implications:** None  
Contact: Donald E. Ellison, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 70,597–N.S.
10. **Amendments to On-Call Waterfront Engineering, Design, Environmental Permitting and Construction Administration Services Contract No. 32000261 with COWI North America, Inc, and Contract No. 32000263 with Transystems Corporation**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager to execute amendments to Contract No. 32000261 with COWI North America, Inc., and Contract No. 32000263 with Transystems Corporation, for on-call waterfront engineering, design, environmental permitting and construction administration services by increasing the contract amount by \$1,000,000 and the duration by twelve months each, from June 30, 2023 through June 30, 2024, to a total not-to-exceed amount of \$2,000,000 each.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,598–N.S. (COWI North America) and Resolution No. 70,599–N.S. (Transystems Corporation).
11. **Contract Awards: Sharjo, Inc. dba ServiceMaster Recovery Management and Belfor USA Group, Inc. for on-call Emergency Restoration, Mitigation and Remediation Services**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager or designee to execute the following contracts for on-call emergency restoration, mitigation and remediation services, each for a period of December 1, 2022 through December 31, 2025:  
1. Sharjo, Inc. dba ServiceMaster Recovery Management for an amount not to exceed \$150,000.  
2. Belfor USA Group, Inc. for an amount not to exceed \$150,000.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,600–N.S. (Sharjo, Inc.) and Resolution No. 70,601–N.S. (Belfor USA Group, Inc.).

## Consent Calendar

- 12. Contract No. 10413B Amendment: LAZ Parking LLC for Managing City-Owned Off-Street Parking Facilities**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10413B with LAZ Parking, LLC, a parking management company, to provide management services for the Telegraph Channing, Oxford, and Center Street Garages, extending the term to December 31, 2024 and increasing the contract amount by \$5,162,424 for a total not-to-exceed of \$16,252,375.  
**Financial Implications:** Off-Street Parking Fund - \$5,162,424  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,602–N.S.
- 13. Contract No. 10340 (ERMA 111976-1) Amendment: HF&H Consultants, LLC for the Update of Rate Model**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10340 (ERMA 111976-1) with HF&H Consultants, LLC for the Update of the Zero Waste Rate Schedules, extending the term to June 30, 2025, and increasing the contract by \$75,000 for a total contract amount not to exceed \$325,000.  
**Financial Implications:** Zero Waste Fund - \$75,000  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,603–N.S.
- 14. Contract No. 117610-1 Amendment Columbia Electric, Inc. for On-Call Electrical Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 117610-1 with Columbia Electrical, Inc., increasing the current contract by \$300,000 for a total not to exceed amount of \$375,000 and extending the contract through June 30, 2025.  
**Financial Implications:** General Fund - \$300,000  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,604–N.S.

## Consent Calendar

**15. Sewer and Access Road Easement and Installation Agreements with Paulonia Investment, LLC and Little Tree Investment, Inc., and James Robert Higgins and Summary Vacation of Existing Sewer Easements**

**From: City Manager**

**Recommendation:**

1. Adopt first readings of three Ordinances authorizing the City Manager to execute easement and installation agreements and any amendments for sewer pipe facilities with:

A. Paulonia Investment, LLC and Little Tree Investment, Inc. for extending, operating, maintaining, and accessing sewer pipe facilities on parcel with APN 063-2969-034-23, and

B. James Robert Higgins for extending, operating, maintaining and accessing sewer pipe facilities on 1033 Miller Avenue (APN 063-2969-034-25) and

C. Paulonia Investment, LLC and Little Tree Investment, Inc. on parcel with APN: 063-2969-034-44 for accessing sewer pipe facilities.

2. Adopt a Resolution to summarily vacate the existing sewer right-of-way easement and sewer reserve easement on parcel with APN 063-2969-034-23.

**Financial Implications:** See report

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

**Action:** Adopted first reading of Ordinance No. 7,841–N.S. (APN 063-2969-034-23), Ordinance No. 7,842–N.S. (APN 063-2969-034-25), and Ordinance No. 7,843–N.S. (APN 063-2969-034-44). Second readings scheduled for November 29, 2022.

Adopted Resolution No. 70,605–N.S.

**16. Reinstate Burma (Myanmar) on Berkeley’s Oppressive States List**

**From: Peace and Justice Commission**

**Recommendation:** Adopt a Resolution to reinstate Burma (Myanmar) on Berkeley’s Oppressive States list; to urge the federal government to strengthen sanctions on the military regime including on its Myanmar Oil and Gas Enterprises (MOGE), and to recognize and support the Burma National Unity Government (NUG), including ensuring the continued representation of Burma at the United Nations by U Kyaw More Tun. Send copies of the Resolution to the congressional delegation and other federal leaders.

**Financial Implications:** Staff time

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

**Action:** Adopted Resolution No. 70,606–N.S.



## Council Consent Items

### 17. United Against Hate Week 2022

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

**Recommendation:**

1. Adopt a Resolution declaring November 13th – 19th, 2022 as United Against Hate Week.

2. Adopt a Resolution approving the D-13 expenditure in an amount not to exceed \$250 per Councilmember, to support the film screening of “Repairing the World” in Berkeley with residuals going to Not in Our Town for United Against Hate Week.

**Financial Implications:** Mayor’s Discretionary Funds - \$250

Contact: Jesse Arreguin, Mayor, (510) 981-7100

**Action:** Councilmember Bartlett added as a co-sponsor. Adopted Resolution No. 70,607–N.S. (United Against Hate Week), and Resolution No. 70,608–N.S.

(Expenditure) revised to reflect a not to exceed expenditure amount of \$500 per Councilmember, and further revised to include contributions from the following Councilmembers up to the amounts listed: Mayor Arreguin - \$500, Councilmember Wengraf - \$250, Councilmember Kesarwani - \$100, Councilmember Hahn - \$300, Councilmember Robinson - \$250, Councilmember Droste - \$100, Councilmember Harrison - \$100, Councilmember Taplin - \$250.

### 18. Resolution Supporting Removal of Cuba from the U.S. State Sponsor of Terrorism List

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

**Recommendation:**

1. Adopt Resolution supporting removal of Cuba from the U.S. State Sponsor of Terrorism List; and

2. Refer to the City Clerk to send copies of the resolution and letters to Representative Lee and Senators Feinstein and Padilla.

**Financial Implications:** Staff time

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

**Action:** Adopted Resolution No. 70,609–N.S.

## Council Consent Items

19. **Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promote the Use of Reusable Bags** (*Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*)

**From: Councilmember Harrison (Author), Councilmember Hahn (Author)**

**Recommendation:**

1. Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate the use of carryout and produce bags and promote the use of reusable bags with a phased enforcement and implementation approach, effective with respect to new charges for bags pursuant to Sections 11.63.040 and 11.63.050 and provisions applicable to the City of Berkeley and City-sponsored events pursuant to Section 11.63.090 on January 1, 2023, and administrative regulations for and all provisions in this ordinance effective June 30, 2023.

2. Refer to the City Manager and Public Works to consider a Zero Waste rate modification with an anticipated net-zero impact on General Fund to provide additional staffing capacity consistent with business and community outreach, support services, implementation, and phased enforcement of this ordinance and other plastic reduction ordinances. Out of an abundance of caution, and in the event that additional or alternative staffing resources are needed beyond a potential rate increase, refer to the Fiscal Year 2023 AAO #1 Budget Process up to \$350,000 per year for staffing for this ordinance and other plastic reduction ordinances.

*Policy Committee Recommendation: To approve the item with a positive recommendation.*

**Financial Implications:** Staff Time - \$350,000 per year

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

**Action:** As recommended by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee: 1. Adopted first reading of Ordinance No. 7,844–N.S. Second reading scheduled for November 29, 2022. 2. Approved recommendation.

## Council Consent Items

**20. The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

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

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$125 per Councilmember, including \$125 from Councilmember Wengraf, to support the Berkeley Baby Book Project, a non-profit, with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf and all other Councilmembers who would like to contribute, will provide books to Berkeley children aged 0-5 years. The books are delivered by USPS and addressed to the child who owns them at no cost to their family. \$125 covers one book delivered to one child every month for 5 years.

**Financial Implications:** Councilmember's Discretionary Funds - \$125

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

**Action:** Adopted Resolution No. 70,610–N.S. as revised to include contributions from the following Councilmember up to the amounts listed: Councilmember Kesarwani - \$125, Councilmember Hahn - \$125, Councilmember Robinson - \$125, Councilmember Droste - \$125, Councilmember Harrison - \$100, Councilmember Taplin - \$125, Mayor Arreguin - \$125.

**21. Budget Referral: Closing the Southside Complete Streets Funding Gap**

**From: Councilmember Robinson (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**

**Recommendation:** Refer \$1,000,000 to the FY 2023 AAO #1 process to contribute to closing the funding gap for the Southside Complete Streets project to ensure that construction on Bancroft, Dana, & Fulton can proceed on schedule and to prevent the loss of \$7.3M in federal funding.

**Financial Implications:** \$1,000,000

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

**Action:** Councilmember Harrison added as a co-sponsor. Approved recommendation.

## Council Consent Items

22. **Referral: Establishing an Electric Bike Rebate Program and Expanding Low-Income E-Bike Ownership through the Climate Equity Action Fund**  
**From: Councilmember Robinson (Author), Councilmember Harrison (Author), Councilmember Taplin (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager to establish a two-tiered point-of-sale rebate program to reduce the up-front cost of electric bicycles and necessary safety and security accessories for Berkeley residents, including: -Rebate Level 1: a point-of-sale rebate to be made available to all City of Berkeley residents; -Rebate Level 2: a point-of-sale rebate that covers a higher percentage of the cost than Rebate Level 1, to be made available to low-income City of Berkeley residents.  
Refer \$500,000 to the FY 2023 AAO #1 process as follows: -\$400,000 for the point of sale rebate program; -\$100,000 in supplementary funding towards the Climate Equity Action Fund (CEAF) to further facilitate e-bike ownership among low-income Berkeley residents.  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170  
**Action:** Councilmember Harrison added as a co-sponsor. Approved recommendation as revised to read as follows:  
*Refer to the City Manager to explore the creation of a program to establish a two-tiered point-of-sale rebate program to reduce the up-front cost of electric bicycles and necessary safety and security accessories for Berkeley residents, including: - Rebate Level 1: a point-of-sale rebate to be made available to all City of Berkeley residents; -Rebate Level 2: a point-of-sale rebate that covers a higher percentage of the cost than Rebate Level 1, to be made available to low-income City of Berkeley residents.*  
*Refer \$500,000 to the FY 2023 AAO #1 process as follows: -\$400,000 for the point of sale rebate program; -\$100,000 in supplementary funding towards the Climate Equity Action Fund (CEAF) to further facilitate e-bike ownership among low-income Berkeley residents.*

Recess 8:02 p.m. – 8:12 p.m.

## Action Calendar – Public Hearings

### 23. Adoption of the 2022 California Fire Code with Local Amendments

**From: City Manager**

**Recommendation:**

1. Adopt the first reading of an Ordinance repealing the Berkeley Fire Code (Berkeley Municipal Chapter 19.48) and reenacting BMC Chapter 19.48;
2. Adopt a Resolution setting forth findings of local conditions that require more stringent building standards than those provided by the 2022 California Fire Code (“CFC”) and rescinding Resolution number 69,178–N.S.;
3. Conduct a public hearing and upon conclusion, adopt a Resolution establishing annual permit fees, inspection and billing rates for inspection of property sites by the Berkeley Fire Department, and rescinding Resolution number 69,179–N.S. and all Resolutions amendatory thereof.
4. In compliance with state law on adopting such codes by reference, hold a public hearing following the first reading and before the second reading, and schedule the public hearing for December 6, 2022.

**Financial Implications:** See report

Contact: David Sprague, Fire, (510) 981-3473

**Action:** M/S/C (Hahn/Robinson) to suspend the rules and extend the meeting to 11:10 p.m.

**Vote:** All Ayes.

**Public Testimony:** The Mayor opened the public hearing. 4 speakers.

M/S/C (Arreguin/Wengraf) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Wengraf/Arreguin) to:

1. Adopt first reading of Ordinance No. 7,845–N.S. as revised in the Supplemental Communications Packet #3 by the Fire Department. Second reading scheduled for December 6, 2022.
2. Adopt Resolution No. 70,611–N.S. (Finding of Local Conditions) as revised in the Supplemental Communications Packet #3 by the Fire Department.
3. Adopt Resolution No. 70,612–N.S. (Fees)
4. Approve the recommendation.

**Vote:** All Ayes.

## Action Calendar – Public Hearings

**24. Implement Residential Preferential Parking (RPP) Program on the 1900 Block of Vine Street and the 3000 Block of Martin Luther King Jr. Way**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25E and Section 25M by adding a subsection to implement Residential Preferential Parking (RPP) on both sides of the 1900 Block of Vine Street in RPP Area E and the west side of the 3000 Block of Martin Luther King Jr. Way in RPP Area M.

**Financial Implications:** See report.

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

**Public Testimony:** The Mayor opened the public hearing. 8 speakers. M/S/C (Arreguin/Robinson) to close the public hearing.

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

Councilmember Taplin absent 8:25 p.m. – 8:34 p.m.

**Action:** M/S/C (Arreguin/Hahn) to adopt Resolution No. 70,613–N.S.

**Vote:** All Ayes.

## Action Calendar – New Business

**25. Update on BPD efforts related to the Improving Hate Crimes Reporting and Response Referral**

**From: City Manager**

Contact: Jennifer Louis, Police, (510) 981-5900

**Action:** M/S/C (Arreguin/Harrison) to continue Item 25 to December 6, 2022.

**Vote:** All Ayes.

## Action Calendar – Continued Business – Public Hearings

- A. **ZAB Appeal: 2018 Blake Street, Use Permit #ZP2021-0095** *(Continued from November 3, 2022) (Item contains supplemental material)*

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units (including two Low-Income units), and dismiss the appeal.

**Financial Implications:** None

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

**Public Testimony:** The Mayor opened the public hearing. 13 speakers.

M/S/C (Arreguin/Robinson) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Robinson) to adopt Resolution No. 70,614–N.S. affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units, and dismiss the appeal, with the revised Findings and Conditions in the supplemental material included with the item from the Planning and Development Department, and further revised to add a condition of approval requiring an on-site manager. Staff is authorized to draft the condition of approval requiring an on-site manager to reflect Council's direction.

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

- B. **ZAB Appeal: 1643-1647 California Street, Use Permit #ZP2021-0001** *(Continued from November 3, 2022)*

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0001 to: 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout resulting in a 3,763 square foot duplex on an existing property, and dismiss the appeal.

**Financial Implications:** None

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

**Public Testimony:** The Mayor opened the public hearing. 11 speakers.

M/S/C (Arreguin/Robinson) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Droste/Kesarwani) to adopt Resolution No. 70,615–N.S. affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0001 to: 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout resulting in a 3,763 square foot duplex on an existing property, and dismiss the appeal.

**Vote:** All Ayes.

## Information Reports

26. **LPO NOD: 2119 Marin Avenue/#LMIN2022-0002**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.
27. **LPO NOD: 1325 Arch Street/#LMSAP2022-0007**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.
28. **LPO NOD: 2081 Center Street/#LMSAP2022-0006**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.
29. **LPO NOD: 2109 Kala Bagai Way/#LMSAP2022-0008**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda - 23 speakers.**

## Adjournment

Adjourned at 11:10 p.m.

## Communications

### **Adeline Street Redesign**

1. Pablo Diaz-Gutierrez
2. Jane Scantlebury
3. Tommaso Sciortino
4. Teresa Clarke
5. Abbie Turiansky
6. John Givens
7. Jeffrey Wescott
8. Laura Stevens
9. Sabina McMurtry
10. Nat Kane

### **All-Day All-Night Festival Noise**

11. Kelly Zito

### **State Required Housing – RHNA Housing Allocation**

12. Margaret Pritt



**Catalytic Converter Crime**

13. Karl Reeh

**Energy Efficient Holidays**

14. Christopher La Combe

**RHS**

15. Anna Avellar

**Hopkins Corridor**

16. Todd Andrew

17. Margot Smith

18. Luther Miller

19. Evelyn Larsen

20. Meg and Dan Holm

21. Joshua Bloom

22. David Kessler

23. Lisa Oglesby

24. Commission on Aging

**Measure L**

25. Finance Department (2)

26. Justin Lee

**COVID-19 Masking Policies**

27. Rainbow Rubin

**UC Berkeley Safety Concerns**

28. Maria Rosino-Miracco

**Hearst Garden/Cottages at 1155-1173 Hearst Avenue**

29. Tracey Emerson

30. Dale Anania

**Housing Element**

31. Janis Ching

32. Richard Illgen

33. Rahel Smith

34. Natalie Hanson

35. 18 similarly-worded form letters

**Middle Housing**

36. Kyle Scott

**Live Transcription**

37. Max Ventura

38. Margot Smith

**People's Park**

- 39. Holly Scott Cayce
- 40. Marc Sapir
- 41. Dale Alexander

**5G Forests**

- 42. Vivian Warkentin

**Phone Bank Lists**

- 43. Samuel Kim, on behalf of Racial Justice and Advocacy Program

**1600 Block Woolsey Health and Safety Issues**

- 44. Joshua Landerfelt (2)

**Native Landscaping – Less-Thirsty**

- 45. Franziska Raedeker

**Codornices Creek Issue**

- 46. Friends of Five Creeks (2)
- 47. Peter Radu, on behalf of Neighborhood Services

**1201-1205 San Pablo Avenue**

- 48. Reed Schwartz
- 49. Tony Benado

**Parking Ticket**

- 50. Dawn Howard

**2065 Kittredge Street – Appeal Use Permit #ZP2021-0193**

- 51. Alisha Pember, on behalf of Adams Broadwell Joseph and Cardozo

**Crime in Berkeley**

- 52. Tony Benado
- 53. Alexander Merenkov

**Segregation in Berkeley Persists**

- 54. Aimee Baldwin

**Neighborhood Noise**

- 55. Paola Bacchetta

**AT&T Box Safety Hazard**

- 56. Immanuel Buder

## Supplemental Communications and Reports 1

### Item #2: Appointment of the Chief of Police

- 57. Janice Schroeder
- 58. Diana Bohn

## Supplemental Communications and Reports 2

### Item #2: Appointment of the Chief of Police

- 59. Margaret Fine
- 60. Diana Bohn (3)
- 61. Phoebe Thomas Sorgen
- 62. Andrea Pritchett
- 63. Kate Lauer
- 64. Paola Laverde
- 65. Rivka Polatnick
- 66. Meghan Schwartz
- 67. Elana Auerbach
- 68. Carole Marasovic
- 69. Cecilia Lunaparra
- 70. Caleb Dawson
- 71. Jorie Heilman
- 72. Mary-Lee Smith
- 73. Jonathan Garvin
- 74. Portia Lewis
- 75. Steve Martinot

### Item 21: Budget Referral: Closing the Southside Complete Streets Funding Gap

- 76. Chuck Siegel

### Item #22: Referral: Establishing an Electric Bike Rebate Program and Expanding Low-Income E-Bike Ownership through the Climate Equity Action Fund

- 77. Tom Lent, on behalf of Walk Bike Berkeley

## Supplemental Communications and Reports 3

### Item #2: Appointment of the Chief of Police

- 78. Catherine Huchting
- 79. Max Ventura
- 80. Moni Law (2)
- 81. Janice Schroeder
- 82. Mansour Id-Deen
- 83. Julia Cato
- 84. Ariana Thompson-Lastad
- 85. Linda Franklin
- 86. Janet Madilon
- 87. Berkeley Progressive Alliance
- 88. Michael Lerner

- 89. Hansel Alejandro Aguilar, Director of Police Accountability
- 90. Brendon Wood, Alameda County Public Defender
- 91. Anne-Lise Francois
- 92. Michai Freeman
- 93. Chrissy Hoffman
- 94. Mike Iziksun
- 95. Lynn Cooper

**Item #19: Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promotes the Use of Reusable Bags**

- 96. Bryce Nesbitt
- 97. Prab Rai, on behalf of CALPIRG Students

**Item #20: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

- 98. Seena Hawley

**Item 23: Adoption of the 2022 California Fire Code with Local Amendments**

- 99. Revised material, submitted by the Fire Department
- 100. Presentation, submitted by the Fire Department

**Item #B: ZAB Appeal: 1643-1647 California Street, Use Permit #ZP2021-0001**

- 101. Presentation, submitted by the Planning and Development Department

## **Urgent Items**

**Resolution and Letter in Support of UC Academic Workers' Ongoing Contract Negotiations and Strike Actions**

- 102. Urgent item, submitted by Councilmember Robinson

**Budget Referral: Berkeley Junior Jackets Fields Use Expenses**

- 103. Urgent item, submitted by Councilmember Taplin

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

**Monday, November 21, 2022  
5:00 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**

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*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **835 4909 8964**. 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:** 5:05 p.m.

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

**Absent:** Bartlett, Droste

Bartlett present at 5:07 p.m.

## Action Calendar

**1. Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

*(Continued from November 3, 2022) (Reviewed by the Health, Life Enrichment, Equity & Community Committee) (Item contains revised and supplemental material)*

**From: Commission on Labor**

**Recommendation:** Adopt first reading of the proposed Fair Workweek Ordinance, adding Berkeley Municipal Code Chapter 13.102.

*Policy Committee Recommendation: To forward the Commission on Labor's item to Council with a positive recommendation to adopt the version of the ordinance dated "7/7/22" that was presented to the Health, Life Enrichment, Equity & Community Committee at the July 11, 2022 meeting.*

**Financial Implications:** See report

Contact: Margot Ernst, Commission Secretary, (510) 981-5400

**Action:** 22 speakers. M/S/C (Arreguin/Harrison) to:

1. Adopt first reading of Ordinance No.7,846-N.S. as submitted by Vice Mayor Harrison in Communications Packet #2 (second reading scheduled for December 13, 2022), revising the final sentence of Section 13.102.070 to read *"Additionally, for the City of Berkeley, the offering of these additional hours shall not in themselves confer career status on any non-career employee or confer benefits on any non-benefitted employee, unless required by state or federal law"*; and
2. Making the following the following referrals:
  - Refer \$50,000 to the FY 23 AAO #1 Budget Process for outreach and technical assistance;
  - Refer to the FY 24 Budget Process up to \$92,000 for citywide predictability pay (up to \$70,000 for PRW and up to \$22,000 for other departments). This allowance supports potential costs for approximately 675 part-time employees who might receive predictability pay, representing up to \$136/person;
  - Resubmit \$220,000 to the FY 2023 AAO #1 budget process for a Community Development Project Coordinator in Health, Housing and Community Services (HHCS) to assist with enforcement of Citywide labor laws and regulations and the Fair Work Week legislation. *This request was previously submitted for the FY 23 budget process but was not funded nor formally carried over for consideration in the AAO; and*

## Action Calendar

- Refer \$150,000 to FY 2024 for a Parks, Recreation & Waterfront (PRW) Accounting Office Specialist III to implement scheduling systems.

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

## Adjournment

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

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

Councilmember Wengraf absent at 6:39 p.m.

Adjourned at 6:58 p.m.

## Communications

**Item #1: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

1. Claire Kahane
2. Andrea Mullarkey (2)

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

**Item #1: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

3. John Caner, on behalf of the Downtown Berkeley Association
4. Matthew Sutton
5. Linda Currie
6. Barbara Gilbert
7. Revised material, submitted by Councilmember Harrison

## Supplemental Communications and Reports 3

**Item #1: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

8. Igor Tregub, on behalf of the Sierra Club Northern Alameda County Group
9. Isabelle Gaston
10. Doug Jones, on behalf of SEIU and UHW

# MINUTES BERKELEY CITY COUNCIL SPECIAL MEETING

**MONDAY, NOVEMBER 28, 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

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## Preliminary Matters

**Roll Call:** 4:35 p.m.

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

**Absent:** Bartlett, Kesarwani, Wengraf

**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: 1718 8th Street, Berkeley, California  
Agency Negotiators: Dee Williams-Ridley, City Manager; Paul Buddenhagen, Deputy City Manager; Scott Ferris, Director of Parks, Recreation, and Waterfront; Christina Erickson, Deputy Director of Parks, Recreation, and Waterfront  
Negotiating parties: City of Berkeley & Bay Area Hispano Institute for Advancement (BAHIA)  
Property owner: City of Berkeley  
Under negotiation: Price and terms

**Action:** No reportable action taken.

### 2. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a)

- a. Government Claim of Susan Simonds & Michael Wentworth
- b. Government Claim of Selamawit Tezare

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

Adjourned at 5:05 p.m.

I hereby certify that the forgoing is a true and correct record of the special closed meeting of November 28, 2022 as approved by the Berkeley City Council.

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Rose Thomsen, Deputy City Clerk

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, November 29, 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

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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:** 6:04 p.m.

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

**Absent:** Taplin, Bartlett

Councilmember Taplin present at 6:05 p.m.

Councilmember Bartlett present at 6:11 p.m.

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

### Ceremonial Matters:

1. Recognition of Alex Roshal, Retiring Building Official
2. Adjournment in memory of Al Wasserman, Berkeley resident

**City Manager Comments:** None

**Public Comment on Non-Agenda Matters:** 6 speakers.

**Action:** M/S/C (Bartlett/Harrison) to accept an urgency item from Councilmember Bartlett pursuant to Government Code Section 54954.2(b)(2) entitled Resolution in Support and Reaffirm Support for Net Energy Metering.

**Vote:** All Ayes.

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

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

**Vote:** All Ayes.

## Consent Calendar

**Urgent Item: Resolution in Support and Reaffirm Support for Net Energy Metering**  
**From: Councilmember Bartlett (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Harrison (Co-Sponsor)**

**Recommendation:** Send the enclosed Resolution in support of Net Energy Metering and transmit copies to Governor Gavin Newsom, State Senator Nancy Skinner, Assemblymember Buffy Wicks, and members of the California Public Utilities Commission Board (CPUC). The Proposed Decision (PD) issued by the CPUC on November 10, 2022, continues to threaten access to net energy metering and rooftop-scale solar and storage by homeowners and tenants alike, thus interfering with Berkeley's and California's climate action and equity goals.

**Financial Implications:** Staff time

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

**Action:** Mayor Arreguin added as a co-sponsor. Adopted Resolution No. 70,616–N.S.

**1. Sewer and Access Road Easement and Installation Agreement with Paulonia Investment, LLC and Little Tree Investment, Inc.**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,841-N.S. authorizing the City Manager to execute an easement and installation agreement and any amendments for sewer pipe facilities with Paulonia Investment, LLC and Little Tree Investment, Inc. for extending, operating, maintaining, and accessing sewer pipe facilities on parcel with APN 063-2969-034-23.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

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

**Action:** Adopted second reading of Ordinance No. 7,841–N.S.

**2. Sewer and Access Road Easement and Installation Agreement with James Robert Higgins**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,842-N.S. authorizing the City Manager to execute an easement and installation agreement and any amendments for sewer pipe facilities with James Robert Higgins for extending, operating, maintaining and accessing sewer pipe facilities on 1033 Miller Avenue (APN 063-2969-034-25).

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

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

**Action:** Adopted second reading of Ordinance No. 7,842–N.S.

## Consent Calendar

- 3. Sewer and Access Road Easement and Installation Agreement with Paulonia Investment, LLC and Little Tree Investment, Inc.**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,843-N.S. authorizing the City Manager to execute an easement and installation agreement and any amendments for sewer pipe facilities with Paulonia Investment, LLC and Little Tree Investment, Inc. on parcel with APN: 063-2969-034-44 for accessing sewer pipe facilities.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted second reading of Ordinance No. 7,843–N.S.
- 4. Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate the Use of Carryout and Produce Bags and Promote the Use of Reusable Bags**  
**From: Councilmember Harrison (Author), Councilmember Hahn (Author)**  
**Recommendation:** Adopt second reading of Ordinance No. 7,844-N.S. adding a Chapter 11.62 to the Berkeley Municipal Code to regulate the use of carryout and produce bags and promote the use of reusable bags with a phased enforcement and implementation approach, effective with respect to new charges for bags pursuant to Sections 11.63.040 and 11.63.050 and provisions applicable to the City of Berkeley and City-sponsored events pursuant to Section 11.63.090 on January 1, 2023, and administrative regulations for and all provisions in this ordinance effective June 30, 2023.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** Staff Time - \$350,000 per year  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140  
**Action:** Adopted second reading of Ordinance No. 7,844–N.S.
- 5. 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, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, October 11, 2022, and November 3, 2022.  
**Financial Implications:** To be determined  
Contact: Farimah Brown, City Attorney, (510) 981-6950  
**Action:** Adopted Resolution No. 70,617–N.S.

## Consent Calendar

6. **Amend I-80 Gilman Interchange Improvement project funding agreement, Contract No. 42200065 (Agreement A22-0056) with Alameda County Transportation Commission (Alameda CTC)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to the existing Contract No. 42200065 (Agreement A22-0056) with Alameda CTC and any other amendments to fix drainage and grading issues for the future fire lane on 3rd Street between Gilman and Camelia Streets as part of the I-80 Gilman Interchange Improvement Project, increasing the amount of the agreement by \$750,000, for a total not-to-exceed amount of \$1,250,000.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 70,618–N.S.

## Council Consent Items

7. **Budget Referral: Strawberry Creek Lodge Food Program**  
**From: Mayor Arreguin (Author), Councilmember Taplin (Author)**  
**Recommendation:** Refer to the December 2022 Annual Appropriations Ordinance (AAO) budget process \$50,000 for the Strawberry Creek Lodge Food Program.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Approved recommendation.
8. **Grant Approval: San Francisco Foundation to support the Equitable Black Berkeley Initiative**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to accept a \$75,000 grant award from the San Francisco Foundation to renew the existing ideation facilitator contract supporting the Equitable Black Berkeley Initiative, a community-led process to develop a reparative approach to new development at the Ashby BART Station and Adeline Corridor, with the goal of maximizing affordability of new housing.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Adopted Resolution No. 70,619–N.S.
9. **Excused Absence for Councilmember Ben Bartlett**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Excuse Councilmember Ben Bartlett from the September 29, 2022 Council meeting as a result of illness.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Approved recommendation.

## Action Calendar – Public Hearings

### 10. Renewal of the Solano Avenue BID for Calendar Year 2023

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution confirming the Annual Report and Budget for the Solano Avenue Business Improvement District for 2022-2023 and, if no majority protest exists, levy annual assessments in the District for calendar year 2023 to finance services and improvements and authorize a fiscal agency contract for receipt and expenditure of District funds.

**Financial Implications:** See report

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

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

**Vote:** All Ayes.

**Action:** M/S/C (Hahn/Robinson) to adopt Resolution No. 70,620–N.S.

**Vote:** All Ayes.

### 11. Referral Response: Amendments to the Sign Ordinance to Clarify Procedures and to Establish a Coordinated Sign Design Program, and Establish a New Fee for Coordinated Sign Design Programs

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion:

1. Adopt the first reading of an Ordinance amending the Berkeley Municipal Code (BMC) Title 20 [Signs] to clarify design review procedures for signs, establish an optional Coordinated Sign Design program, and amend Section 20.12.070 [Issuance authorized when] and Section 23.204.070B [Design Review – When required] to provide internal consistency; and
2. Adopt a Resolution amending Resolution No. 67,985-N.S., the Land Use Planning Fee schedule, to add a new Coordinated Sign Design Program Fee.

**Financial Implications:** See report

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

**Public Testimony:** The Mayor opened the public hearing. 2 speakers.

M/S/C (Arreguin/Robinson) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Wengraf) to:

1. Adopt first reading of Ordinance No. 7,847–N.S. Second reading scheduled for December 13, 2022.

2. Adopt Resolution No. 70,621–N.S.

**Vote:** All Ayes.

## Action Calendar – Public Hearings

**12. Adoption of Berkeley Building Codes, including Local Amendments to California Building Standards Code**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt the second reading of Ordinance No. 7,839-N.S. repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Building Standards Codes in Berkeley Municipal Code Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

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

**Public Testimony:** The Mayor opened the public hearing. 3 speakers. M/S/C (Arreguin/Robinson) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Harrison) to adopt the second reading of Ordinance No. 7,839–N.S.

**Vote:** All Ayes.

**13. Re-enactment of the Berkeley Housing Code; Repealing Chapter 12.48 and Repealing and Re-enacting Chapter 19.40**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt the second reading of Ordinance No. 7,840-N.S. repealing Berkeley Municipal Code (BMC) Chapter 12.48 (Residential Rental Housing Safety Program), and repealing and re-enacting BMC 19.40 (Berkeley Housing Code), incorporating BMC Chapter 12.48 into BMC Chapter 19.40.

**First Reading Vote:** All Ayes.

**Financial Implications:** None

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

**Public Testimony:** The Mayor opened the public hearing. 2 speakers. M/S/C (Arreguin/Robinson) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Robinson) to adopt the second reading of Ordinance No. 7,840–N.S.

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

Councilmember Taplin absent 7:22 p.m. – 7:31 p.m.



## Action Calendar – New Business

**14. Return to In-Person City Council Meetings and Status of Meetings of City Legislative Bodies**

**From: City Manager**

**Recommendation:** Review the public health meeting protocols and advise on any revisions to be implemented for the return to in-person regular meetings at the December 6, 2022 regular meeting.

**Financial Implications:** See report

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

**Action:** 5 speakers. The Council reviewed the public health procedures for in-person meetings and provided direction to require distancing on the dais and request information on the public health protocols in place for other legislative bodies in the region.

Recess 8:08 p.m. – 8:19 p.m.

## Action Calendar – New Business

### 15. Adeline Street at Ashby BART Conceptual Design

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the Plaza with Two-Lane Adeline option as the conceptual design for a street reconfiguration and new plaza along Adeline Street between Ashby Avenue and Martin Luther King Jr. Way, and authorizing the City Manager to direct staff to proceed with the detailed engineering design of the project.

**Financial Implications:** See report

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

**Action:** 17 speakers. M/S/C (Bartlett/Arreguin) to:

- 1) Adopt a revised recommendation, “Adopt a Resolution approving the Plaza with Two-Lane Adeline option as the conceptual design for a street reconfiguration and new plaza along Adeline Street between Ashby Avenue and Martin Luther King Jr. Way, and authorizing the City Manager to direct staff to proceed with developing preliminary engineering concepts directed toward ensuring universal design and access for consideration by the public and the council, and subsequently detailed engineering design of the project including a podium connecting the retail spaces to the Adeline frontage.”
- 2) Request that staff consult with the Ed Roberts Campus and the Commission on Disability regarding universal design and access considerations.
- 3) Adopt Resolution No. 70,622–N.S. with an amended resolved clause to read:

*NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to direct staff to proceed with the preliminary engineering concepts directed toward ensuring universal design and access for consideration by the public and the council, and subsequently detailed engineering design of the Adeline at Ashby BART Project, based on the recommended conceptual design with Two-Lane Adeline option as the conceptual design for a street reconfiguration and new plaza along Adeline Street between Ashby Avenue and Martin Luther King Jr. Way, including a podium connecting the retail spaces to the Adeline frontage, pending identification of funding.*

**Vote:** All Ayes.

## Information Reports

### 16. Climate Action Plan and Resilience Update

**From: City Manager**

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

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

### 17. City Policies for Managing Parking Around BART Stations

**From: City Manager**

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

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

## Information Reports

18. **Fair Campaign Practices Commission FY2022-2023 Work Plan**  
**From: Fair Campaign Practices Commission**  
Contact: Sam Harvey, Commission Secretary, (510) 981-6950  
**Action:** Received and filed.
19. **Open Government Commission FY2022-2023 Work Plan**  
**From: Open Government Commission**  
Contact: Sam Harvey, Commission Secretary, (510) 981-6950  
**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda – 3 speakers.**

## Adjournment

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

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

Adjourned at 10:16 p.m.

## Communications

### Item #15: Adeline Street at Ashby BART Conceptual Design

1. Ryan Lau, on behalf of the Alameda-Contra Costa Transit District

### No Right Turn on Red

2. Riti Dhesi
3. Ned Himmel
4. Laralynn and Joe Rapoza

### Harriet Tubman Terrace Apartments

5. Darinxoso Oyamasela

### Homelessness and Encampments

6. Friends of Five Creeks (3)
7. Craig Nagasaw
8. John Caner, Downtown Berkeley Associations
9. Susana Garcia

### PCI Street Conditions

10. David Lerman (2)
11. Marna Braunstein Clark

### Hopkins Street Corridor

12. Nancy Lewis

**26-Story Building in Central Berkeley**

13. Dorothea Dorenz

**EV Micro-Mobility Vehicles**

14. Bernard Marszalek

**Traffic Safety at Cedar and California**

15. David Lerman

**Bring Back Transit Bus 80**

16. Jovanka Beckles

**Berkeley Waterfront and Marina Area**

17. Camille Antinori, David Fielder and Gordon Stout

**Recruitment of Commissioners for the Commission on Aging**

18. George Porter, Chair, Commission on Aging

**Support for Repairs to La Pena Cultural Center**

19. Natalia Neira and Tara Dalbo, Executive & Deputy Executive Director

**Illegal Dumping**

20. Alice Rosenthal

**Implement Ceasefire in Berkeley**

21. Diana Bohn

**People's Park**

22. Susana Lamaina

23. Joshua Hart

24. Susan Stevens

25. Sandra Morey

26. Norma Harrison

**Cannabis Policy**

27. Getting It Right From The Start

**North Berkeley BART Developer Selection**

28. John Parman

29. Peggy Radel

**Berkeley Half Marathon Impacts**

30. Alexander Merenkow

**Climate Change**

31. Vivian Warkentin

**Proposed Proclamation, in Honor of Barbara Ann White**

32. Moni Law (2)

**End the Eviction Moratorium**

33. Jeannie Llewellyn

34. May Fong

35. Daniel Gonzalez

**PRA Request**

36. Nathan Mizell

37. Dee Williams-Ridley

**Berkeley City Council Meeting Comment**

38. Peter Goldman

**Berkeley Police Department Superior Customer Service**

39. Pauline Russo Cutter, Mayor of San Leandro

**Golden Gate Fields Stable Code Violations**

40. T. Conrad

**Measure L**

41. Jeffrey Heller

**Housing Element**

42. 9 similarly-worded from letters

**Supplemental Communications and Reports 1**

- None

**Supplemental Communications and Reports 2**

**Item #15: Adeline Street at Ashby BART Conceptual Design**

43. Charles Siegel

**Supplemental Communications and Reports 3**

**Item #8: Grant Approval: San Francisco Foundation to support the Equitable Black Berkeley Initiative**

44. Toni Mester

**Item 10: Renewal of the Solano Avenue BID for Calendar Year 2023**

45. Todd Andrews

**Item #15: Adeline Street at Ashby BART Conceptual Design**

46. Presentation, submitted by Public Works

47. T. Michai Freeman

**Urgent Item**

**Resolution in Support and Reaffirm Support for net Energy Metering**

48. Urgent item, submitted by Councilmember Bartlett

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

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

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 IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION***

*For in-person attendees, additional public health protocols will be in place. If you are feeling sick, please do not attend in person.*

*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/84189893148>. 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: 841 8989 3148. 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 meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating 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:** 6:05 p.m.

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

**Absent:** Bartlett

Councilmember Bartlett present at 6:07 p.m.

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

### Ceremonial Matters:

1. Recognition of Lori Droste, Councilmember, District 8

### City Manager Comments:

The City Manager presented the Homeless Response Team Data and Progress Report

**Public Comment on Non-Agenda Matters:** 5 speakers.

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 14 speakers.

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

**Vote:** All Ayes.

### 1. **Urgency Ordinance for Leasing the Real Property at 1720 San Pablo Avenue** **From: City Manager**

**Recommendation:** Adopt an Urgency Ordinance to enter into a lease for the real property located at 1720 San Pablo Avenue, Berkeley, CA for a term of 5 years.

**Financial Implications:** See report

Contact: Peter Radu, City Manager's Office, (510) 981-7000

**Action:** Adopted Urgency Ordinance No. 7,848–N.S. as revised in Supplemental Communications Packet #1 by the City Manager's Office.



## Consent Calendar

- 2. Amend Contract No. 32100161 with Dorothy Day House to extend Horizon Village Shelter and Safe RV Parking Program operations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100161 with Dorothy Day House (DDH) to add \$612,559 to cover costs to extend the Safe RV Parking Program (SPARK) through December 31, 2022 and costs to operate the Horizon Village Shelter (HVS) from October 1, 2022 through June 30, 2023 (including the Berkeley Inn from December 7, 2022 through June 30, 2022), for a total contract amount not to exceed \$2,270,177.  
**Financial Implications:** See report  
Contact: Peter Radu, City Manager's Office, (510) 981-7000  
**Action:** Adopted Resolution No. 70,623–N.S.
- 3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 6, 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 - \$2,581,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Approved recommendation.
- 4. Classification and Salary: ADA Program Coordinator**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution revising the represented classification Disability Services Specialist to ADA Program Coordinator with a monthly salary range of \$9,231.73 - \$11,162.67.  
**Financial Implications:** See report  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 70,624–N.S.
- 5. Donation: Memorial Bench at Cesar Chavez Park in memory of Linda Loh**  
**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 Cesar Chavez Park in memory of Linda Loh.  
**Financial Implications:** Marina Fund - \$3,400 (Donation)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 70,625–N.S.

## Council Consent Items

6. **Office of Racial Equity: Re-Entry Employment and Guaranteed Income Programs** (*Reviewed by the Health, Life Enrichment, Equity & Community Committee*)  
**From: Councilmember Taplin (Author), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor), Councilmember Robinson (Co-Sponsor)**  
**Recommendation:**

1. Refer to the City Manager to Strengthen Adult Criminal Justice Re-Entry Employment Programs in Berkeley by studying re-entry programs, supports, and systems already available for Berkeley residents, strengthening linkages, and identifying gaps. Report findings back to the Health, Life Enrichment, Equity & Community Committee during 2023.
2. Refer \$50,000 to the Budget Process to engage a consultant to recommend a Universal Income Pilot for Berkeley. Recommendation to include evaluation of: - Potential funding sources; -Appropriate and recommended models for Berkeley; - Target population(s) to be supported by Pilot; -Program delivery models; -Evaluation; -Any and all other elements/factors to establish an effective Universal Income Pilot for Berkeley.

Considerations for target populations may include local Equity Indicators measuring racial justice and social equity outcomes such as poverty and financial health, educational disparities, environmental and mental health, housing quality, infrastructure, and public safety.

3. Refer to the City Manager to establish evaluation processes and metrics for all social services programs recommended through the Reimaging Public Safety Process, including but not limited to violence prevention services, adult reentry programs, and mental health crisis response, and report evaluation outcome to the City Council.

*Policy Committee Recommendation: To forward the item to Council with a positive recommendation that the City Council approve the item with the Author's substitute recommendations (as detailed in the report).*

**Financial Implications:** See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

**Action:** Approved recommendation as recommended by the Health, Life Enrichment, Equity & Community Committee.

Recess 8:47 p.m. – 8:57 p.m.

7. **Update on BPD efforts related to the Improving Hate Crimes Reporting and Response Referral** (*Continued from November 15, 2022*)  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** 3 speakers. Presentation made and discussion held.

## Action Calendar – Public Hearings

### Action Calendar – Public Hearings

**8. Renewal of the Elmwood Avenue BID for Calendar Year 2023**

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution confirming the Annual Report and Budget for the Elmwood Business Improvement District (hereafter, “the District”, “the Elmwood BID” or “the BID”) for 2022-23 and, if no majority protest exists, levy annual assessments in the District for calendar year 2023 to finance services and improvements and authorize a fiscal agency contract with Elmwood Business Association for receipt and expenditure of District funds.

**Financial Implications:** See report

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.

M/S/C (Arreguin/Droste) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Droste/Wengraf) to adopt Resolution No. 70,626–N.S.

**Vote:** All Ayes.

**9. Adoption of the 2022 California Fire Code with Local Amendments – Second Reading**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt the second reading of Ordinance No. 7,845-N.S. repealing and reenacting the Berkeley Fire Code, including amendments to the California Fire Code as outlined in the proposed ordinance, plus Appendix Chapters D, E, F, L (as amended by BMC 19.48.020, Amendments to the California Fire Code) and O published by the International Code Council not included in the California Building Standards Code, as Berkeley Municipal Code Chapter 19.48.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

Contact: David Sprague, Fire, (510) 981-3473

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.

M/S/C (Arreguin/Wengraf) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Wengraf/Harrison) to adopt the second reading of Ordinance No. 7,845-N.S.

**Vote:** All Ayes.

## Action Calendar – Public Hearings

### 10. Citywide Affordable Housing Requirements

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion:

1. Adopt first reading of an Ordinance to amend the Berkeley Municipal Code Chapter 23.328, updating the citywide Affordable Housing Requirements (AHR) in the Zoning Ordinance and repealing existing administration and zoning code sections that refer to affordable housing requirements, BMC Section 22.20.065, and Section 23.312.040(A)(6), to become effective on April 1, 2023.
2. Adopt a Resolution establishing regulations for a voucher program and establishing an in-lieu fee pursuant to BMC Section 23.328.020(A)(2) (Attachment 2) upon the effective date of contemporaneously adopted amendments to BMC Section 23.328, and rescind Resolution No. 68,074-N.S. related to fees, exemptions, and administration of inclusionary affordable housing and in-lieu programs upon the effective date of contemporaneously adopted amendments to BMC Section 23.328.

**Financial Implications:** See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400, Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

**Action:** Item 10 removed from the agenda by the City Manager.

## Information Reports

### 11. FY 2022 Fourth Quarter Investment Report: Ended June 30, 2022

**From: City Manager**

Contact: Henry Oyekanmi, Finance, (510) 981-7300

**Action:** Received and filed.

## Public Comment – Items Not Listed on the Agenda - 2 speakers.

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 9:36 p.m.

## Communications

### Homelessness/Encampments

1. Pamela Michaud
2. Mike Kim (3)
3. Justin Shapiro
4. Peter Radu (2)
5. Ron Restani

### Property Crime Is On The Rise

6. Jordan Sax

**CalPERS Funding for City of Berkeley**

7. Geoff Lomax

**Harriet Tubman Terrace Apartments**

8. Daxinxoso Oyamasela

9. M. Mendonca

**People's Park**

10. Susanna Lamaina

11. Wynd Kaufmyn

12. Jacob Picheny

**North Berkeley BART Development**

13. Sue Martin

14. Virginia Browning

15. Vicki

**Staffing Shortage at City of Berkeley**

16. David Lerman

**EV Scooter Hazards - Being Ridden On Sidewalk**

17. Kathleen Krier

**E-Bike Rebate**

18. Edwin Bish

**Berkeley Police Department Culture**

19. Diana Bohn

**Measure L**

20. Krista Denton

21. Robert Reiter

**Letter of Commendation for an Ecology Employee**

22. Mary McBride

**Eviction Moratorium**

23. Carol Curtis

**Most Future-Ready Cities**

24. Vivian Warkentin

**Supplemental Communications and Reports 1**

**Item #1: Urgency Ordinance for Leasing the Real Property at 1720 San Pablo Avenue**  
25. Supplemental material, submitted by the City Manager's Office

**Item #10: Citywide Affordable Housing Requirements**  
26. Supplemental material, submitted from Planning and Development

## **Supplemental Communications and Reports 2**

**Item #1: Urgency Ordinance for Leasing the Real Property at 1720 San Pablo Avenue**  
27. Meryl Siegal  
28. Aimee Baldwin

**Item #2: Amend Contract No. 32100161 with Dorothy Day House to extend Horizon Village Shelter and Safe RV Parking Program operations**  
29. Elana Auerbach

**Item #6: Office of Racial Equity: Re-Entry Employment and Guaranteed Income**  
30. Lorenzo Grayson

## **Supplemental Communications and Reports 3**

### **City Manager Comments**

31. Presentation "Homeless Response Team Update", submitted by the City Manager's Office

**Item #1: Urgency Ordinance for Leasing the Real Property at 1720 San Pablo Avenue**  
32. Acacia Schmidt  
33. Beth Gerstein, on behalf of Councilmember Kesarwani  
34. Meryl Siegal  
35. Hans Ashlock  
36. Toni Mester

**Item #6: Office of Racial Equity: Re-Entry Employment and Guaranteed Income**  
37. Tom Lent  
38. Igor Tregub, on behalf of the Sierra Club  
39. Igor Tregub, on behalf of the Alameda County Democratic Party  
40. Ayanna Davis  
41. Maryann O'Sullivan

**Item #7: Update on BPD efforts related to the Improving Hate Crimes Reporting and Response Referral**  
42. Presentation, submitted by the Police Department

**Item #10: Citywide Affordable Housing Requirements**  
43. Toni Mester (2)  
44. Janis Ching

# BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, DECEMBER 12, 2022

3:00 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 – MARK HUMBERT

**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/86583999676>. 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: 865 8399 9676. 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:** 3:08 p.m.

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

**Absent:** Harrison

**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. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1):**

a. *Schmier v. City of Berkeley*, Alameda County Superior Court Case No. RG19036596

**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, Aram Kouyoumdjian, 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.

## OPEN SESSION:

No reportable action taken.

## Adjournment

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

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

Adjourned at 4:08 p.m.



I hereby certify that the foregoing is a true and correct record of the City Council special meeting held on December 12, 2022.

\_\_\_\_\_  
Mark Numainville, City Clerk

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

**Tuesday, December 13, 2022  
5:00 PM**

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

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 – MARK HUMBERT

***PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION***

*For in-person attendees, face coverings or masks that cover both the nose and the mouth are required. Physically distanced seating will be available. If you are feeling sick, please do not attend the meeting in person.*

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## Preliminary Matters

**Roll Call:** 5:16 p.m.

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

**Absent:** None.

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 9 speakers.

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

**Vote:** All Ayes.

## Consent Calendar

### 1. **Confirming the Results of the November 8, 2022, General Municipal Election**

**From:** City Manager

**Recommendation:**

1. Adopt a Resolution: a) Confirming the results of the November 8, 2022, General Municipal Election; and b) Declaring the passage of Measure M – Vacancy Tax, and Measure N – Article 34 Low-Income Housing.
2. Adopt an Ordinance amending the Berkeley Municipal Code to incorporate the passage of Measure M – Vacancy Tax.
3. Adopt a Resolution codifying the text of Measure N – Article 34 Low-Income Housing.

**Financial Implications:** None

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

**Action:** 1. Adopted Resolution No. 70,627–N.S. (Confirm Results); 2. Adopted Ordinance No. 7,849-N.S. (Measure M - Vacancy Tax); 3. Adopted Resolution No. 70,628–N.S. (Measure N - Article 34 Low-Income Housing).

### 2. **Grant Contracts with the State Coastal Conservancy to receive the FY2022 State Budget Allocation of \$15 Million for improvement projects at the Berkeley Waterfront**

**From:** City Manager

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute grant contracts with the State Coastal Conservancy (SCC) to receive the FY2022 State Budget Allocation of \$15 Million for improvement projects at the Berkeley Waterfront for the following projects: 1. Dredging of the Marina Main Channel, 2. Replacement of D and E Dock system, 3. Improvements to Cesar Chavez Park Pathways, 4. Improvements to the South Cove West Parking Lot, and 5. Environmental Review and Design of the Pier-Ferry Project.

**Financial Implications:** \$15 million in revenue.

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

**Action:** Adopted Resolution No. 70,629–N.S.

## Council Consent Items

### 3. City Council Committee and Regional Body Appointments

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions for a term ending on January 31, 2024 or until new appointments are made.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, 981-7100

**Action:** Adopted Resolution No. 70,630–N.S. amended to appoint Councilmember Kesarwani to the Public Safety Committee and appoint Councilmember Humbert to the Health, Life Enrichment, Equity & Community Committee, and appoint Councilmember Hahn as the Alternate to ABAG.

### 4. Appointment of the Vice-President of the Council

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution appointing Councilmember Ben Bartlett to be the Vice-President of the Council for a term beginning December 14, 2022 to December 5, 2023 and Councilmember Susan Wengraf to be the Vice President of the Council for a term beginning December 6, 2023 to December 1, 2024 or until new appointments are made.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, 981-7100

**Action:** Adopted Resolution No. 70,631–N.S.

### 5. Seating Arrangements for Councilmembers during City Council Meetings

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution rescinding Resolution No. 70,202–N.S. and changing the seating placement of City Councilmembers on the dais to accommodate the newly-elected councilmember and newly appointed Vice-Mayor, as follows (From left to right, facing the dais): Humbert, Kesarwani, Harrison, Bartlett, Arreguin, Wengraf, Hahn, Robinson, Taplin.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, 981-7100

**Action:** Adopted Resolution No. 70,632–N.S.

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 5:46 p.m.

## Communications

**Item #2: Grant Contracts with the State Coastal Conservancy to receive the FY2022 State Budget Allocation of \$15 Million for improvement projects at the Berkeley Waterfront**

1. Camille Antinori (2)

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

- None

## Supplemental Communications and Reports 3

**Item #2: Grant Contracts with the State Conservancy to receive the FY2022 State Budget Allocation of \$15 Million for improvement projects at the Berkeley Waterfront**

2. James McGrath

**MINUTES  
BERKELEY CITY COUNCIL MEETING  
Tuesday, December 13, 2022  
6:00 PM**

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

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 – MARK HUMBERT

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## Preliminary Matters

**Roll Call:** 6:08 p.m.

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

**Absent:** None

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

### Ceremonial Matters:

1. Swearing in of City Auditor and Councilmembers elected in the 2022 municipal election
2. Recognition of the 50<sup>th</sup> Year of the Zero Waste Commission
3. Adjourned in memory of Samuel Lepie Hallward, Berkeley Middle School Student
4. Yakov Harari, Berkeley Resident
5. Recognition of Councilmember Harrison's service as Vice Mayor
6. Recognition of Paul Buddenhagen, Deputy City Manager

### City Manager Comments:

The City Manager gave a presentation on the workforce analysis and employer of choice program

**Public Comment on Non-Agenda Matters:** 8 speakers.

**Action:** M/S/C (Arreguin/Hahn) to accept an urgency item from Councilmember Hahn pursuant to Government Code Section 54954.2(b)(2) entitled Letter in support of seating Cherokee Nation Delegate to the US House of Representatives.

**Vote:** All Ayes.

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

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

**Vote:** All Ayes.

## Consent Calendar

### **Urgency Item: Letter in support of seating Cherokee Nation Delegate to the US House of Representatives**

**From: Councilmember Hahn (Author)**

**Recommendation:** Send a letter to Speaker of the House Nancy Pelosi, Minority Leader Kevin McCarthy, and Rep. Barbara Lee, urging the US House of Representatives to honor the Treaty of New Echota and seat the official delegate nominated by the Cherokee Nation.

**Financial Implications:** None

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

**Action:** Councilmember Taplin added as a co-sponsor. Approved recommendation.

**1. Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

**From: Commission on Labor**

**Recommendation:** Adopt second reading of Ordinance No. 7,846-N.S., the proposed Fair Workweek Ordinance, adding Berkeley Municipal Code Chapter 13.102.

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

**Financial Implications:** See report

Contact: Margot Ernst, Commission Secretary, (510) 981-5400

**Action:** Adopted second reading of Ordinance No. 7,846–N.S.

**2. Referral Response: Amendments to the Sign Ordinance to Clarify Procedures and to Establish a Coordinated Sign Design Program, Amending BMC Titles 20 and 23, and Establish a New Fee for Coordinated Sign Design Programs**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,847-N.S. amending the Berkeley Municipal Code (BMC) Title 20 [Signs] to clarify design review procedures for signs, establish an optional Coordinated Sign Design program, and amend Section 20.12.070 [Issuance authorized when] and Section 23.204.070B [Design Review – When required] to provide internal consistency.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

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

**Action:** Adopted second reading of Ordinance No. 7,847–N.S.



## Consent Calendar

**3. 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, June 28, 2022, July 26, 2022, September 20, 2022, and November 3, 2022.

**Financial Implications:** To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

**Action:** Adopted Resolution No. 70,633–N.S.

**4. 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, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, October 11, 2022, November 3, 2022, and November 29, 2022.

**Financial Implications:** To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

**Action:** Adopted Resolution No. 70,634–N.S.

**5. Waiver of the Sanctuary City Contracting Ordinance's Requirements for AG Witt, LLC Contract**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving a waiver of the Sanctuary City Contracting ordinance's requirements for the City's FEMA Cost-Recovery Contract with AG Witt LLC.

**Financial Implications:** See report

Contact: Farimah Brown, City Attorney, (510) 981-6950

**Action:** Adopted Resolution No. 70,635–N.S.

## Consent Calendar

- 6. City of Berkeley 2023 State and Federal Legislative Platform**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the City of Berkeley's State and Federal Legislative Platform  
**Financial Implications:** See report  
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000  
**Action:** Adopted Resolution No. 70,636–N.S. as amended in Supplemental Communications Packet #1 from City Manager's Office, and further amended to add "residential decarbonization" in the section regarding soft story retrofits.
- 7. Adopt a Resolution Authorizing the City Manager to Execute a License Agreement with East Bay Community Energy for Electric Vehicle Fast Charging Stations on Municipal Property**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or their designee to execute a Master Site License Agreement with East Bay Community Energy (EBCE) for the installation and operation of publicly-available electric vehicle (EV) direct current fast charging stations on municipal property.  
**Financial Implications:** See report  
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000  
**Action:** Adopted Resolution No. 70,637–N.S.
- 8. Interactive Kiosk Experience (IKE) Smart City Kiosk Locations, Phase Two**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution, pursuant to Ordinance No. 7,626-N.S. Franchise Agreement with IKE Smart City, LLC approving 22 locations for the second phase of deployment of IKE Smart City Kiosks in Berkeley.  
**Financial Implications:** See report  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530  
**Action:** Adopted Resolution No. 70,638–N.S.  
**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Harrison, Wengraf, Robinson, Humbert, Arreguin; Noes – Hahn.
- 9. Contract: Berkeley Fire Medical Director**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments, with Herbert Gene Hern, MD to serve as the Berkeley Fire Medical Director for five years from July 1, 2022 until June 30, 2027 in the amount not to exceed \$400,000.  
**Financial Implications:** See Report  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 70,639–N.S.

## Consent Calendar

- 10. Contract: Statewide Prevention and Early Intervention Project FY2023 Participation Agreement – California Mental Health Services Authority**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to enter into a Participation Agreement for FY2023 and any amendments with the California Mental Health Services Authority (CalMHSA) to allocate Mental Health Services Act (MHSA) funds in the amount of \$70,907 to participate in the Statewide Prevention and Early Intervention (PEI) Project, for a total amount not to exceed \$70,907 through June 30, 2023.  
**Financial Implications:** Mental Health Services Act Fund - \$70,907  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,640–N.S.
- 11. Contract: Resource Development Associates Specialized Care Unit and Community Crisis Response Services Program Evaluation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Resource Development Associates (Contractor) to design and implement an evaluation for program effectiveness of the Specialized Care Unit and Community Crisis Response Services (Bridge Services). Services will begin on January 1, 2023 and extend to June 30, 2025 in an amount not to exceed \$150,000.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,641–N.S.
- 12. Contract: Bonita House for Specialized Care Unit Provider**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Bonita House (Contractor) to implement Berkeley’s Specialized Care Unit for a two-year pilot. Services will begin on February 1, 2023 and extend to January 30, 2025 in an amount not to exceed \$4,500,000.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 70,642–N.S.

## Consent Calendar

**13. Reserving Predevelopment Funds for the Development of Affordable Housing at the North Berkeley BART Station**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Reserving \$500,000 for the selected development team to support the development of affordable housing at the North Berkeley BART site, contingent on the team's selection and approval by the BART Board at its December 1, 2022 meeting, and the team's timely submission of a completed predevelopment application demonstrating they meet the City's funding criteria. 2. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 70,643–N.S.

**14. Contract: California Constructores for Ohlone Park (East) Playground Replacement and Site Improvements Project**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the Ohlone Park (East) Playground Replacement and Site Improvements Project; and 2. Accepting the bid of the lowest responsive and responsible bidder, California Constructores; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with California Constructores, for the Ohlone Park (East) Playground Replacement and Site Improvements Project at 1933 Hearst Avenue, in an amount not to exceed \$1,120,344 which includes a contract amount of \$933,620 and a 20% contingency in the amount of \$186,724.

**Financial Implications:** Various Funds - \$1,120,344

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

**Action:** Adopted Resolution No. 70,644–N.S.

## Consent Calendar

### 15. **Contracts: Consultants for On-Call Transportation Planning Services**

**From: City Manager**

**Recommendation:** Adopt five Resolutions authorizing the City Manager to execute individual contracts and any amendments, each for the period January 1, 2023 through June 30, 2028 for a total amount of all contracts not to exceed \$5,000,000 with the following consultants for On-call Transportation Planning Services:

1. Alta Planning + Design, Inc. for an amount not to exceed \$1,000,000.
2. Community Design + Architecture for an amount not to exceed \$1,000,000.
3. Fehr & Peers for an amount not to exceed \$1,000,000.
4. NN Engineering, Inc. for an amount not to exceed \$1,000,000
5. Toole Design Group, LLC for an amount not to exceed \$1,000,000.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 70,645–N.S. (Alta Planning); Resolution No. 70,646–N.S. (Community Design); Resolution No. 70,647–N.S. (Fehr & Peers); Resolution No. 70,648–N.S. (NN Engineering); and Resolution No. 70,649–N.S. (Toole Design).

### 16. **Contracts: On-Call Architectural Services: ELS Architecture and Urban Design; Noll & Tam Architects; and Siegel & Strain Architects**

**From: City Manager**

**Recommendation:** Adopt three Resolutions authorizing the City Manager to execute contracts and any amendments with the following firms for on-call architectural design services in support of the City's annual Facilities CIP program, each from January 1, 2023 through December 31, 2025:

1. ELS Architecture and Urban Design (ELS), for an amount not to exceed \$3,333,334.
2. Noll & Tam Architects (N&T), for an amount not to exceed \$3,333,333.
3. Siegel & Strain Architects (SSA), for an amount not to exceed \$3,333,333.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 70,650–N.S. (ELS Architecture); Resolution No. 70,651–N.S. (Noll & Tam); and Resolution No. 70,652–N.S. (Siegel & Strain).

### 17. **Authorization for an Additional Commission on Disability Meeting in 2022**

**From: Commission on Disability**

**Recommendation:** Adopt a Resolution authorizing one additional meeting of the Commission on Disability in 2022.

**Financial Implications:** None.

Contact: Andrew Brozyna, Commission Secretary, (510) 981-6300

**Action:** Adopted Resolution No. 70,653–N.S.

## Consent Calendar

### 18a. Measure FF Budget Recommendation - Expanded Fire Prevention Inspection Program *(Reviewed by the Public Safety Committee)*

#### From: Disaster and Fire Safety Commission

**Recommendation:** With the risk of catastrophic wildfire steadily increasing due to climate change, the Disaster and Fire Safety Commission (DFSC) recommends prioritizing wildfire fuel reduction in the FY 23 and FY 24 Measure FF budget by expanding the Fire Department's Fire Prevention Inspection Program and fully enforcing the existing Fire Code to clear vegetation build-up and overgrowth within 100 feet of structures in Berkeley's Very High Fire Severity Zones (VHFSZs) (Fire Zones 2 and 3). In addition, the Fire Code would be strengthened as needed to require removal of hazardous vegetation on the entirety of properties beginning in FY 25. The program would provide for City vegetation management crews to clear vegetation where property owners opt into the program or fail to comply, with no-interest liens placed upon properties to recover direct costs upon transfer. Special emphasis should be placed on eucalyptus groves due to their high flammability and potential to create spot fires. Funding for this expanded program, together with the Fire Department's existing home inspection program, which is focused on creating defensible space around structures, would be supported by devoting 21 percent and 26 percent of Measure FF revenues for FY 23 and FY 24, respectively.

*Policy Committee Recommendation: Positive recommendation to adopt the City Manager's recommendation as presented in the companion report.*

**Financial Implications:** See Report

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

**Action:** See action for Item 18b.

### 18b. Companion Report: Measure FF Budget Recommendation – Expanded Fire Prevention Inspection Program *(Reviewed by the Public Safety Committee)*

#### From: City Manager

**Recommendation:** That the Berkeley City Council reaffirms its support for the work being conducted by the Fire Department (Department) and considers the Disaster and Fire Safety Commission's (DFSC) Report during the FY24 budget process if the DFSC so chooses to resubmit an updated version at that time.

*Policy Committee Recommendation: Positive recommendation to adopt the City Manager's recommendation as presented in the companion report.*

**Financial Implications:** None

Contact: David Sprague, Fire, (510) 981-3473

**Action:** Approved recommendation as recommended by the Public Safety Committee.

## Consent Calendar

19. **Zero-Emission Vehicle Parking Support Letter**  
**From: Environment and Climate Commission**  
**Recommendation:** Refer to the City Manager to send a letter to State Assemblymember Buffy Wicks and State Senator Nancy Skinner asking them to advance a proposal to allow cities to dedicate parking spaces for Zero-Emission Vehicles (ZEVs).  
**Financial Implications:** See report.  
Contact: Billi Romain, Commission Secretary, (510) 981-7400  
**Action:** Approved recommendation.

## Council Consent Items

20. **Berkeley Holiday Fund: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Mayor Arreguin to the Berkeley Holiday Fund's annual campaign with funds 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:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Adopted Resolution No. 70,654–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Mayor Arreguin - \$500; Councilmember Harrison - \$250; Councilmember Wengraf - \$500; Councilmember Robinson - \$250; Councilmember Humbert - \$500; Councilmember Kesarwani - \$100; Councilmember Taplin - \$500; Vice-Mayor Bartlett - \$250; Councilmember Hahn - \$300.

## Action Calendar – Public Hearings

### 21. 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 the first reading of an Ordinance containing technical edits, corrections and other non-substantive amendments to the following sections of the Zoning Ordinance:

- BMC Section 23.108.020 (Zoning Districts)
- BMC Section 23.202.020 (Allowed Land Uses)
- BMC Section 23.202.140 (R-SMU District)
- BMC Section 23.204.150 (R-BMU District)
- BMC Section 23.204.020 (Allowed Land Uses)
- BMC Section 23.204.060 (C-U District)
- BMC Section 23.204.080 (C-E District)
- BMC Section 23.204.100 (C-SA District)
- BMC Section 23.206.040 (Use-Specific Regulations)
- BMC Section 23.406.050 (Variances)
- 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. 0 speakers.

M/S/C (Arreguin/Robinson) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Robinson) to adopt first reading of Ordinance No. 7,850-N.S. with the authorization for staff to correct section numbering as needed. Second reading scheduled for January 17, 2023.

**Vote:** All Ayes.

## Action Calendar – New Business

### 22. FY 2022 Preliminary Year End Status

**From: City Manager**

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

**Action:** Presentation made. See action on Item 23.



## Action Calendar – New Business

**23. Amendment: FY 2023 Annual Appropriations Ordinance**

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance amending the FY 2023 Annual Appropriations Ordinance No. 7,828-N.S. for fiscal year 2023 based upon recommended re-appropriation of committed FY 2022 funding and other adjustments authorized since July 1, 2022, in the amount of \$176,583,851 (gross) and \$170,322,312 (net).

**Financial Implications:** See Report.

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

**Action:** 11 speakers. M/S/C (Arreguin/Robinson) to adopt first reading of Ordinance No. 7,851-N.S. amending the FY 2023 Annual Appropriations Ordinance No. 7,828-N.S. for fiscal year 2023 based upon recommended re-appropriation of committed FY 2022 funding and other adjustments authorized since July 1, 2022, in the revised amounts of \$178,289,951 (gross) and \$172,028,412 (net) and as revised in Supplemental Communications Packet #2 by the City Manager and the Mayor including the revisions recommended by the Budget & Finance Committee. Second reading scheduled for January 17, 2023.

**Vote:** All Ayes.

**24. Status Report - Berkeley's Financial Condition (FY 2012 - FY 2021): Pension Liabilities and Infrastructure Need Attention**

**From: City Manager**

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

**Action:** M/S/C (Arreguin/Wengraf) to continue the item to January 17, 2023.

**Vote:** All Ayes.

## Councilmember Action Items

**25. Resolution Supporting Trip Reduction Alternative for BUSD Berkeley High School Tennis and Parking Structure Project**

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

**Recommendation:** Adopt a Resolution in support of a Trip Reduction Alternative to be included in the scope of the Environmental Impact Report for the Berkeley High School Tennis and Parking Structure Project at 2000 Bancroft Way, and send a copy of Resolution to the Berkeley Unified School District (BUSD) Board of Directors.

**Financial Implications:** None

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

**Action:** Item continued to January 17, 2023.

**Public Comment – Items Not Listed on the Agenda - 3 speakers.**

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 10:58 p.m.

## **Communications**

### **North Berkeley BART Development**

1. 9 similarly-worded form letters
2. genetic@igc
3. David Brandon
4. Donna DeDiemar
5. Barbara Fisher

### **Eviction Moratorium**

6. Robert Bahme
7. Kathleen Lee Verani
8. Sarah Davis
9. Ron Edwards
10. Misha

### **Cost/Benefit Analysis of City Policies**

11. Barbara Gilbert

### **Water Leak at Acton and Delaware**

12. Gavin Tyler

### **Undemocratic Process**

13. Ben and Sarah Davis

### **Cyclist Traffic Safety**

14. Marc Hedlund

### **National Whistleblower Center**

15. Boona Cheema
16. Christoverre Kohler

### **Horizons Shelter and SPARK Lease**

17. Elana Auerbach
18. Boona Cheema

### **No Right Turn on Red**

19. Michael Frantz

### **Indigenous Liberation**

20. Sophie

**Draft Housing Element**

21. Michael Trujillo, on behalf of East Bay Community Law Center

**Berkeley High School Coach**

22. Ramona Parks

**Supplemental Communications and Reports 1**

**Item #6: City of Berkeley 2023 State and Federal Legislative Platform**

23. Supplemental communications, submitted by the City Manager's Office

**Item #8: Interactive Kiosk Experience (IKE) Smart City Kiosk Locations Phase Two**

24. Luis Valdivia, on behalf of the Holiday Inn Express and Suites

**Item #23: Amendment: FY 2023 Annual Appropriations Ordinance**

25. Cecilia Lunaparra

**Supplemental Communications and Reports 2**

**Item #8: Interactive Kiosk Experience (IKE) Smart City Kiosk Locations Phase Two**

26. Charlene Woodcock

27. Gael Alcock

28. Michael Weber

29. Summer Brenner

30. Geri McGilvray

31. Cliff Romig, on behalf of Donkey and Goat Winery

32. Carol Denney

33. Joan Ellis and Patrick Hooker, on behalf of Babette Café

34. Mary Curtis Ratcliff

35. Jane Kitchel

36. Phil Allen

37. Laurie Baumgarten

**Item #23: Amendment: FY 2023 Annual Appropriations Ordinance**

38. Supplemental material, submitted by Mayor Arreguin

39. Revised material, submitted by the City Manager's Office

40. Ben Gerhardstein, on behalf of Walk Bike Berkeley

41. Jeremy Benin Yap

42. Brandon Yung (2)

43. Sharanya Sahu (2)

44. Kendra Levine

45. Grayson Savoie

46. Csilla Kenny

47. Jonathan Walden (2)

48. Chris Lee-Egan (2)

49. Warren Wells

50. Jordan Burns

51. Linsy Damashek

**Time Critical**

52. Time critical item, submitted by Councilmember Hahn

**Supplemental Communications and Reports 3**

**City Manager Comments**

53. Workforce Analysis, "A Hiring Crisis Amidst The Great Resignation"

**Item #8: Interactive Kiosk Experience (IKE) Smart City Kiosk Locations Phase Two**

54. Visit Berkeley & Berkeley Film Office

55. Donna Mickleson

56. Mary Lee Noonan

57. Carol Denney (2)

58. Larry Hendel

59. Steve Wasserman, on behalf of Heyday Books

**Item #13: Reserving Predevelopment Funds for the Development of Affordable Housing at the North Berkeley BART Station**

60. David Lerman

**Item #23: Amendment: FY 2023 Annual Appropriations Ordinance**

61. Presentation, submitted by the City Manager's Office

62. Nicholas Heller

63. Rebecca Mirvish

64. Elana Auerbach (2)

65. Diana Bohn

66. Bill Press

67. Nora Shourd

**Item #24: Status Report – Berkeley's Financial Condition (FY 2012 – FY 2021): Pension Liabilities and Infrastructure Needs Attention**

68. Geoff Lomax



Office of the City Manager

CONSENT CALENDAR  
January 17, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Economic Development Manager

Subject: Approval of donated sculpture gift, *Queen Shamiram* by Fred Parhad, valued at \$225,000, for inclusion in the City of Berkeley's Public Art Collection

RECOMMENDATION

Adopt a Resolution approving the gift of a sculpture by artist Fred Parhad titled *Queen Shamiram*, valued at \$225,000, donated by Narsai and Venus David to the City of Berkeley's Public Art Collection. The artwork will be installed for permanent display along the pedestrian path at the southeast corner of Maudelle Shirek Building at Martin Luther King Jr. Way and Allston Way as approved by the Civic Arts Commission.

FISCAL IMPACTS OF RECOMMENDATION

The artwork valued at \$225,000, will be donated to the City. Funding for the engineering and installation of the sculpture (estimated at \$20,000) will come from the FY23 Budget of the Cultural Trust Fund (Fund 148) as approved by the Civic Arts Commission.

CURRENT SITUATION AND ITS EFFECTS

*Queen Shamiram* is a bronze sculpture by artist Fred Parhad depicting the historic figure Sammu-ramāt, queen of the Assyrian Empire (c.800 BCE), standing alongside a lion asleep at her feet. The work measures approximately 9 feet tall by 7 feet wide and will sit upon a 10-inch-high concrete base. The Civic Arts Commission would like to acquire this artwork for the City's Public Art Collection for permanent display near the Maudelle Shirek Building located at 2134 Martin Luther King Jr Way. The sculpture will be donated by the artist and Narsai and Venus David, with \$20,000 in engineering and installation costs funded by the Cultural Trust Fund (Fund 148). Through acceptance of this gift, the Civic Arts Commission seeks to diversify representation in public statuary in the City, and provide the Assyrian community of Berkeley a place to gather for cultural events. The artwork is anticipated to be installed by June 30, 2023.

BACKGROUND

In April 2018, the artist Fred Parhad and donors Narsai and Venus David, approached the Civic Arts Commission to propose giving the artwork *Queen Shamiram* to the City of Berkeley for public display near Civic Center. It is the artist and donors' intention to have the Assyrian community of Berkeley gather at this artwork for cultural events. Assyrians

are an indigenous group native to Assyria in West Asia, a region currently divided between modern-day Iraq, southeastern Turkey, northwestern Iran, and northeastern Syria. A majority of modern Assyrians have migrated to other regions of the world, including North America, triggered by massacres, genocide, and impacts of wars in the region of the former Assyrian homeland.

In June 2019, the Civic Arts Commission approved the sculpture *Queen Shamiram*, valued at \$225,000, as a gift to the City's Public Art Collection, and its installation near the Maudelle Shirek Building (Ayes – An, Anno, Blecher, Bullwinkel, Covarrubias, Ozol, Ross; Nays – None; Abstain – None; Absent – Passmore, Slattery, Tamano). In May 2022, the Civic Arts Commission allocated \$20,000 from the FY23 budget of Cultural Trust Fund (Fund 148) to pay for the engineering and installation of the sculpture (Ayes — Anno, Blecher, Bullwinkel, Covarrubias, La, Passmore, Woo; Nays — None; Abstain — None; Absent — Dhesi, Ozol).

Subsequently, Civic Arts staff identified the pedestrian path at the southeast corner of Maudelle Shirek Building at Martin Luther King Jr. Way and Allston Way as an ideal location for the sculpture. This location will not be impacted by future development of the Civic Center Vision Project. In June 2022, the Civic Arts Commission approved the exact sculpture location, depicted in Attachment 2 (Ayes — Anno, Blecher, Bullwinkel, Covarrubias, Dhesi, Ozol, Woo; Nays — None; Abstain — None; Absent — Passmore). The site was also reviewed by the Parks, Recreation and Waterfront Department who supervise and lead the maintenance of park property. They take no issue with the sculpture location, and will work with Civic Arts staff to coordinate the artwork placement with any existing infrastructure in that area.

Per Berkeley Municipal Code Section 2.06.150, *“any gift of funds, goods, or services worth more than \$1000 in aggregate, which may be accepted or collected by the City or any of its functionaries or Legislative Bodies, for the purpose of carrying out or assisting any City function, shall be disclosed and approved on the Agenda of a regular Meeting of the City Council.”*

#### 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

Acceptance of this gift would allow the Civic Arts Commission to diversify representation in public statuary in the City, and provide the Assyrian community of Berkeley a place to gather for cultural events.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Zoe Taleporos, Civic Arts, Office of Economic Development, (510) 981-7538

Attachments:

1: Resolution

2: Images of *Queen Shamiram* sculpture and proposed installation location

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

ACCEPTANCE OF QUEEN SHAMIRUM SCULPTURE BY FRED PARHAD INTO THE  
CITY OF BERKELEY'S PUBLIC ART COLLECTION

WHEREAS, on June 26, 2019 the Civic Arts Commission approved the sculpture *Queen Shamiram* by Fred Parhad, valued at \$225,000, as a gift to the City of Berkeley's Public Art Collection, and its installation in the Civic Center area; and

WHEREAS, on May 25, 2022, the Civic Arts Commission approved the allocation of \$20,000 for engineering and installation of the sculpture *Queen Shamiram* by Fred Parhad from the FY23 budget of the Cultural Trust Fund (Fund 148); and

WHEREAS, on June 22, 2022, the Civic Arts Commission approved the location of the sculpture *Queen Shamiram* by Fred Parhad to be installed along the pedestrian path at the southeast corner of Maudelle Shirek Building at Martin Luther King Jr. Way and Allston Way; and

WHEREAS, the Berkeley Municipal Code Section 2.06.150 states, "*any gift of funds, goods, or services worth more than \$1,000 in aggregate, which may be accepted or collected by the City or any of its functionaries or Legislative Bodies, for the purpose of carrying out or assisting any City function, shall be disclosed and approved on the Agenda of a regular Meeting of the City Council.*"

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the gift of sculpture *Queen Shamiram* by Fred Parhad, valued at \$225,000, be approved for inclusion in the City of Berkeley's Public Art Collection.



QUEEN SHAMIRAM  
A GIFT TO THE CITY OF BERKELEY

Fred Parhad, Artist  
Narsai and Venus David, Donors



Fred Parhad is an Iraqi-Assyrian sculptor who is best known for his monument of Ashurbanipal (Assyrian King 600s BC), which stands in front of the Asian Art Museum in San Francisco.

Parhad is a self-taught sculptor, who, at the beginning of his career, focused on the art of ancient Assyria.



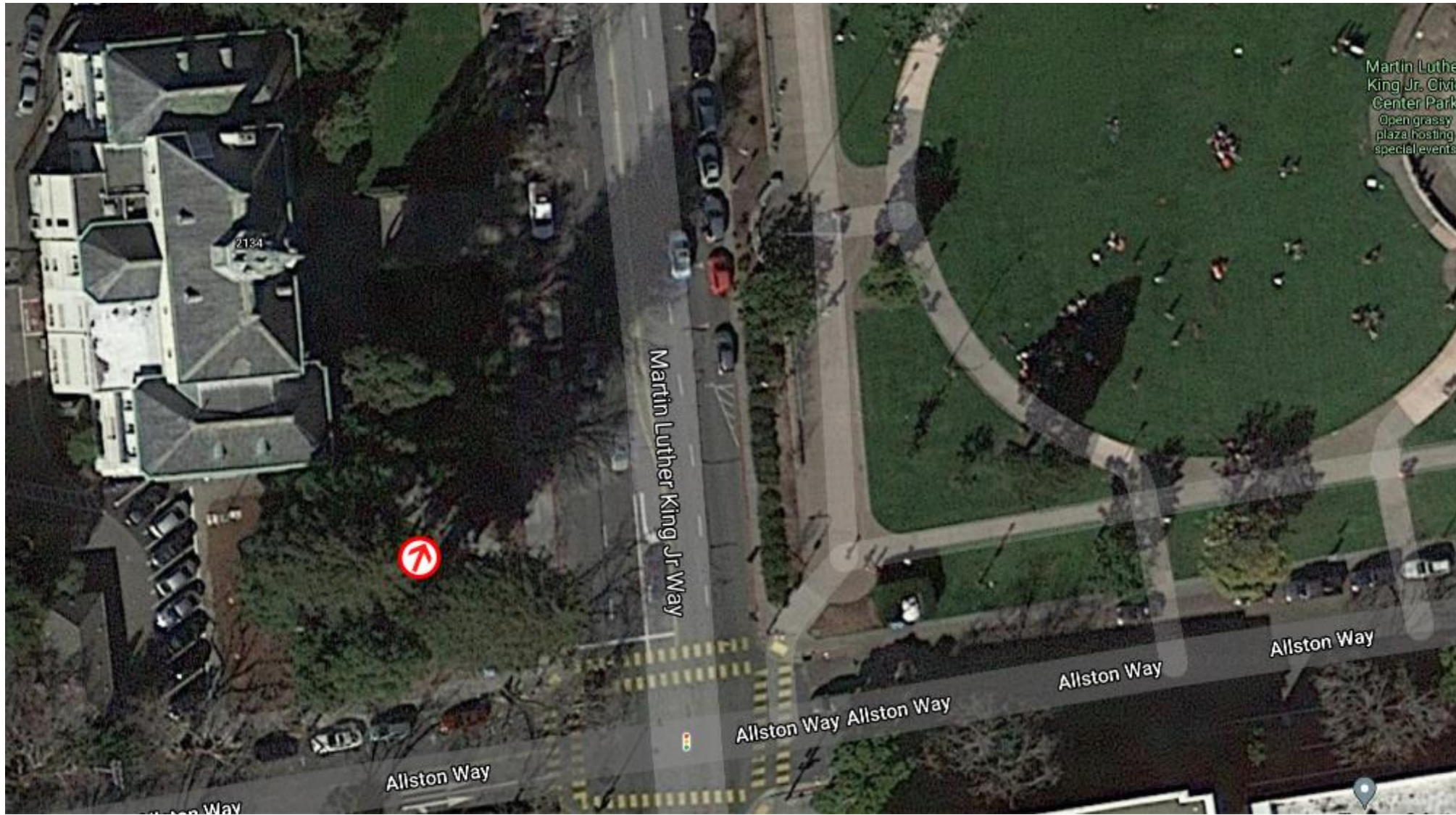
©ArtandArchitecture-SF.com



Queen Shamiram, is based on the historic figure, Sammu-ramāt, the queen of the Assyrian Empire (c.800 BCE), who took over the throne when her husband, Shamshi-Adad V, died, and assumed rule until her son, Adad Nirari III. came of age.

In 2018, the artist and Narsai and Venus David (the donors), approached the Civic Arts Commission about giving the artwork to the City of Berkeley for public display near Civic Center. The Civic Arts Commission approved the artwork for accession into the Public Art Collection, and its permanent public display.

It is the artist and donors' intention to have the Assyrian community of Berkeley gather at this artwork for cultural events.



The proposed location is along the pedestrian path at the SE corner of the Maudelle Shirek Building in Berkeley, on MLK and Allston Way.

The Civic Arts Commission has allocated \$20,000 from the FY23 budget Fund 148 for engineering and installation of the artwork. The goal is to install the artwork by June 30, 2023.

The installation location is under the supervision of the Parks, Recreation and Waterfront Department. They take no issue with the installation and will work with Civic Arts Staff to coordinate the artwork with any existing infrastructure in that area.













Office of the City Manager

CONSENT CALENDAR  
January 17, 2023

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 January 17, 2023

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is **\$3,506,000**.

| <u>PROJECT</u>                                                      | <u>Fund</u> | <u>Source</u>                                       | <u>Amount</u>      |
|---------------------------------------------------------------------|-------------|-----------------------------------------------------|--------------------|
| Results Based Accountability Planning and Implementation            | 302<br>336  | Operating Grants – State<br>One-Time Grant Fund     | \$210,000          |
| CHVP Needs Assessment                                               | 312         | Health (General)                                    | \$400,000          |
| Marina Selective Piling Replacement Project                         | 511<br>501  | Measure T1 – Infstr and Fac<br>Capital Improvements | \$2,700,000        |
| Human-Propelled Courier and Mail Room Services                      | 674<br>621  | Central Services<br>Permit Service Center           | \$56,000           |
| Identity and Access Management (IAM) Assessment & Strategic Roadmap | 011         | Discretionary                                       | \$140,000          |
| <b>Total:</b>                                                       |             |                                                     | <b>\$3,506,000</b> |

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (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 January 17,2023
  - a. Results Based Accountability Planning and Implementation
  - b. CHVP Needs Assessment
  - c. Marina Selective Piling Replacement Project
  - d. Human-Propelled Courier and Mail Room Services

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on January 17, 2023

CONSENT CALENDAR  
January 17, 2023

e. Identity and Access Management (IAM) Assessment & Strategic Roadmap

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

DATE SUBMITTED: December 6, 2022

| SPECIFICATI<br>ON NO. | DESCRIPTION OF<br>GOODS /<br>SERVICES BEING<br>PURCHASED          | APPROX.<br>RELEASE<br>DATE | APPROX.<br>BID<br>OPENING<br>DATE | INTENDED USE                                                                                                                                                                                               | ESTIMATED<br>COST                                                                                                              | BUDGET CODE TO BE<br>CHARGED                                                                                                                                                                                                                                                                                                                                                                       | DEPT. /<br>DIVISION                                                                            | CONTACT NAME &<br>PHONE     |
|-----------------------|-------------------------------------------------------------------|----------------------------|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-----------------------------|
| 23-11563-C            | Results Based<br>Accountability<br>Planning and<br>Implementation | 1/17/2023                  | 2/18/2023                         | Assistance in readiness assessment,<br>planning and implementation of the<br>Results Based Accountability<br>Framework for the Health, Housing,<br>and Community Services Department<br>and its Divisions. | NTE \$210,000<br>from FY23-FY24<br><br>Breakdown by<br>Fiscal Year:<br><br>FY23:<br><br>\$130,000<br><br>FY24:<br><br>\$80,000 | FY23<br><br>\$100,000: HHOFPH2301-<br>NONPERSONN-<br>OPERATING-<br>MISCPROFSV<br><br>302-51-501-501-0000-<br>000-451-612990-<br><br>FY24:<br><br>\$30,000: HHOCER2201-<br>NONPERSONN-<br>OPERATING-<br>MISCPROFSV; 336-51-<br>501-501-2075-000-451-<br>612990-<br><br>FY24:<br><br>\$80,000: HHOFPH2301-<br>NONPERSONN-<br>OPERATING-<br>MISCPROFSV<br><br>302-51-501-501-0000-<br>000-451-612990- | HHCS/ Public<br>Health                                                                         | Nelson Lam<br><br>981-6395  |
| 23-11565-C            | CHVP Needs<br>Assessment                                          | 1/24/2023                  | 2/10/2023                         | Consultant time complete a needs<br>assessment                                                                                                                                                             | \$400,000                                                                                                                      | Funding will be<br>appropriated in AAO2 in<br>312-51-506-562-2055-<br>000-451-612990                                                                                                                                                                                                                                                                                                               | Funding will<br>be<br>appropriated<br>in AAO2 in<br>312-51-506-<br>562-2055-000-<br>451-612990 | Janice Chin<br><br>981-5121 |
| <b>DEPT. TOTAL</b>    |                                                                   |                            |                                   |                                                                                                                                                                                                            | <b>\$610,000</b>                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                |                             |

DATE SUBMITTED: December 6, 2022

| SPECIFICATI<br>ON NO. | DESCRIPTION OF<br>GOODS /<br>SERVICES BEING<br>PURCHASED | APPROX.<br>RELEASE<br>DATE | APPROX.<br>BID<br>OPENING<br>DATE | INTENDED USE                                                                                                                                                                                                                                                 | ESTIMATED<br>COST                                | BUDGET CODE TO BE<br>CHARGED                                                                                                                        | DEPT. /<br>DIVISION      | CONTACT NAME &<br>PHONE      |
|-----------------------|----------------------------------------------------------|----------------------------|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|------------------------------|
| 23-11567-C            | Marina Selective Piling Replacement Project              | 1/18/2023                  | 2/18/2023                         | Project consists of selective piling replacements throughout the Marina. Many piles are deteriorated and failing causing a hazard at the marina. Piles will be replaced based on a condition assessment starting with piles that are in the worst condition. | \$2,700,000                                      | 511-52-545-000-0000-000-461-662110-PRWT122012 (T1 Fund) - \$1,200,000<br><br>501-52-545-000-0000-000-461-662110-PRWT122012 (CIP Fund) - \$1,500,000 | PRW/Waterfront           | Nelson Lam<br><br>981-6395   |
| <b>DEPT. TOTAL</b>    |                                                          |                            |                                   |                                                                                                                                                                                                                                                              | <b>\$2,700,000</b>                               |                                                                                                                                                     |                          |                              |
| 23-11568-C            | Human-propelled courier and mail room services           | 1/18/2023                  | 2/14/2023                         | Provision of satellite mail services, courier (commission packets), and mail room back-up                                                                                                                                                                    | \$50,0000<br><br>\$ 6,000<br><br>Total: \$56,000 | 674-33-325-347-0000-000-472-612990-<br><br>Mail room<br><br>621-53-584-622-0000-000-474-639130-<br><br>Planning Commission                          | Finance/General Services | Darryl Sweet<br><br>981-7329 |
| <b>DEPT. TOTAL</b>    |                                                          |                            |                                   |                                                                                                                                                                                                                                                              | <b>\$56,000</b>                                  |                                                                                                                                                     |                          |                              |

DATE SUBMITTED: December 6, 2022

| SPECIFICATI<br>ON NO. | DESCRIPTION OF<br>GOODS /<br>SERVICES BEING<br>PURCHASED                              | APPROX.<br>RELEASE<br>DATE | APPROX.<br>BID<br>OPENING<br>DATE | INTENDED USE                                                                                                                                                                                               | ESTIMATED<br>COST     | BUDGET CODE TO BE<br>CHARGED           | DEPT. /<br>DIVISION                        | CONTACT NAME &<br>PHONE    |
|-----------------------|---------------------------------------------------------------------------------------|----------------------------|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------------------------------------|--------------------------------------------|----------------------------|
| 23-11569-C            | Identity and<br>Access<br>Management<br>(IAM)<br>Assessment &<br>Strategic<br>Roadmap | 1/17/2023                  | 2/18/2023                         | Seeking request for proposal (RFP)<br>from vendor who will conduct<br>assessment and deliver a 3-year<br>strategic roadmap to establish an<br>enterprise Identity and Access<br>Management (IAM) solutions | \$140,000             | 011-35-363-382-0000-<br>000-472-612990 | 011-35-363-<br>382-0000-000-<br>472-612990 | Thomas Ray<br><br>981-6542 |
| <b>Dept TOTAL</b>     |                                                                                       |                            |                                   |                                                                                                                                                                                                            | <b>\$140,000.00</b>   |                                        |                                            |                            |
|                       |                                                                                       |                            |                                   |                                                                                                                                                                                                            | <b>\$3,506,000.00</b> |                                        |                                            |                            |



Office of the City Manager

CONSENT CALENDAR  
January 17, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Contract No. 32000146 Amendment: Aramark for Uniforms and Laundering

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000146 with Aramark Uniform Services to continue to meet the uniform-related needs of City departments, extending the term through FY 2025 and increasing the contract amount by \$550,000 for a total not-to-exceed amount of \$1,017,000.

FISCAL IMPACTS OF RECOMMENDATION

Funds are available in individual departmental budgets. An additional \$110,000 is required to complete the current contract year due to increased products and services resulting from needs during pandemic, and that will continue forward. The two-year extension period is estimated at \$220,000 per year (\$440,000). This brings the the total projected expenditure over five (5) years to \$1,017,000.

CURRENT SITUATION AND ITS EFFECTS

The original Aramark contract was approved in the amount of \$467,000, which was intended to provide funding for three years. The pandemic caused departments to add new products (for example, a significant amount of reusable face coverings) which increased the need for laundering services. Additionally, Aramark’s performance has been satisfactory to the City during the contract period.

The City intends to extend the contract with Aramark for up to two (2) one-year periods to continue services. Estimated annual spend going forward is \$220,000\* per year. A spend breakdown is listed in the table below:

|                                                       |             |
|-------------------------------------------------------|-------------|
| Initial Contract Amount                               | \$ 467,000  |
| Additional funds required for initial contract period | \$ 110,000  |
| Funds for two-year contract extension                 | \$ 440,000* |
| Total Contract not-to-exceed                          | \$1,017,000 |

BACKGROUND

The City of Berkeley is a relatively small account for the rental uniform and laundry industry. Pricing obtained by the City was higher than that of larger cities. City of Berkeley identified the City of Fresno contract, which leveraged a much larger workforce, but with similar uniform and laundry needs. The City of Fresno competed and awarded a multi-year contract to Aramark in 2019. Fresno received strong pricing based on their account size. The City of Berkeley is able to obtain the same pricing of the larger account by piggybacking on the City of Fresno contract. Aramark continues to attest to meeting the City of Berkeley's Sweatshop-Free ordinance. The City is satisfied with Aramark's uniform quality, other product quality, laundering and repair services, and delivery service, and, barring any major disruptions, or negative feedback, intends to continue with Aramark for the contract extension period.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

As noted in the original staff report for the Aramark contract, Aramark is undertaking several environmental initiatives such as wastewater reduction, fleet management, increasing operational efficiencies, and waste minimization efforts.

RATIONALE FOR RECOMMENDATION

The City has several job classifications requiring uniforms that meet specific standards.

ALTERNATIVE ACTIONS CONSIDERED

The City considered administering its own RFP, however, because the City's service need is relatively small compared to big Cities, the city will be unable to receive the economy-of-scale pricing with its solicitation. With staffing issues, as well as the availability and strong pricing of the City of Fresno contract, piggybacking the contract outweigh the City administering its own RFP at this time.

CONTACT PERSON

Josh Roben, Contract Administrator, Finance/General Services, 510-981-7324

Attachments:  
1: Resolution



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

CONTRACT NO. 32000146 AMENDMENT: ARAMARK FOR UNIFORMS AND  
LAUNDERING

WHEREAS, City Council approved Resolution 69,073-N.S. on September 10, 2019 approving the contract for uniforms and laundering with Aramark by piggybacking on the City of Fresno's available contract; and

WHEREAS, City departments require ongoing uniform, towels, mats, and laundering services, and have departmental budgets for those; and

WHEREAS, the pandemic led to additional products and services available in the contract; and

WHEREAS, Aramark continues to attest to compliance with the City's Sweatshop-Free Ordinance; and

WHEREAS, the benefits of continuing with Aramark outweigh administering a City of Berkeley RFP at this time.

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. 32000146 with Aramark Uniform Services to continue to meet the uniform-related needs of City departments, extending the term through FY 2025 and increasing the contract amount by \$550,000 for a total not-to-exceed amount of \$1,017,000.





Office of the City Manager

CONSENT CALENDAR  
January 17, 2023

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. 32300064 Amendment: Tiana Sanchez International, LLC for HHCS Equity Consultant

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 32300064 with Tiana Sanchez International, LLC to add \$21,077.73 and extend the term of the Health, Housing, and Community Services (HHCS) Equity Consultant contract to January 31, 2024 with a not to exceed amount of \$141,077.73.

FISCAL IMPACTS OF RECOMMENDATION

The amendment will add \$21,077.73 with a total not-to-exceed amount of \$141,077.73. Funding for the Tiana Sanchez International, LLC's (TSI) contract is available in the FY2023 budget in One-Time Grant (Fund 336-51-501-501-2075-000-451-612990).

CURRENT SITUATION AND ITS EFFECTS

Amending the TSI Health, Housing, and Community Services (HHCS) Equity Consultant contract is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity. The additional funds will allow the TSI team to extend their contract term to January 31, 2024 which will provide additional time to work with HHCS staff to determine and recommend an appropriate equity framework. TSI's contract began in October 2022 and had limited time to complete the project. This added funding and time will allow for a less abbreviated process and scope.

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, climate impacts or sustainability opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

The additional funding identified will allow for a less abbreviated scope and timeline than the original funding alone did, and will support a more comprehensive process.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify other alternatives that are consistent with both the project goals and the CERI program guidelines.

#### CONTACT PERSON

Katherine Hawn, Senior Management Analyst, HHCS, 510-847-8532

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

CONTRACT NO. 32300064 AMENDMENT: TIANA SANCHEZ INTERNATIONAL, LLC  
FOR HHCS EQUITY CONSULTANT

WHEREAS, Contract #32300064 was awarded to Tiana Sanchez International, LLC (TSI) to create and recommend an equity framework for the Department of Health, Housing, and Community Services (HHCS), and

WHEREAS, through Contract #32300064 TSI has been reviewing HHCS reports and is conducting interviews with Department staff to inform the equity framework; and

WHEREAS, \$21,077.73 was allocated to support an extension of the contract to allow for increased research and analysis for HHCS; and

WHEREAS, TSI is the most qualified consultant to receive the additional funding to continue to develop an equity framework for HHCS.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend the HHCS Equity Consultant Contract No. 32300064 with Tiana Sanchez International, LLC by extending the term of January 31, 2024 and adding \$21,077.73 and a not to exceed amount of \$141,077.73. Funding is available in the FY2023 budget in the One-Time Grant Fund (Fund 336).





Office of the City Manager

CONSENT CALENDAR  
January 17, 2023

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: Revenue Grant Agreement: Funding Support from the State of California:  
 California Home Visiting Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to submit a grant agreement to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the California Home Visiting Program in the projected total amount of \$2,473,611 for July 1, 2022 to June 30, 2028.

FISCAL IMPACTS OF RECOMMENDATION

The City will receive funds in the estimated amount of \$2,473,611 from the State of California, California Home Visiting Program (CHVP) for the period FY 2023 through FY 2028. The contract will be assigned a contract number and the revenue deposited in Fund 312-51-506-562-2055-000-000-432110 - (Health Fund). \$405,041 will be recommended for appropriation through the second amendment in the FY2023 Appropriations Ordinance in the Health Fund (Fund 312). Funding in the amount of \$413,714 per fiscal year will be subject to appropriation in the FY2024 through FY2028 budgets in the Health Fund (Fund 312) for a projected total amount \$2,473,611 for July 1, 2022 to June 30, 2028. There is no match required.

Spending of these grant funds is subject to Council approval of the budget and the Annual Appropriations Ordinances each fiscal year.

CURRENT SITUATION AND ITS EFFECTS

The State of California, CHVP program is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city, champion and demonstrate social and racial equity and be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

The Health, Housing and Community Services Department (HHCS) provides a broad range of public health and community health services in Berkeley; with the goals of

achieving health equity, promoting healthy environments and behaviors, protecting residents from disease, and preventing illness, disability, and premature death.

The California Department of Public Health-CHVP grant contributes to the Department's work towards improving the health of our community by engaging in preventive interventions focused on promoting positive parenting and child development and supporting overburdened families who are at risk for Adverse Childhood Experiences (ACEs), including child maltreatment, domestic violence, substance use disorder and mental health related issues.

### BACKGROUND

The City of Berkeley receives funding from many sources annually to complete activities to improve the health of the community. As a local health jurisdiction, the City is entitled to specific State funding to meet core public health objectives. HHCS' Public Health Division (HHCS/PHD) is committed to providing essential services to the community to prevent the spread of disease and to promote healthy environments.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

### RATIONALE FOR RECOMMENDATION

These funds support vital services related to our mandates as a public health jurisdiction and local initiatives designed to address health inequities in Berkeley and improve the health of Berkeley residents. This grant supports the Department's mission and provides the City with funding to continue working to protect and improve the health of the community.

### ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify an alternative action consistent with the City's goals of advancing public health and social and racial equity.

### CONTACT PERSON

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

Attachments:

1. Resolution



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

GRANT AGREEMENT: CALIFORNIA DEPARTMENT OF PUBLIC HEALTH FOR  
CALIFORNIA HOME VISITING PROGRAM

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services, Public Health Division (HHCS/PHD), is committed to promoting maternal health and well-being, improving infant and child health and development, strengthening family functioning and cultivating strong communities.

WHEREAS, HHCS provides a broad range of needed public health program services to the community; and

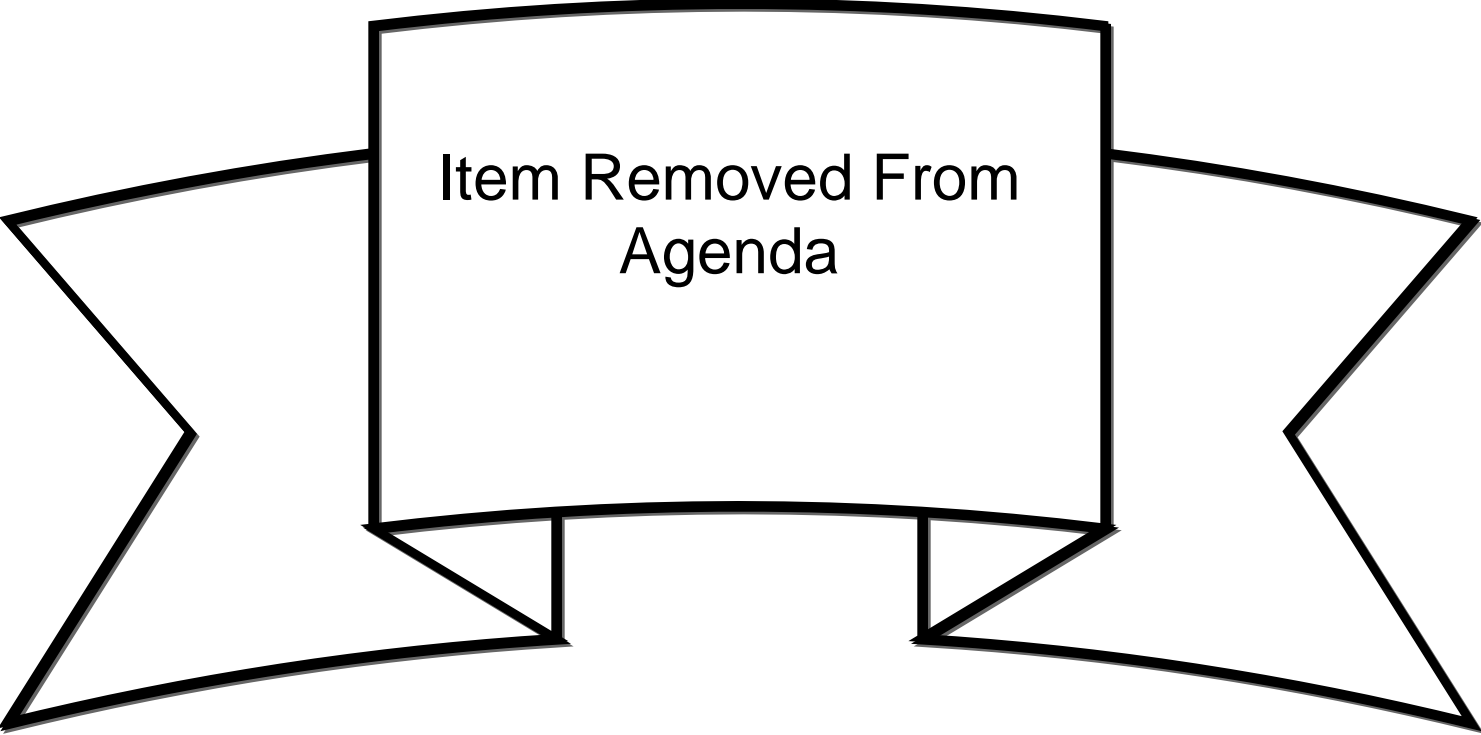
WHEREAS, HHCS works to promote healthy environments and behaviors, protect residents from disease, and prevent illness, disability, and premature death; and

WHEREAS, HHCS seeks to achieve health equity; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital health services.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to accept State of California funding for fiscal years 2023 through 2028 for the California Home Visiting Program: to provide home visits by a trained professional during pregnancy and in the first few years of life; execute any resultant revenue agreements and amendments; and implement the projects and appropriation of funding in the estimated amount of \$2,473,611 for July 1, 2022 to June 30, 2028 for related expenses. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.





Item Removed From  
Agenda

This item has been removed from the agenda by the City Manager.

If you have questions regarding this report, please contact the person noted on the agenda.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, City Council's Website**  
<https://berkeleyca.gov/your-government/city-council>





Office of the City Manager

CONSENT CALENDAR

January 17, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Aram Kouyoumdjian, Director of Human Resources  
 Subject: Establish Classification and Salary – Medical Director

RECOMMENDATION

Adopt a Resolution establishing the represented classification of Medical Director with a monthly salary range of \$15,671.76 – 17,802.72.

FISCAL IMPACTS OF RECOMMENDATION

The new classification and associated salary range is comparable to the physician classification that is currently fulfilling the Medical Director responsibilities. The hourly rate of the current Part-Time Physician classification is \$101.67, and the top hourly rate for the proposed Medical Director position is \$102.71. The minimal salary difference will be covered by salary savings in FY 23, and through Realignment funds in subsequent fiscal years. The revised classification and new salary range result in an increased salary impact to the General Fund as the position is 100% funded by the General Fund. It is the department's intention to maintain it as a part-time position.

CURRENT SITUATION AND ITS EFFECTS

The Department of Health, Housing and Community Services (HHCS) is organized as an Office of the Director and five divisions [Attachment 1] that support the Department's mission: Aging Services, Housing and Community Services, Environmental Health, Mental Health, and Public Health. The Public Health Division (PH) strives to achieve health equity in Berkeley by creating environments that optimize health and well-being for all, and through community-based partnerships. PH provides health education and promotion for tobacco cessation, cardiovascular/heart health, childhood health and nutrition, oral health, and adolescent health. The Division oversees and provides adolescent health services at the Berkeley High School and Berkeley Technology Academy Health Centers, immunization clinics for both adults and children, and provides maternal and child health services including prevention programs and targeted case management.

Historically, the duties of the position have been evolved greatly in the last 30 years and the position is currently filled by a Part-Time Hourly Physician who works approximately 10 hours per week, outlined by a job duties statement. It is the department's intention to

Classification and Salary: Medical Director

CONSENT CALENDAR  
January 17, 2023

maintain it as a part-time position. With the future retirement of that incumbent, Human Resources and the Department of Health, Housing and Community Services initiated a review of the duties and salary prior to recruiting, and drafted a job description for Medical Director [Attachment 2]. The proposed Medical Director classification would develop, plan and implement medical-related Public Health Division goals and objectives. Additionally, the Medical Director would support the City's health education and services within the community. A licensed physician is required to sign certification statements of compliance with state and federal regulations, needed to operate the various public health clinics throughout the City.

### BACKGROUND

To establish the job class specification of Medical Director, Human Resources and the Department of Health, Housing and Community Services sought input from the Manager of Public Health Services, Senior Managers from Health, Housing, and Community Services, and the current Part-Time Hourly Physician.

Bryce Consulting, an agency that provides a variety of human resource services to non-profit and public-sector clients, was retained to develop a job class specification and base salary recommendation. Agencies within the City's identified labor market were reviewed to determine if they have a comparable classification, including Alameda County, City of Concord, City of Fremont, City of Hayward, City of Oakland, City of Palo Alto, City of Richmond, City and County of San Francisco, City of San Jose, City of San Leandro, San Mateo County, and Santa Clara County. Santa Clara County has a different structure as it has its own hospital. Given that there are only a few cities within the State of California that have a Public Health function, none of the cities had a comparable classification.

In the absence of labor market data, internal alignment was reviewed to determine an appropriate salary based on organizational level, scope, complexity, and requirements. In reviewing the organizational chart, the position will report to the Manager of Public Health Services who has overall responsibility for managing the division; however, the Manager of Public Health Services is not a physician while the Medical Director is. The City currently has a Health Officer Certified classification that is responsible for enforcing local health orders and ordinances, regulations prescribed by the State Department of Health Services, and State statutes. The position reports to the Director of Health, Housing and Community Services and is required to be a licensed physician. With the Medical Director having a slightly narrower scope of responsibility, it is recommended that the salary for the classification be set 10% below the Public Health Officer Certified. The recommended hourly wage of \$90.41 – \$102.71 represents 10% below the salary of the Public Health Officer Certified job class specification.

The Personnel Board discussed and voted unanimously at its December 6, 2022 meeting to send this classification and salary to the City Council for approval (Motion to Approve: Dixon, Wenk; Vote: Bartlow, Lacey, Karpinski, Gilbert, O'Loughlin; Noes: None Abstains: None).

Classification and Salary: Medical Director

CONSENT CALENDAR  
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ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

It has been the policy of the City to create the necessary classification and salary schedule to accommodate new duties and responsibilities, reflect programmatic changes, maintain competitive salaries and, when applicable, comply with regulatory requirements.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807

Attachments:

1. Resolution
2. Organizational Chart – Department of Health, Housing and Community Services (HHCS)
3. Medical Director Classification

Classification and Salary: Medical Director

CONSENT CALENDAR  
January 17, 2023

RESOLUTION NO. xxxxx - N.S.

CLASSIFICATION: MEDICAL DIRECTOR

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

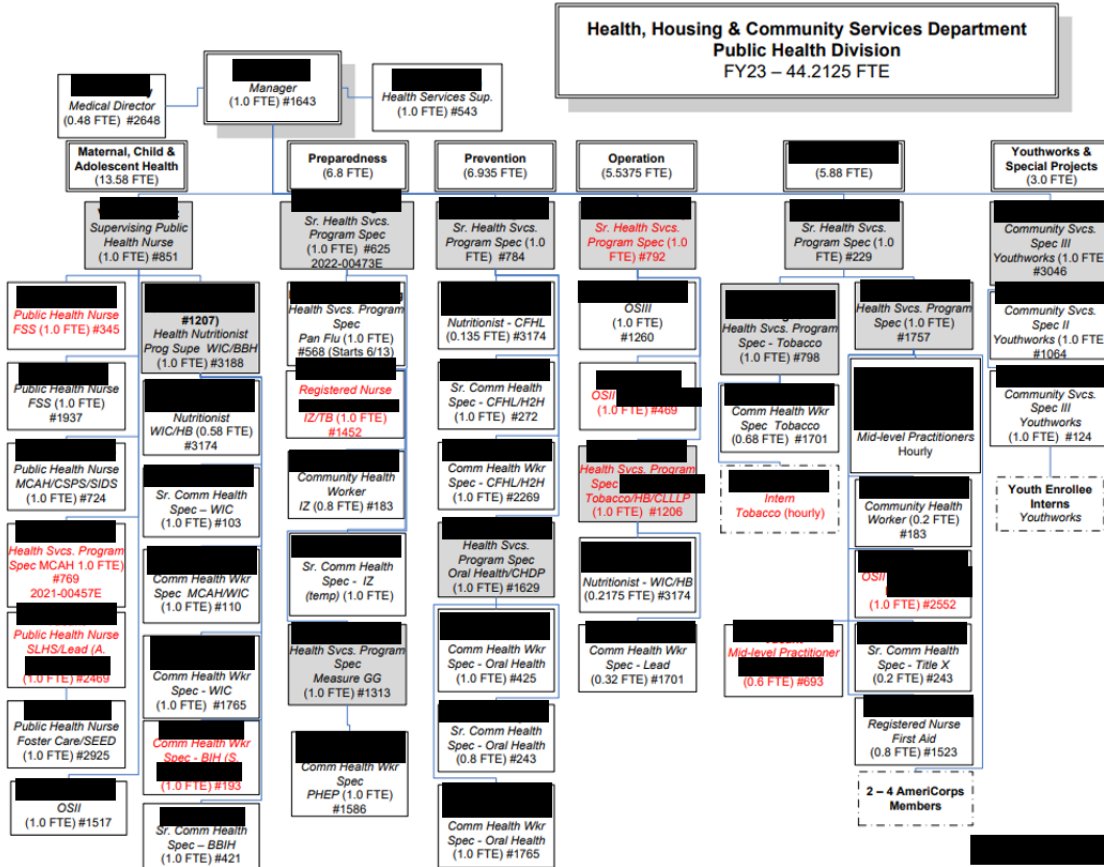
WHEREAS, the Human Resources Department has completed a classification review and recommended Medical Director;

WHEREAS, the Personnel Board recommended on December 6, 2022 to revise the Medical Director job class specification and salary range exempt from the overtime provisions of the Fair Labor Standards Act (FLSA), effective December 6, 2022;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Classification for Medical Director is established, with a monthly salary range of \$15,671.76 – 17,802.72 and classification specification, effective January 17, 2023.



**Attachment 2: Organizational Chart – Department of Health, Housing and Community Services (HHCS)**



Classification and Salary: Medical Director

CONSENT CALENDAR  
January 17, 2023

**Attachment 3: Medical Director Job Class Specification**



Human Resources

**MEDICAL DIRECTOR**

**SALARY RANGE**

\$90.41 – \$102.71 Hourly  
\$7,233.12 – \$8,216.64 Bi-weekly  
\$15,671.76 – 17,802.72 Monthly  
\$188,061.12 – \$213,632.64 Annually

**DEFINITION**

Under direction, to provide medical oversight for the clinical operations of the Public Health Division; to coordinate activities with City departments and outside agencies; and to provide highly responsible and complex support to the Director of Health, Housing and Community Services.

**CLASS CHARACTERISTICS**

This is a single-position clinical management classification. The Medical Director's duties are clinical and highly complex in nature, involving highly technical functions to support medical consultation. The incumbent has broad authority for the day-to-day clinical practices of the Public Health Division.

**EXAMPLES OF DUTIES**

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification or is similar or closely related to another duty statement.

1. Develop, plan and implement clinical goals and objectives that are aligned with programmatic goals and objectives; recommend and administer policies and procedures;
2. Coordinate division's clinical activities with those of other departments and outside agencies and organizations; prepare and present staff reports and other necessary correspondence;

Classification and Salary: Medical Director

CONSENT CALENDAR  
January 17, 2023

3. Participate in the development of the division's work plan; assign clinical work activities, projects and programs; monitor work flow; review and evaluate work products, methods and procedures;
4. Assist in the selection, training, motivation and evaluation of personnel; provide or coordinate staff training; assist in conducting performance evaluations; assist in implementing discipline procedures; maintain discipline and high standards necessary for the efficient and professional operation of the division;
5. Represent the division to outside groups and organizations; participate in outside community and professional groups and committees; provide technical assistance as necessary;
6. Provide timely medical consultations, back-up by phone and email, and clinical training and assistance for Mid-Level Practitioners, Public Health Nurses, Registered Nurses and Program Managers during clinic/program operations;
7. Develop, approve, and monitor medical protocols for medical staff;
8. Serve as the Medical Director for various public health programs as needed, including signing certification statement of compliance to state and federal provisions.
9. In consultation with the Berkeley High School Health Center (BHS HC) Clinic Director or Program Managers, ensure implementation and adherence to medical protocols and procedures as well as any pertinent clinic policies;
10. Provide oversight in the clinical aspects of Continuous Quality Improvement for clinical staff at the various Program sites;
11. In collaboration with Program Managers, participate in clinical implications or impacts of administrative management decision-making;
12. Collaborate with Program Managers and clinical staff to ensure the accuracy of clinical medical records;
13. May conduct medical and physical examinations, make diagnoses, and prescribe and administer treatments and medications, when needed;
14. Provide medical doctor (MD) license information, sign off on all applicable licenses and certificates, and standing orders;
15. Build and maintain positive working relationships with co-workers, other employees and the public using principles of good customer service;
16. Perform related duties as assigned.

**KNOWLEDGE AND ABILITIES:**

Note: The level and scope of the knowledges and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Medical science and its application;
2. Environmental and Public Health medical science and its application;
3. Federal, State and local laws governing public health, medical care, environmental health and pollution control;
4. Principles and practices of public health, including current trends in policy, treatment, prevention, education and related issues;
5. General medical practices of public health clinics;

Classification and Salary: Medical Director

CONSENT CALENDAR  
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6. Effective public and community relations;
7. Principles and practices of leadership, motivation, team building and conflict resolution;
8. Pertinent local, State and Federal laws, rules and regulations;
9. Organizational and management practices as applied to the analysis and evaluation of programs, policies and operational needs;
10. Principles and practices of organization, administration and personnel management;
11. Principles and practices of budget preparation and administration;
12. Principles of supervision, training and performance evaluation;
13. Public relations practices and techniques; public speaking;
14. Research methods; report writing techniques; statistical concepts and methods; principles and techniques of project management.

Ability to:

1. Providing sound medical direction representing several different professional disciplines;
2. Working with County, State, Federal, and local government officials in the establishment of coordinated and effective program of services to health clients;
3. Develop and implement division clinical policies and procedures;
4. Gain cooperation through discussion and collaboration;
5. Interpret and apply City policies, procedures, rules and regulations;
6. Supervise, train and evaluate assigned staff;
7. Meet critical deadlines; make decisions under pressure;
8. Prepare and give effective public presentations;
9. Prepare and present complex narrative and statistical reports, correspondence, and other documents;
10. Communicate clearly and concisely, both orally and in writing;
11. Operate and use modern office equipment including computers and applicable software;
12. Establish and maintain effective working relationships with those contacted in the course of work.

#### **MINIMUM QUALIFICATIONS:**

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to a Doctorate of Medicine from an accredited medical college or university and five years of increasingly responsible experience in the practices of clinical medicine, including completion of an accredited residency in an applicable field and two years of experience as a licensed Physician working in a specialty area such as disease control and adult health or maternal and child health. A degree in Public Health, experience in working with community groups, and Board Certification in a Medical Specialty relevant to public health, such as family medicine, pediatrics, or preventive medicine, are desirable.

Classification and Salary: Medical Director

CONSENT CALENDAR  
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**OTHER REQUIREMENTS:**

Must be able to travel to various locations within and outside the City of Berkeley to meet program needs and to fulfill the job responsibilities. When driving on City business, the incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

**Classification History**

|                         |                  |
|-------------------------|------------------|
| Title:                  | Medical Director |
| Class Code:             | TBD              |
| Established:            | January 17, 2023 |
| Revised:                | N/A              |
| FLSA Status:            | Exempt           |
| Admin Leave / Overtime: | Admin Leave      |
| Representation Unit:    | Z-1              |
| Probationary Period:    | 12 Months        |
| Workers' Comp Code:     | 8810             |





Office of the City Manager

CONSENT CALENDAR  
January 17, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kevin Fong, Director, Department of Information Technology  
 Subject: Contract: Presidio for Micro-Segmentation

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to award a contract to Presidio for implementing micro-segmentation for a total not to exceed amount of \$822,512, from January 18, 2023 to June 30, 2028.

FISCAL IMPACTS OF RECOMMENDATION

Funding for procurement and implementation of micro-segmentation in the amount of \$320,412.00 is allocated within Fiscal Year (FY) 2023 in the Department of Information Technology’s General Funds as outlined below and any future expenditures are subject to Council approval of the proposed citywide budget and Annual Appropriations Ordinances.

| FY 2023             | Description                                 | Funding Source                                                           |
|---------------------|---------------------------------------------|--------------------------------------------------------------------------|
| \$203,400.00        | Professional Services                       | IT Gen Funds (011), IT Dept, Security                                    |
| \$94,502.00         | Illumio software subscription (year 1 of 5) | IT Gen Funds (011), IT Dept, Security                                    |
| \$17,010.00         | Illumio maintenance & support (year 1 of 5) | IT Gen Funds (011), IT Dept, Security                                    |
| \$5,500.00          | Illumio training                            | 011-35-363-380-0000-000-412-612990-IT Gen Funds (011), IT Dept, Security |
| <b>\$320,412.00</b> | <b>FY2023 Subtotal</b>                      |                                                                          |

| FY 2024-27          | Description                                  | Funding Source                         |
|---------------------|----------------------------------------------|----------------------------------------|
| \$425,510.00        | Professional Services (years 2 thru 5)       | IT Cost Alloc (680), IT Dept, Security |
| \$76,590.00         | Illumio maintenance & support (yrs 2 thru 5) | IT Cost Alloc (680), IT Dept, Security |
| <b>\$502,100.00</b> | <b>FY2024-2027 Subtotal</b>                  |                                        |

|                     |                                              |
|---------------------|----------------------------------------------|
| <b>\$822,512.00</b> | <b>Total FY2023-2027 Not To Exceed Value</b> |
|---------------------|----------------------------------------------|

CURRENT SITUATION AND ITS EFFECTS

The City’s ‘As-Is’ Cyber-Resilience Assessment evaluated the likelihood of an attack succeeding as “High” and our ability to contain it as “Low.” The consequences of such a successful attack was identified as potentially “Critical” (meaning the City could suffer severe to catastrophic losses in its capacity to operate as well as deliver services to our community).

The City currently utilizes a traditional network perimeter security more commonly known as firewalls. Today however, many attacks are also coming from inside the firewall so security experts have recognized that the traditional “seal the perimeter” methodology is obsolete or inadequate. We can no longer simply watch the border; we must secure from within the system as well.

The contemporary solution is to implement micro-segmentation which is about protecting what’s inside our network from attacks that could already be inside. The concept is simple; we segment parts of our data center away from the rest of the network, which keeps our network protected. Even if an attacker was to be inside our network, they wouldn’t be able to steal much data or cause critical damage as they would be limited within a segment, unable to make any moves to elsewhere in the network.

With micro-segmentation, individual users can safely access the data they need to do their job from anywhere (on-site or remotely), anytime, and from any device without risking the loss or exposure of data.

#### BACKGROUND

In late 2018, the City began development of its Cyber Resilience Plan (CRP) to help ensure the City is sufficiently and prudently equipped to handle cyberattacks and to help the City mitigate the effects of a successful cyberattack, should one occur. Micro-segmentation was identified as a risk area to address.

In May 2022, the City of Berkeley issued RFP No. 22-11501-C for Micro-Segmentation Solutions. The City received five (5) proposals from top vendors in micro-segmentation. The Department of Information Technology conducted extensive research based on its architectural vision, defined technical prerequisites, needed solution requirements and capabilities, conversion and operational resource needs, potential vendors, and anticipated benefits to be realized. Department of Information Technology staff also consulted with other local governments that had implemented a similar contemporary security architecture. After extensive review of the proposals received, staff determined that Presidio, presenting the Illumio solution, provided the strongest bid for the City’s micro-segmentation project.

Micro-segmentation aligns with the City’s adopted Strategic Plan goals of creating a resilient, safe, connected, and prepared City and providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Both Presidio and Illumio are located in the Bay Area and all professional service technical staff will be local and available to work at all City sites. Additionally, delivery of some professional services may be conducted remotely, eliminating the need for travel to Berkeley and thus further reducing greenhouse gas emissions from commuting. This resolution continues to support the goals of environmental sustainability.



RATIONALE FOR RECOMMENDATION

In May 2022, the City of Berkeley issued RFP No. 22-11501-C for Micro-Segmentation Solutions. The City received five (5) proposals from top vendors in micro-segmentation. After extensive review of the proposals received, Department of Information Technology staff determined that Presidio, presenting the Illumio solution, provided the strongest bid for the City’s Micro-Segmentation Project.

The City has an existing work relationship with Presidio for networking procurements and implementations, and Presidio presented to the City the micro-segmentation solution by Illumio, a top tier vendor in this space. The bid and solution were selected based on their price, technical and market leadership, implementation details, and the evaluated combined reputations and credibility of both Presidio and Illumio.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered not moving forward with implementing micro-segmentation and continuing with implementing network segmentation using switches and firewalls, but this approach can only provide limited visibility and few capabilities to contain an attacker’s movement within the City’s computer network. Micro-segmentation can be used to protect every virtual machine in our enterprise network with policy-driven, application-level security controls. Because security policies are applied at an application level, micro-segmentation tactics can significantly increase our security defense posture.

CONTACT PERSON

Kevin Fong, Director, Department of Information Technology, 981-6541

Attachments:  
1: Resolution

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

CONTRACT: PRESIDIO FOR MICRO-SEGMENTATION SOLUTIONS

WHEREAS the City seeks to obtain the critical Information Technology capabilities of visibility and a cyber-resilience for its infrastructure, systems, business applications; and

WHEREAS in May 2022, the City issued a Request for Proposals (RFP) for Micro-Segmentation Solutions (Specification No. 22-11501-C) and received five (5) qualifying bids; and

WHEREAS the RFP review committee evaluated each proposal and determined that the proposal from Presidio specifying Illumio best met the City's operational, technological, and fiscal requirements; and

WHEREAS funding for professional services, training, maintenance and support services in the amount of \$320,412.00 is allocated within Fiscal Year (FY) 2023 in the Department of Information Technology's IT General funds; and spending in future fiscal years is subject to Council approval of the proposed citywide budget and annual appropriation ordinances; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to award the contract to Presidio, for implementing Illumio's micro-segmentation solution for a total not to exceed amount of \$822,512, from January 18, 2023 to June 30, 2028.



Office of City Manager

CONSENT CALENDAR

January 17, 2023

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: Bay Area Hispano Institute for Advancement (BAHIA) at building 1718 8<sup>th</sup> Street, at James Kenney Park

RECOMMENDATION:

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Bay Area Hispano Institute for Advancement (BAHIA) to use the building at 1718 8<sup>th</sup> Street, adjacent to James Kenney Community Center, in James Kenney Park for a 15-year lease term anticipated to begin March 1, 2023 and ending February 1, 2038, with one 5-year option to renew.

FISCAL IMPACTS OF THE RECOMMENDATION

BAHIA will pay an annual rent of \$6,000, escalating by 3% per year. The total lease revenue is \$111,593. In addition, they will be responsible for completing capital improvements valued at \$219,000 and ongoing maintenance described in Exhibit "B" of the lease. Lease revenue will be deposited in Parks Tax Fund, Budget Code 450-5801-363.10-04.

CURRENT SITUATION AND ITS EFFECTS

BAHIA began leasing the space at James Kenney in 1979, and extended several times since then. The lease was most recently renewed in 2012 with a 5-year lease, and a 5-year option to renew, which expired this year and is now in holdover status.

The new lease would secure BAHIA's tenancy to 2038, with an option to renew to 2043. The premises shall continue to be used for a childcare development center.

The key terms include the following:

- 15-year term with a 5-year option to renew.
- Annual rent of \$6,000, escalating by 3% per year. This will cover the utility costs at the Bahia building, which is fed by the utility meter at the James Kenney Community Center building.
- BAHIA agrees to perform all improvements described in the City's Schedule of Improvements, estimated to be \$219,000 (see Exhibit "B").

Lease Agreement: BAHIA for the property at 1718 8<sup>th</sup> Street  
James Kenney Park

CONSENT CALENDAR  
January 17, 2023

- BAHIA agrees to perform all maintenance to keep building in good repair (see Exhibit “B”).

### BACKGROUND

BAHIA operates two Spanish bilingual programs at the James Kenney site: an afterschool program for 65 youth participants, ages 5-10; and a preschool program for 24 children, ages 3-4.

In 2017, the City completed a comprehensive seismic renovation at both James Kenney and BAHIA buildings using funds from Measure WW, Measure F and FEMA.

### RATIONALE FOR RECOMMENDATION

The proposed lease offers the following benefits to the City:

- BAHIA has been a good steward for the building at James Kenney Park for over 40 years.
- The proposed use will continue to provide families dual language childcare in Northwest Berkeley.

### CONTACT PERSON

Scott Ferris, Director, PRW, 981-6711

Christina Erickson, Deputy Director, PRW, 981-6703

Mollica Sokhom, Assistant Management Analyst, PRW, 981-6706

Attachments:

1: Ordinance

Exhibit A: Lease Agreement

Exhibit B: Schedule of Improvements and Maintenance

ORDINANCE NO. -N.S.

LEASE AGREEMENT WITH BAHIA TO USE CITY PROPERTY LOCATED AT  
1718 8<sup>th</sup> STREET IN JAMES KENNEY PARK

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

Section 1. The City Manager, or her designee, is hereby authorized to execute a lease agreement with BAHIA with a lease term beginning on March 1, 2023, ending February 1, 2038. The estimated revenue is \$111,593. 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 Parks Tax Fund in a specific revenue account (Budget Code 450-5801-363.10-04) and used to maintain public facilities in James Kenney 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 the Maudelle Shirek Building, 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

Exhibit B: Schedule of Improvements and Maintenance

**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

BAY AREA HISPANO INSTITUTE FOR ADVANCEMENT (BAHIA) INC.

as Tenant.

For the Property at  
1718 8<sup>th</sup> Street  
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) 981-6706  
Email: parks@cityofberkeley.info
- 2. Tenant: Bay Area Hispano Institute for Advancement (BAHIA) Inc.
- 3. Tenant Trade Name: Bay Area Hispano Institute for Advancement Inc.
- 4. Effective Date: March 1, 2023
- 5. Premises: One building (as depicted in Exhibit “A”) located at 1718 8<sup>th</sup> Street, the outdoor gated play area and garden area, and non-exclusive rights to the common area (outdoor sidewalk area by the front door, as shown on the map attached hereto as Exhibits “A”).
- 6. Permitted Uses: The Premises shall be used by Tenant for the purpose of operating a child care and development center.
- 7. Initial Term: Fifteen (15) year(s), commencing as of March 1, 2023 (“**Commencement Date**”).
- 8. Option Period: Five (5) years.
- 9. Base Rent: \$6,000 per year with 3% increase annually.
- 10. Improvements Tenant will invest approx. \$219,000 in capital improvements. This includes adding a gate entry at the northeast side of the Premises, ADA access to the loft area, ADA improvements to reading room/amphitheater, repair fence fabric around exterior play area, repaint interior and exterior, and replace roof.
- 11. Maintenance Tenant commits to ongoing maintenance, including landscaping, trees, graffiti abatement, pest control, and maintenance of plumbing, electrical, roof/gutters, and building systems.
- 12. Services Base rent includes the cost of utility charges and services, including water, gas, electrical, and sewer. Tenant will make all arrangements and pay for refuse collection and telephone service.

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 BAY AREA HISPANO INSTITUTE FOR ADVANCEMENT, Inc. ("BAHIA"), a non-profit organization doing business at 1718 8<sup>th</sup> Street, 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.

F. "Premises" shall mean the building located at 1718 8th Street (approximately 4,500 sq. ft.), the outdoor gated play area and garden area (approximately 3,700 sq. ft.) and non-exclusive rights to the common area (outdoor sidewalk area by the front door (approximately 1,600 sq. ft.) as shown on the map attached hereto as Exhibits "A". The Tenant understands that the building is adjacent to the James Kenney Community Center and on the grounds of James Kenney Park which provide recreational services to children and adults of all ages. Prior to using the common area for special events only, the Tenant agrees to provide at least thirty (30) days' written notice of intent to use James Kenney Park, site coordinator and recreation manager to ensure that there are no other conflicting uses of the space. The Tenant agrees to cooperate with users of the Community Center and Park in use of the common area for ingress and egress. No items will be allowed to be stored within the common area. Items not related to the Tenants' program shall not be stored on the Premises at any time.

**2. TERM**

A. "Initial Term and Term of Renewal. The initial term is for a period of approximately fifteen 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 February 28, 2038 (“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 **SIX THOUSAND DOLLARS (\$6000.00)** for the first year of the Lease, increasing by 3% for each subsequent year of the original term and any option term. For purposes of determining Rent, the first year of the Lease is the period up to February 28, 2024 and will be pro-rated for a partial year.

B. 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.

C. 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.

D. 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 C.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

A. The Premises shall be used by Tenant for the purpose of operating a child care and development center. Tenant may add new program activities with written approval from the City 30 days prior to commencement and such permission will not be unreasonably withheld so long as the programs held on the Premises focus on child care and development.

B. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and any local, state or federal laws or regulations or the standards promulgated by Landlord.

C. Tenant understands the leased Premises are adjacent to James Kenney Community Center and on the grounds of James Kenney Park. At all times, Tenant agrees to provide adequate personnel to ensure the safe and efficient management of its use of the leased Premises Tenant must comply with all applicable regulations governing the use of James Kenney Park.

D. Tenant will comply with all applicable safety standards in effect at any given time, and take all necessary steps to ensure that its participants are properly supervised to prevent injury to participants and others. Tenant will provide adequate supervision of the participants at all times while using the Premises.

E. Landlord shall have no responsibility for Tenant's equipment that may be lost, stolen, or damaged.

F. Tenant agrees to require its employees, participants, and visitors who use the Premises and to abide by standards of behavior common to general park use.

G. Business may be conducted with the public on the Premises at any time on any

day that James Kenney Park is open to the public, provided that Tenant shall have obtained all required permits and provided Tenant shall comply with all rules applicable to James Kenney Park.

H. Tenant agrees to cooperate with the City in promoting community participation in Tenant's programs and activities held at James Kenney Park.

I. Tenant shall not, without the written consent of Landlord:

1. place, construct or maintain in, on, or about the Premises or within James Kenney 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 vending machines, newspaper racks or other coin operated devices.

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;

5. portable signs or other devices to be stored or to remain on the Premises;

6. use or permit any portion of the Premises to be used as living or sleeping quarters; and

7. sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of James Kenney Park.

J. 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 James Kenney 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 James Kenney 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 James Kenney Park which increases the existing rate of such insurance upon James Kenney 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 James Kenney 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.

K. 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.

L. 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.

M. 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 James Kenney 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.

## **6. USE OF JAMES KENNEY 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 James Kenney Park.

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 James Kenney 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 James Kenney Park (other than the Building) 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 James Kenney 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 James Kenney Park, including without limitation, the right to lease, license or permit the use of space within James Kenney 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 property of Tenant's members, 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 those using the Premises pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for James Kenney 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 James Kenney 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 environment of James Kenney Park.

G. Tenant shall not interfere with the free and unobstructed access by the public to James Kenney Park. Tenant shall not preclude other users of James Kenney Park from exercising a different use without first obtaining any and all appropriate permits.

H. Landlord reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across 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. Tenant acknowledges that there is no separate meter for water, gas, electrical or sewer service provided to the Premises. Tenant understands that base rent includes the cost of these utility charges and services. Tenant shall make all arrangements and pay for refuse collection and telephone service, and all fees and periodic charges related thereto.

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 James Kenney 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 "B" that shall be completed by Tenant. Tenant shall complete the improvements within the timeframe as stated in Exhibit "B". 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 improvements listed in Exhibit "B". 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, 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 construction of any new buildings, or moving existing buildings onto the Premises, are all subject to the prior written approval of the Landlord (with the exception of the Exhibit "B" Improvements) and all improvements (including Exhibit "B" Improvements) are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.

E. Except for Exhibit "B" 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 "B" 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.

F 1. Tenant hereby agrees in accordance with the schedule set forth in Exhibit "B" to undertake and complete all of the recommended capital improvements.

2. Tenant understands the Premises were inspected by Disability Access Consultants LLC (DAC). Tenant acknowledges receipt of their findings and some of these are incorporated into planned improvements in Exhibit B. City makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Tenant's use of the Premises requires modifications or additions to the Premises in order to comply with the ADA or similar legislation, Tenant agrees to make any such necessary modifications and/or additions at Tenant'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 15-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 B 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 8. and shall be relieved of all other obligations under this Lease.

G. 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 James Kenney 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(s) on the Premises, and all leasehold improvements, including interior and exterior walls, floors, ceilings, plumbing and heating, 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(s), or other area in the Premises, whether required by deterioration or by operations of Tenant or otherwise. Subject to approval required by Section 9, the obligation under this section to maintain the building and improvements on the Premises, includes any repairs to the roof and the exterior siding.

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 James Kenney Park as may be designated by Landlord for pick-up and disposal by the Landlord.

E. Landlord shall maintain or cause to be maintained, at Landlord's expense, any street lighting.

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. Landlord has made no representations respecting the condition of the Building, the Premises, or James Kenney 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, James Kenney Park, 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 James Kenney 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. 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 items listed on Exhibit "B". 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 James Kenney 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 James Kenney 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 Section.

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 James Kenney 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 Section 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 James Kenney 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 James Kenney Park 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 terms. Failure to perform any of the obligations and improvements listed on Exhibit "B", 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 Sections 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 James Kenney 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 James Kenney 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 James Kenney 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 James Kenney 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 James Kenney 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 **ONE HUNDRED DOLLARS (\$100)**, 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 James Kenney 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:** BAHIA  
1718 8<sup>th</sup> Street  
Berkeley, CA 94710

**To Landlord:** Parks, Recreation & Waterfront  
City of Berkeley  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

**With copy to:** City Manager  
City of Berkeley  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

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 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, 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 Section 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 Section 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 and B, 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:  
BAY AREA HISPANO INSTITUTE FOR ADVANCEMENT (BAHIA) INC.  
A non-profit organization

By: \_\_\_\_\_  
Martha Melgoza, 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"

- Leased Premises:
- Lease building
  - Leased exterior - outdoor fenced play area
  - non-exclusive use, common area shared with James Kenney Park



## Exhibit "B"

## Schedule of Improvements and Maintenance 2023-2038

## BAHIA Inc.

| Date            | What/Location                   | Description                                                                                    | Estimated Cost    |
|-----------------|---------------------------------|------------------------------------------------------------------------------------------------|-------------------|
| 2023            | Fence around exterior play area | Repair fence fabric                                                                            | \$ 10,000         |
| 2024            | Gate entry                      | Adding gate entry at the northeast side of the Premises, between the Premises and the sidewalk | \$ 25,000         |
| 2028            | Exterior building               | Repaint by year 5                                                                              | \$ 20,000         |
| 2028            | Reading room stairs/room        | ADA improvements to amphitheater/reading room                                                  | \$ 22,000         |
| 2028            | Electrical                      | Comprehensive inspection with an electrician and make repairs as recommended.                  | \$ 10,000         |
| 2038            | Exterior building               | Repaint by year 15                                                                             | \$ 20,000         |
| 2038            | Electrical                      | Comprehensive inspection with an electrician and make repairs as recommended.                  | \$ 10,000         |
| by 2038         | Stairs to loft area             | ADA access to loft area                                                                        | \$ 32,000         |
| by 2038         | Roof                            | Replace roof                                                                                   | \$ 70,000         |
| <b>TOTAL \$</b> |                                 |                                                                                                | <b>219,000.00</b> |

## Preventative Maintenance

| Frequency     | What/Location               | Description                                                                                                           |
|---------------|-----------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Quarterly     | Stairs & Railings           | Make sure that they are not loose                                                                                     |
| Yearly        | General Building & Interior | Test smoke and carbon monoxide detectors and change batteries                                                         |
| Monthly       | Interior Lights             | Check condition and look for any that might be broken, replaced bulbs as needed                                       |
| Monthly       | General Building & Interior | Conduct routine pest inspections and treatments                                                                       |
| Monthly       | Exterior Windows            | Check condition and look for any that might be broken                                                                 |
| Yearly (Fall) | Roof & Gutters              | Clean debris from roof and gutters. Check condition of roof                                                           |
| Ongoing       | Painting                    | Check for condition of exterior/interior paint or siding                                                              |
| Ongoing       | Painting                    | Graffiti abatement as needed                                                                                          |
| Yearly        | Electrical                  | Look for loose wires or fixtures. You will want to schedule a more comprehensive inspection with an electrician.      |
| Monthly       | Plumbing                    | Check for leaks, signs of water damage and loose fixtures. You will want a more complete inspection with a plumber.   |
| Yearly        | Heating & Cooling Systems   | Check gas water heater and gas furnace. Change furnace filter. Clear cobwebs and dust from furnace prior to starting. |
| Monthly       | Heating & Cooling Systems   | Check sump pump                                                                                                       |
| Ongoing       | Exterior Landscape          | Remove weeds, bamboo, or any other invasive plants growing beyond fenced area                                         |

**Exhibit "B"**

**Schedule of Improvements and Maintenance 2023-2038**

**BAHIA Inc.**

| <b>Date</b>     | <b>What/Location</b>            | <b>Description</b>                                                                             | <b>Estimated Cost</b> |
|-----------------|---------------------------------|------------------------------------------------------------------------------------------------|-----------------------|
| 2023            | Fence around exterior play area | Repair fence fabric                                                                            | \$ 10,000             |
| 2024            | Gate entry                      | Adding gate entry at the northeast side of the Premises, between the Premises and the sidewalk | \$ 25,000             |
| 2028            | Exterior building               | Repaint by year 5                                                                              | \$ 20,000             |
| 2028            | Reading room stairs/room        | ADA improvements to amphitheater/reading room                                                  | \$ 22,000             |
| 2028            | Electrical                      | Comprehensive inspection with an electrician and make repairs as recommended.                  | \$ 10,000             |
| 2038            | Exterior building               | Repaint by year 15                                                                             | \$ 20,000             |
| 2038            | Electrical                      | Comprehensive inspection with an electrician and make repairs as recommended.                  | \$ 10,000             |
| by 2038         | Stairs to loft area             | ADA access to loft area                                                                        | \$ 32,000             |
| by 2038         | Roof                            | Replace roof                                                                                   | \$ 70,000             |
| <b>TOTAL \$</b> |                                 |                                                                                                | <b>219,000.00</b>     |

**Preventative Maintenance**

| <b>Frequency</b> | <b>What/Location</b>        | <b>Description</b>                                                                                                    |
|------------------|-----------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Quarterly        | Stairs & Railings           | Make sure that they are not loose                                                                                     |
| Yearly           | General Building & Interior | Test smoke and carbon monoxide detectors and change batteries                                                         |
| Monthly          | Interior Lights             | Check condition and look for any that might be broken, replaced bulbs as needed                                       |
| Monthly          | General Building & Interior | Conduct routine pest inspections and treatments                                                                       |
| Monthly          | Exterior Windows            | Check condition and look for any that might be broken                                                                 |
| Yearly (Fall)    | Roof & Gutters              | Clean debris from roof and gutters. Check condition of roof                                                           |
| Ongoing          | Painting                    | Check for condition of exterior/interior paint or siding                                                              |
| Ongoing          | Painting                    | Graffiti abatement as needed                                                                                          |
| Yearly           | Electrical                  | Look for loose wires or fixtures. You will want to schedule a more comprehensive inspection with an electrician.      |
| Monthly          | Plumbing                    | Check for leaks, signs of water damage and loose fixtures. You will want a more complete inspection with a plumber.   |
| Yearly           | Heating & Cooling Systems   | Check gas water heater and gas furnace. Change furnace filter. Clear cobwebs and dust from furnace prior to starting. |
| Monthly          | Heating & Cooling Systems   | Check sump pump                                                                                                       |
| Ongoing          | Exterior Landscape          | Remove weeds, bamboo, or any other invasive plants growing beyond fenced area                                         |





Office of the Mayor

CONSENT CALENDAR  
January 17, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Support for SB 4: Affordable Housing on Faith Lands Act

RECOMMENDATION

Adopt a Resolution in support of Senate Bill 4 with amendments, the Affordable Housing on Faith Lands Act, introduced by Senator Scott Weiner. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assemblymember Buffy Wicks.

BACKGROUND

Development of new affordable housing is essential for meeting our goals of creating a more equitable and accessible city. In a 2020 community survey, 80% of respondents said that affordable housing and homeless services are either extremely or very important. Under the 2023-2031 Regional Housing Needs Allocation (RHNA) cycle, almost 9,000 units of housing is needed to be constructed in Berkeley, with almost 4,000 of those available to those at low and very low-income levels. Despite the need and desire to create affordable housing, restrictive zoning rules, bureaucratic regulations, and increased construction costs have made it increasingly difficult to identify and finance such development. Under the draft Housing Element for the City of Berkeley, infill developments will play a key role in meeting RHNA numbers.

A 2020 report by UC Berkeley's Terner Center for Housing Innovation revealed that around 38,800 acres of land in California, or an area slightly larger than the City of Oakland, is used for religious purposes and potentially developable. Much of this land is located in urban counties and areas the State had identified as high resource opportunity areas. There is a growing trend of religious institutions wanting to develop lots owned by them into affordable housing, but are often met with barriers that significantly limit the size and scope of such developments or makes it financially infeasible altogether.

SB 4, the Affordable Housing on Faith Lands Act, introduced by State Senator Scott Weiner, would streamline the building process for religious institutions and independent institutions of higher education that want to build 100% affordable housing on their land. Qualified proposals, as outlined in the bill, would be eligible for a use by right, and would require construction workers receive prevailing wages. However, to help increase opportunities for employment in the construction industry which is currently experiencing

shortages, the bill should be amended to include apprenticeship and training programs at such projects.

Berkeley is home to an extensive number of religious institutions, with multiple examples of such organizations providing land to create affordable housing. In 2022, Jordan Court opened, providing 34 units of affordable housing for seniors, in partnership with All Souls Episcopal Parish. Also in 2022, a vacant eight unit apartment was renovated and converted into permanently affordable housing under the Small Sites Program, in partnership with the McGee Avenue Baptist Church, which owns the property. Two other projects currently under development that involve partnerships with local religious institutions. St. Paul Terrace, which will provide 49 units at 30-60% AMI near Ashby BART, will be built on land owned by the St. Paul African Methodist Episcopal Church. Another South Berkeley development, the Ephesian Legacy Court will provide 79 one-bedroom units at 30-60% AMI on land owned by the Ephesian Church of God in Christ. These projects, many of which are infill developments would not have been able to go forward without significant support from the City, including funding from Measures O and U1 and zoning changes to enable these developments to move forward.

FINANCIAL IMPLICATIONS

Not applicable.

ENVIRONMENTAL SUSTAINABILITY

Creating infill housing developments, especially in areas near public transit, is a vital goal of the Berkeley Climate Action Plan, as it will help reduce greenhouse gas emissions from transportation, which remains a significant source of the City's emissions.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 4

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

IN SUPPORT OF SB 4 – THE AFFORDABLE HOUSING ON FAITH LANDS ACT

WHEREAS, development of new affordable housing is essential for meeting our goals of creating a more equitable and accessible city; and

WHEREAS, 38,800 acres of land across California, an area slightly larger than the City of Oakland, is used for religious purposes and potentially developable; and

WHEREAS, despite the need and desire to create affordable housing, restrictive zoning rules, bureaucratic regulations, and increased construction costs have made it increasingly difficult to identify and finance such development; and

WHEREAS, under the 2023-2031 Regional Housing Needs Allocation (RHNA) cycle, almost 9,000 units of housing is needed to be constructed in Berkeley, with almost 4,000 of those available to those at low and very low-income levels; and

WHEREAS, under the draft Housing Element for the City of Berkeley, infill developments will play a key role in meeting RHNA numbers; and

WHEREAS, Berkeley is home to many religious institutions, with multiple examples of such organizations providing land to create affordable housing with City support, with 42 units being created in 2022 and 128 units in the pipeline; and

WHEREAS, creating policies that streamline the creation of affordable housing on lots owned by religious institutions will make it easier to meet RHNA goals and create opportunities for low-income families to live in Berkeley; and

WHEREAS, SB 4, the Affordable Housing on Faith Lands Act, introduced by State Senator Scott Weiner, would streamline the building process for religious institutions and independent institutions of higher education that want to build 100% affordable housing on their land; and

WHEREAS, qualified proposals, as outlined in the bill, would be eligible for a use by right, and would require construction workers receive prevailing wages.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 4 with an amendment to include apprenticeship and training programs.

BE IT FURTHER RESOLVED that copies of the Resolution be sent to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assemblymember Buffy Wicks.

**SENATE BILL**

**No. 4**

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**Introduced by Senator Wiener**

(Principal coauthor: Assembly Member Wicks)

**(Coauthors: Senators Eggman and Gonzalez)**

(Coauthors: Assembly Members Gabriel, McKinnor, and Ward)

December 5, 2022

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An act to add Section 65913.16 to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as introduced, Wiener. Planning and zoning: housing development: higher education institutions and religious institutions.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development, and the development of certain lands outside its boundaries, that includes, among other mandatory elements, a housing element. That law allows a development proponent to submit an application for a development that is subject to a specified streamlined, ministerial approval process not subject to a conditional use permit, if the development satisfies certain objective planning standards.

Existing law, the Zenovich-Moscone-Chacon Housing and Home Finance Act, establishes the California Tax Credit Allocation Committee within the Department of Housing and Community Development. Existing law requires the committee to allocate state low-income housing tax credits in conformity with state and federal law that establishes a maximum rent that may be charged to a tenant for a project unit constructed using low-income housing tax credits.

This bill would require that a housing development project be a use by right upon the request of an applicant who submits an application for streamlined approval, on any land owned by an independent

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institution of higher education or religious institution on or before January 1, 2024, if the development satisfies specified criteria, including that the development is not adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use. The bill would define various terms for these purposes. Among other things, the bill would require that 100% of the units, exclusive of manager units, in a housing development project eligible for approval as a use by right under these provisions be affordable to lower income households, except that 20% of the units may be for moderate-income households, provided that all of the units are provided at affordable rent, as set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee, or affordable housing cost, as specified. The bill would authorize the development to include ancillary uses on the ground floor of the development, as specified.

This bill would specify that a housing development project that is eligible for approval as a use by right under the bill is also eligible for a density bonus or other incentives or concessions, except as specified. The bill would require a development subject to these provisions to provide off-street parking of up to one space per unit, unless a local ordinance provides for a lower standard of parking, in which case the ordinance applies. The bill would prohibit a local government from imposing any parking requirement on a development subject to these provisions if the development is located within one-half mile walking distance of a high-quality transit corridor or major transit stop, as those terms are defined, and within one block of a car share vehicle.

This bill would require a local government that determines a proposed development is in conflict with any objective planning standards, as specified, to provide the developer with written documentation explaining those conflicts under a specified timeframe. The bill would require a local government to approve a development if the local government fails to provide the requisite documentation explaining any conflicts. The bill would authorize a local government to conduct a design review, as described, only if the design review focuses on compliance with the requisite criteria of a streamlined, ministerial review process. The bill would prohibit a local government from using a design review, as specified, from inhibiting, chilling, or precluding a streamlined, ministerial approval. The bill would require a local government to issue a subsequent permit for developments approved under the provisions of this act.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA does not apply to the ministerial approval of projects.

This bill, by requiring approval of certain development projects as a use by right, would expand the exemption for ministerial approval of projects under CEQA.

By adding to the duties of local planning officials with respect to approving certain development projects, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 65913.16 is added to the Government
- 2 Code, to read:
- 3 65913.16. (a) For purposes of this section:
- 4 (1) "Applicant" means a qualified developer who submits an
- 5 application for streamlined approval pursuant to this section.
- 6 (2) "Independent institution of higher education" has the same
- 7 meaning as defined in Section 66010 of the Education Code.
- 8 (3) "Local government" means a city, county, or city and county,
- 9 whether general law or chartered.

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1 (4) “Qualified developer” means any of the following:

2 (A) A local public entity, as defined in Section 50079 of the  
3 Health and Safety Code.

4 (B) (i) A developer that is a nonprofit corporation, a limited  
5 partnership in which the managing general partner is a nonprofit  
6 corporation, or a limited liability company in which the managing  
7 member is a nonprofit corporation.

8 (ii) The developer, at the time of submission of an application  
9 for development pursuant to this section, owns or manages housing  
10 units located on property that is exempt from taxation pursuant to  
11 the welfare exemption established in subdivision (a) of Section  
12 214 of the Revenue and Taxation Code.

13 (C) A developer that contracts with a nonprofit corporation that  
14 has received a welfare exemption under Section 214.15 of the  
15 Revenue and Taxation Code for properties intended to be sold to  
16 low-income families with financing in the form of zero interest  
17 rate loans.

18 (5) “Religious institution” means an institution owned,  
19 controlled, and operated and maintained by a bona fide church,  
20 religious denomination, or religious organization composed of  
21 multidenominational members of the same well-recognized  
22 religion, lawfully operating as a nonprofit religious corporation  
23 pursuant to Part 4 (commencing with Section 9110) of Division 2  
24 of Title 1 of the Corporations Code.

25 (6) “Use by right” means that the local government’s review of  
26 the development project under this section may not require a  
27 conditional use permit, planned unit development permit, or other  
28 discretionary local government review or approval that would  
29 constitute a “project” for purposes of Division 13 (commencing  
30 with Section 21000) of the Public Resources Code. Any subdivision  
31 of the sites shall be subject to all laws, including, but not limited  
32 to, the local government ordinance implementing the Subdivision  
33 Map Act (Division 2 (commencing with Section 66410)).

34 (b) Notwithstanding any inconsistent provision of a local  
35 government’s general plan, specific plan, zoning ordinance, or  
36 regulation, upon the request of an applicant, a housing development  
37 project shall be a use by right, if all of the following criteria are  
38 satisfied:

39 (1) The development is located on land owned on or before  
40 January 1, 2024, by an independent institution of higher education

1 or a religious institution, including ownership through an affiliated  
2 nonprofit public benefit corporation organized pursuant to the  
3 Nonprofit Corporation Law (Part 2 (commencing with Section  
4 5110) of Division 2 of Title 1 of the Corporations Code).

5 (2) The development is located on a parcel that satisfies the  
6 requirements specified in subparagraphs (A) and (B) of paragraph  
7 (2) of subdivision (a) of Section 65913.4.

8 (3) The development is located on a parcel that satisfies the  
9 requirements specified in subparagraphs (B) to (K), inclusive, of  
10 paragraph (6) of subdivision (a) of Section 65913.4.

11 (4) The development is located on a parcel that satisfies the  
12 requirements specified in paragraph (7) of subdivision (a) of  
13 Section 65913.4.

14 (5) The development is not adjoined to any site where more  
15 than one-third of the square footage on the site is dedicated to  
16 industrial use. For purposes of this subdivision, parcels separated  
17 by only a street or highway shall be considered to be adjoined.

18 (6) The development project is located on a site that is  
19 one-quarter acre in size or greater.

20 (7) One hundred percent of the development project’s total units,  
21 exclusive of a manager’s unit or units, are for lower income  
22 households, as defined by Section 50079.5 of the Health and Safety  
23 Code, except that up to 20 percent of the total units in the  
24 development may be for moderate-income households, as defined  
25 in Section 50053 of the Health and Safety Code. Units in the  
26 development shall be offered at affordable housing cost, as defined  
27 in Section 50052.5 of the Health and Safety Code, or at affordable  
28 rent, as set in an amount consistent with the rent limits established  
29 by the California Tax Credit Allocation Committee. The rent or  
30 sales price for a moderate-income unit shall also be at least 20  
31 percent below the market rate for a unit of similar size and bedroom  
32 count in the same ZIP Code in the city, county, or city and county  
33 in which the housing development is located. The applicant shall  
34 provide the city, county, or city and county with evidence to  
35 establish that the units meet the requirements of this paragraph.  
36 All units, exclusive of any manager unit or units, shall be subject  
37 to a recorded deed restriction as provided in this paragraph for at  
38 least the following periods of time:

39 (A) Fifty-five years for units that are rented. However, the local  
40 government may require that the rental units in the housing



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1 development project be restricted to lower income and  
2 moderate-income households for a longer period of time if that  
3 restriction is consistent with all applicable regulatory requirements  
4 for state assistance.

5 (B) Forty-five years for units that are owner occupied. However,  
6 the local government may require that owner-occupied units in  
7 the housing development project be restricted to lower income and  
8 moderate-income households for a longer period of time if that  
9 restriction is consistent with all applicable regulatory requirements  
10 for state assistance.

11 (8) The development project complies with all objective  
12 development standards of the city or county that are not in conflict  
13 with this section.

14 (9) If the housing development project requires the demolition  
15 of existing residential dwelling units, the applicant shall comply  
16 with subdivision (d) of Section 66300, as that section read as of  
17 January 1, 2024.

18 (10) The applicant certifies to the local government that either  
19 of the following is true for the housing development project, as  
20 applicable:

21 (A) The entirety of the development project is a public work  
22 for purposes of Chapter 1 (commencing with Section 1720) of Part  
23 7 of Division 2 of the Labor Code.

24 (B) A development that contains more than 10 units and is not  
25 in its entirety a public work for purposes of Chapter 1 (commencing  
26 with Section 1720) of Part 7 of Division 2 of the Labor Code and  
27 approved by a local government pursuant to Article 2 (commencing  
28 with Section 65912.110) of, or Article 3 (commencing with Section  
29 65912.120) of, Chapter 4.1 shall be subject to all of the following:

30 (i) All construction workers employed in the execution of the  
31 development shall be paid at least the general prevailing rate of  
32 per diem wages for the type of work and geographic area, as  
33 determined by the Director of Industrial Relations pursuant to  
34 Sections 1773 and 1773.9 of the Labor Code, except that  
35 apprentices registered in programs provided by the Chief of the  
36 Division of Apprenticeship Standards may be paid at least the  
37 applicable apprentice prevailing rate.

38 (ii) The development proponent shall ensure that the prevailing  
39 wage requirement is included in all contracts for the performance

1 of the work for those portions of the development that are not a  
2 public work.

3 (iii) All contractors and subcontractors for those portions of the  
4 development that are not a public work shall comply with both of  
5 the following:

6 (I) Pay to all construction workers employed in the execution  
7 of the work at least the general prevailing rate of per diem wages,  
8 except that apprentices registered in the programs approved by the  
9 Chief of the Division of Apprenticeship Standards may be paid at  
10 least the applicable apprentice prevailing rate.

11 (II) Maintain and verify payroll records pursuant to Section  
12 1776 of the Labor Code and make those records available for  
13 inspection and copying as provided in that section. This  
14 subparagraph does not apply if all contractors and subcontractors  
15 performing work on the development are subject to a project labor  
16 agreement that requires the payment of prevailing wages to all  
17 construction workers employed in the execution of the development  
18 and provides for enforcement of that obligation through an  
19 arbitration procedure. For purposes of this subparagraph, “project  
20 labor agreement” has the same meaning as set forth in paragraph  
21 (1) of subdivision (b) of Section 2500 of the Public Contract Code.

22 (c) (1) The obligation of the contractors and subcontractors to  
23 pay prevailing wages pursuant to this section may be enforced by  
24 any of the following:

25 (A) The Labor Commissioner, through the issuance of a civil  
26 wage and penalty assessment pursuant to Section 1741 of the Labor  
27 Code, that may be reviewed pursuant to Section 1742 of the Labor  
28 Code, within 18 months after the completion of the development.

29 (B) An underpaid worker through an administrative complaint  
30 or civil action.

31 (C) A joint labor-management committee through a civil action  
32 pursuant to Section 1771.2 of the Labor Code.

33 (2) If a civil wage and penalty assessment is issued pursuant to  
34 this section, the contractor, subcontractor, and surety on a bond or  
35 bonds issued to secure the payment of wages covered by the  
36 assessment shall be liable for liquidated damages pursuant to  
37 Section 1742.1 of the Labor Code.

38 (3) This subdivision does not apply if all contractors and  
39 subcontractors performing work on the development are subject  
40 to a project labor agreement that requires the payment of prevailing

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1 wages to all construction workers employed in the execution of  
2 the development and provides for enforcement of that obligation  
3 through an arbitration procedure. For purposes of this subdivision,  
4 “project labor agreement” has the same meaning as set forth in  
5 paragraph (1) of subdivision (b) of Section 2500 of the Public  
6 Contract Code.

7 (d) Notwithstanding subdivision (c) of Section 1773.1 of the  
8 Labor Code, the requirement that employer payments not reduce  
9 the obligation to pay the hourly straight time or overtime wages  
10 found to be prevailing does not apply to those portions of a  
11 development that are not a public work if otherwise provided in a  
12 bona fide collective bargaining agreement covering the worker.

13 (e) The requirement of this section to pay at least the general  
14 prevailing rate of per diem wages does not preclude use of an  
15 alternative workweek schedule adopted pursuant to Section 511  
16 or 514 of the Labor Code.

17 (f) In addition to the requirements of Section 65912.130, a  
18 development of 50 or more housing units approved by a local  
19 government pursuant to Article 2 (commencing with Section  
20 65912.110) of, or Article 3 (commencing with Section 65912.120)  
21 of, Chapter 4.1 shall meet all of the following labor standards:

22 (1) The development proponent shall require in contracts with  
23 construction contractors and shall certify to the local government  
24 that each contractor of any tier who will employ construction craft  
25 employees or will let each subcontracts for at least 1,000 hours  
26 shall satisfy the requirements in paragraphs (2) and (3). A  
27 construction contractor is deemed in compliance with paragraphs  
28 (2) and (3) if it is signatory to a valid collective bargaining  
29 agreement that requires use of registered apprentices and  
30 expenditures on health care for employees and dependents.

31 (2) A contractor with construction craft employees shall either  
32 participate in an apprenticeship program approved by the Division  
33 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
34 Code, or request the dispatch of apprentices from a state-approved  
35 apprenticeship program under the terms and conditions set forth  
36 in Section 1777.5 of the Labor Code. A contractor without  
37 construction craft employees shall show a contractual obligation  
38 that its subcontractors comply with this subdivision.

39 (3) Each contractor with construction craft employees shall  
40 make health care expenditures for each employee in an amount

1 per hour worked on the development equivalent to at least the  
2 hourly pro rata cost of a Covered California Platinum-level plan  
3 for two 40 years of age and two dependents 0 to 14 years of age  
4 for the Covered California rating area in which the development  
5 is located. A contractor without craft employees shall show a  
6 contractual obligation that its subcontractors comply with this  
7 subdivision. Qualifying expenditures shall be credited toward  
8 compliance with prevailing wage payment requirements set forth  
9 in Section 65912.130.

10 (4) (A) The development proponent shall provide to the local  
11 government, on a monthly basis while its construction contracts  
12 on the development are being performed, a report demonstrating  
13 compliance with paragraphs (2) and (3). The report shall be  
14 considered public records under the California Public Records Act  
15 (Division 10 (commencing with Section 7920.000) of Title 1), and  
16 shall be open to public inspection.

17 (B) A development proponent that fails to provide the monthly  
18 report shall be subject to a civil penalty for each month for which  
19 the report has not been provided, in the amount of 10 percent of  
20 the dollar value of construction work performed by that contractor  
21 on the development in the month in question, up to a maximum  
22 of ten thousand dollars (\$10,000). Any contractor or subcontractor  
23 that fails to comply with paragraph (2) or (3) shall be subject to a  
24 civil penalty of two hundred dollars (\$200) per day for each worker  
25 employed in contravention of paragraph (2) or (3).

26 (C) Penalties may be assessed by the Labor Commissioner  
27 within 18 months of completion of the development using the  
28 procedures for issuance of civil wage and penalty assessments  
29 specified in Section 1741 of the Labor Code, and may be reviewed  
30 pursuant to Section 1742 of the Labor Code. Penalties shall be  
31 deposited in the State Public Works Enforcement Fund established  
32 pursuant to Section 1771.3 of the Labor Code.

33 (5) Each construction contractor shall maintain and verify  
34 payroll records pursuant to Section 1776 of the Labor Code. Each  
35 construction contractor shall submit payroll records directly to the  
36 Labor Commissioner at least monthly in a format prescribed by  
37 the Labor Commissioner in accordance with subparagraph (A) of  
38 paragraph (3) of subdivision (a) of Section 1771.4 of the Labor  
39 Code. The records shall include a statement of fringe benefits.  
40 Upon request by a joint labor-management cooperation committee

1 established pursuant to the federal Labor Management Cooperation  
2 Act of 1978 (29 U.S.C. Sec. 175a), the records shall be provided  
3 pursuant to subdivision (e) of Section 1776 of the Labor Code.

4 (6) All construction contractors shall report any change in  
5 apprenticeship program participation or health care expenditures  
6 to the local government within 10 business days, and shall reflect  
7 those changes on the monthly report. The reports shall be  
8 considered public records pursuant to the California Public Records  
9 Act (Division 10 (commencing with Section 7920.000 of Title 1))  
10 and shall be open to public inspection.

11 (7) A joint labor-management cooperation committee established  
12 pursuant to the federal Labor Management Cooperation Act of  
13 1978 (29 U.S.C. Sec. 175a) shall have standing to sue a  
14 construction contractor for failure to make health care expenditures  
15 pursuant to subdivision (c) in accordance with Section 218.7 or  
16 218.8 of the Labor Code.

17 (g) Notwithstanding any other provision of this section, a  
18 development project that is eligible for approval as a use by right  
19 pursuant to this section may include the following ancillary uses,  
20 provided that those uses are limited to the ground floor of the  
21 development:

22 (1) In a single-family residential zone, ancillary uses shall be  
23 limited to uses that provide direct services to the residents of the  
24 development and have a community benefit, including childcare  
25 centers and community centers.

26 (2) In all other zones, the development may include commercial  
27 uses that are permitted without a conditional use permit or planned  
28 unit development permit.

29 (h) A housing development project that qualifies as a use by  
30 right pursuant to subdivision (b) shall be allowed the following  
31 density, as applicable:

32 (1) (A) If the development project is located in a zone that  
33 allows residential uses, the development project shall be allowed  
34 a density of the applicable density deemed appropriate to  
35 accommodate housing for lower income households identified in  
36 subparagraph (B) of paragraph (3) of subdivision (c) of Section  
37 65583.2.

38 (B) If the local government allows for greater residential density  
39 on that parcel, or greater residential density or building heights on

1 an adjacent parcel, than permitted in subparagraph (A), the greater  
2 density or building height shall apply.

3 (C) A housing development project that is located in a zone that  
4 allows residential uses shall be eligible for a density bonus or other  
5 incentives or concession pursuant to Section 65915.

6 (2) (A) If the development project is located in a zone that does  
7 not allow residential uses, the development project shall be allowed  
8 a density of 40 units per acre and a height of one story above the  
9 maximum height otherwise applicable to the parcel.

10 (B) If the local government allows for greater residential density  
11 or building heights on that parcel, or an adjacent parcel, than  
12 permitted in subparagraph (A), the greater density or building  
13 height shall apply. A development project shall not use an  
14 incentive, waiver, or concession to increase the height of the  
15 development to greater than the height authorized under this  
16 subparagraph.

17 (C) Except as provided in subparagraph (B) a housing  
18 development project that is located in a zone that does not allow  
19 residential uses shall be eligible for a density bonus or other  
20 incentives or concession pursuant to Section 65915.

21 (i) (1) Except as provided in paragraph (2), the proposed  
22 development shall provide off-street parking of up to one space  
23 per unit, unless a local ordinance provides for a lower standard of  
24 parking, in which case the ordinance shall apply.

25 (2) A local government shall not impose a parking requirement  
26 if either of the following is true:

27 (A) The parcel is located within one-half mile walking distance  
28 of public transit, either a high-quality transit corridor as defined  
29 in subdivision (b) of Section 21155 of the Public Resources Code  
30 or a major transit stop as defined in Section 21064.3 of the Public  
31 Resources Code.

32 (B) There is a car share vehicle located within one block of the  
33 parcel.

34 (j) (1) If the local government determines that the proposed  
35 development is in conflict with any of the objective planning  
36 standards specified in this section, it shall provide the development  
37 proponent written documentation of which standard or standards  
38 the development conflicts with, and an explanation for the reason  
39 or reasons the development conflicts with that standard or  
40 standards, within the following timeframes:

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1 (A) Within 60 days of submittal of the development proposal  
2 to the local government if the development contains 150 or fewer  
3 housing units.

4 (B) Within 90 days of submittal of the development proposal  
5 to the local government if the development contains more than  
6 150 housing units.

7 (2) If the local government fails to provide the required  
8 documentation pursuant to paragraph (1), the development shall  
9 be deemed to satisfy the required objective planning standards.

10 (3) For purposes of this section, a development is consistent  
11 with the objective planning standards if there is substantial  
12 evidence that would allow a reasonable person to conclude that  
13 the development is consistent with the objective planning standards.

14 (4) The determination of whether a proposed project submitted  
15 pursuant to this section is or is not in conflict with the objective  
16 planning standards is not a “project” as defined in Section 21065  
17 of the Public Resources Code.

18 (5) Design review of the development may be conducted by the  
19 local government’s planning commission or any equivalent board  
20 or commission responsible for review and approval of development  
21 projects, or the city council or board of supervisors, as appropriate.  
22 That design review shall be objective and be strictly focused on  
23 assessing compliance with criteria required for streamlined,  
24 ministerial review of projects, as well as any reasonable objective  
25 design standards published and adopted by ordinance or resolution  
26 by a local jurisdiction before submittal of the development to the  
27 local government, and shall be broadly applicable to developments  
28 within the jurisdiction. That design review shall be completed as  
29 follows and shall not in any way inhibit, chill, or preclude the  
30 ministerial approval provided by this section or its effect, as  
31 applicable:

32 (A) Within 90 days of submittal of the development proposal  
33 to the local government pursuant to this section if the development  
34 contains 150 or fewer housing units.

35 (B) Within 180 days of submittal of the development proposal  
36 to the local government pursuant to this section if the development  
37 contains more than 150 housing units.

38 (6) The local government shall ensure that the project satisfies  
39 the requirements specified in subdivision (d) of Section 66300,

1 regardless of whether the development is within or not within an  
2 affected city or within or not within an affected county.

3 (7) If the development is consistent with all objective  
4 subdivision standards in the local subdivision ordinance, an  
5 application for a subdivision pursuant to the Subdivision Map Act  
6 (Division 2 (commencing with Section 66410)) shall be exempt  
7 from the requirements of the California Environmental Quality  
8 Act (Division 13 (commencing with Section 21000) of the Public  
9 Resources Code).

10 (8) A local government's approval of a development pursuant  
11 to this section shall, notwithstanding any other law, be subject to  
12 the expiration timeframes specified in subdivision (f) of Section  
13 65913.4.

14 (9) Any proposed modifications to a development project  
15 approved pursuant to this section shall be undertaken pursuant to  
16 subdivision (g) of Section 65913.4.

17 (10) A local government shall not adopt or impose any  
18 requirement, including, but not limited to, increased fees or  
19 inclusionary housing requirements, that applies to a project solely  
20 or partially on the basis that the project is eligible to receive  
21 streamlined, ministerial review pursuant to this section.

22 (11) A local government shall issue a subsequent permit required  
23 for a development approved under this section pursuant to  
24 paragraph (2) of subdivision (h) of Section 65913.4.

25 (12) A public improvement that is necessary to implement a  
26 development that is approved pursuant to this section shall be  
27 undertaken pursuant to paragraph (3) of subdivision (h) of Section  
28 65913.4.

29 (k) The Legislature finds and declares that ensuring residential  
30 development at greater density on land owned by independent  
31 institutions of higher education and religious institutions is a matter  
32 of statewide concern and is not a municipal affair as that term is  
33 used in Section 5 of Article XI of the California Constitution.  
34 Therefore, this section applies to all cities, including charter cities.

35 SEC. 2. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 a local agency or school district has the authority to levy service  
38 charges, fees, or assessments sufficient to pay for the program or



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- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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Office of the Mayor

CONSENT CALENDAR  
January 17, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Susan Wengraf, and Councilmember Sophie Hahn

Subject: Twelfth Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

RECOMMENDATION

1. Adopt a Resolution retroactively co-sponsoring the 12th Annual Martin Luther King Jr. Celebration Breakfast on January 16, 2023.
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguin, to the Berkeley Rotary Endowment, the fiscal sponsor of the 12th Annual Martin Luther King Jr. celebration, with funds 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

The annual Martin Luther King Jr Celebration, which first started in 2012, strives to bring together a diverse group of East Bay residents to celebrate and continue the work of Dr. Martin Luther King Jr. The purpose of this event is to bring the faith based, business, university, youth and civic communities together to celebrate the life and dreams of Dr. King and to honor adult and youth leaders in our community.

We are proposing that City Councilmembers make individual grants of up to \$250 to the Berkeley Rotary Endowment to commemorate and honor Dr. Martin Luther King Jr. The event is being held on January 16, 2023.

FINANCIAL IMPLICATIONS

No General Fund impact; \$250 is available from Mayor Arreguin's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

11<sup>th</sup> Annual MLK Jr. Celebration

CONSENT CALENDAR

January 17, 2023

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution for City Sponsorship
- 2: Resolution for Council Expenditures

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

CITY SPONSORSHIP OF THE 12TH ANNUAL DR. MARTIN LUTHER KING JR.  
CELEBRATION

WHEREAS, the Twelfth Annual Dr. Martin Luther King Jr. Celebration will take place on January 16, 2023; and

WHEREAS, the purpose of this event is to bring the faith based, business, university, youth and civic communities together to celebrate the life and dreams of Dr. King and to honor adult and youth leaders in our community; and

WHEREAS, historically the Berkeley City Council has generously provided sponsorship for this event.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby co-sponsors the 12th Annual Dr. Martin Luther King Jr. Celebration, has permission to use the City's name and logo in the event's promotional materials and signage naming the City of Berkeley as a co-sponsor solely for the purpose of the City indicating its endorsement of the event.

BE IT FURTHER RESOLVED that this co-sponsorship does not: (1) authorize financial support, whether in the form of fee waivers, a grant or provision of City services for free; (2) constitute the acceptance of any liability, management, or control on the part of the City for or over the MLK Jr Celebration; or (3) constitute regulatory approval of the event.

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 Berkeley Rotary Endowment, seeks funds in the amount of \$250 to provide the following public services to publicly commemorate and honor the contributions of Dr. Martin Luther King Jr.; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of bringing the communities across the City, including, but not limited to faith based, business, university, youth and civic communities, together to celebrate the life and dreams of Dr. King and to honor adult and youth leaders in our 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 \$250 per office shall be granted to the Berkeley Rotary Endowment to fund the following services of bringing the communities across the City, including, but not limited to faith based, business, university, youth and civic communities, together to celebrate the life and dreams of Dr. King and to honor adult and youth leaders in our community.



Office of the Mayor

CONSENT CALENDAR

January 17, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguin

Subject: Amend Contract No. 32200161 with Community Development Partners to extend consulting work associated with Equitable Black Berkeley Initiative.

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200161 with Community Development Partners (CDP) to add \$75,000 to the existing ideation facilitator contract supporting the Equitable Black Berkeley Initiative for a total contact amount not to exceed \$125,000 and extending the contract term to September 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

On November 29, 2022, City Council approved a resolution accepting a grant award of \$75,000 from the San Francisco Foundation to renew the existing ideation facilitator contract with CDP supporting the Equitable Black Berkeley Initiative. The grant funds have been deposited and expensed from the One-Time Grant: No Capital Expenses Fund and will be appropriated in the First Amendment to the FY 2023 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

On November 30, 2021, the City Council approved a \$50,000 grant from the San Francisco Foundation (SFF) grant to support a six-month process to ideate increasing affordable housing at the North Berkeley and Ashby BART stations. SFF has increased the grant funding by \$75,000 continuing the work of the part time consultant in creating a plan, in collaboration with the community and multiple partners, to secure the funding needed to meet the project goals of maximizing affordable housing at and around the Ashby and North Berkeley BART sites within a reparative framework. In addition, the consultant will assist the City in outreach with Berkeley Flea Market vendors and community members, regarding resources to support the Berkeley Flea Market currently and plans for its relocation at a new Adeline Plaza as part of the new transit oriented development at Ashby Station. City Council approved accepting the increased grant funding of \$75,000 on November 29, 2022.

BACKGROUND

Equitable Black Berkeley is an innovative, replicable model to support equity, opportunity and the well-being of Berkeley's Black community. It will underpin policies to repair harm, create financing vehicles to sustain community investment and ensure Black families

Amend contract with Community Development Partners  
Continue consulting services for Equitable Black Berkeley Initiative

CONSENT CALENDAR  
January 17, 2023

have a right to stay, right to return, and right to own/build equity. EBB will help alleviate the housing crisis and create the conditions for the South Berkeley community to thrive.

The San Francisco Foundation grant will continue to provide support to the City in developing additional strategies for increasing financial support for greater affordability levels for the BART projects and engaging the black community in developing a reparative framework that will address economic harms and provide the support infrastructure to provide repair.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Would support Climate Action goals by providing more affordable housing along transit corridors.

RATIONALE FOR RECOMMENDATION

Increasing affordability levels for new housing developments and addressing inequities for communities of color are expressed City values and council direction. This contract extension supports the efforts to increase affordability in previously redlined areas in a reparative framework.

CONTACT PERSON

Mayor Jesse Arreguin, 510-981-7100

Attachments:

1. Resolution



RESOLUTION NO. XX,XXX N.S.

AUTHORIZING A CONTRACT EXTENSION WITH COMMUNITY DEVELOPMENT PARTNERS (CDP) TO SUPPORT THE EQUITABLE BLACK BERKELEY INITIATIVE AND FUNDED THROUGH A GRANT FROM THE SAN FRANCISCO FOUNDATION.

WHEREAS, On November 30, 2021, the Berkeley City Council voted to receive a grant from the San Francisco Foundation to support a consultant to assist the Equitable Black Berkeley Initiative (EBB) in a six-month process to ideate financing alternatives to increase the level of affordable housing at the North Berkeley and Ashby BART stations within a reparative framework; and

WHEREAS, on November 29, 2022, City Council approved accepting a grant award of \$75,000 from the San Francisco Foundation to renew the existing contract with CDP supporting the Equitable Black Berkeley Initiative; and

WHEREAS, the grant funds have been deposited and expensed from the One-Time Grant: No Capital Expenses Fund and will be appropriated in the First Amendment to the FY 2023 Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to extend Contract #32200161 with Community Development Partners in support of the Equitable Black Berkeley Initiative, adding an additional \$75,000 to the contract for a total contact amount not to exceed \$125,000 and extending the contract term to September 30, 2023.





Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR

January 17, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Referral for a Security Assessment of the 1700 and 1600 Blocks of San Pablo Avenue

RECOMMENDATION

Refer to the City Manager to conduct a security assessment of the 1700 and 1600 blocks of San Pablo Avenue two months after the City of Berkeley has entered into a lease of real property located at 1720 San Pablo Avenue (hereafter referred to as Berkeley Inn, a 27-room motel). Additional security measures deemed necessary should be implemented as soon as practicable after the security assessment is completed.

Recommended aspects of the security assessment include but are not limited to the following:

- A community meeting for immediate businesses, residents, and stakeholders of the 1700 and 1600 blocks of San Pablo Avenue to be hosted by the Office of Councilmember Rashi Kesarwani, City Manager Dee Williams-Ridley [or her designee(s)], and the Berkeley Police Department in order to assess the current street conditions and safety concerns; and
- A Crime Prevention Through Environmental Design (CPTED) assessment to be conducted by the Berkeley Police Department for the 1700 and 1600 blocks of San Pablo Avenue.

Possible security measures may include but are not limited to the following:

- Increased Berkeley police patrols and/or the provision of private security services;
- Assistance from the Office of Economic Development to identify grant or other funding opportunities so businesses and residents may procure and install security cameras at key locations;

- Implementation of environmental design improvements, as recommended by the CPTED assessment, by the City of Berkeley and/or private property owners, as appropriate.

### CURRENT SITUATION AND ITS EFFECTS

***New Uses in the 1700 and 1600 Blocks of San Pablo Avenue Warrant Safety Assessment.*** On December 6, 2022 Council approved the lease with the Berkeley Inn located on the 1700 block of San Pablo Avenue, as well as a contract amendment with the Dorothy Day House to operate the facility as a transitional shelter. The 1600 block of San Pablo Avenue is the site of a permanent supportive housing facility at the former Golden Bear Inn, operated by Bay Area Community Services, with residents in the process of moving in as of November 2022.

City Council's approval of the five-year lease agreement with owners of the Berkeley Inn, located at 1720 San Pablo Avenue, is critical in maintaining Berkeley's commitment to sheltering homeless populations as the Horizon Transitional Village, also administered by Dorothy Day house, provides 50 beds for unsheltered and encampment populations and will be closing at the end of this month on December 31, 2022. This hotel conversion fills a dire need for an alternate location to house this vulnerable population that likely would otherwise end up back on the street and in encampments. Additionally, it provides non-congregate shelter rooms that are preferred and more likely to be accepted by persons experiencing unsheltered homelessness by future residents.

### BACKGROUND

***Opportunity Sites for Homeless Shelters are Extremely Limited.*** The City's lease of the Berkeley Inn, a 27-room motel, to serve as a transitional non-congregate shelter facility replaces a larger 50-bed congregate shelter facility located at 742 Grayson Street. The Grayson site, known as the Horizon Transitional Village Program, is scheduled to close on Dec. 31, 2022 due to the termination of the City's lease with the private property owner. The City was able to extend its lease for the Grayson facility on Sept. 29, 2022 through the end of the year, but no further extensions are available. Staff have noted that the City engaged in an exhaustive search of City facilities to replace the Grayson facility, but none were found to be suitable, safe, or available for year-round use as a shelter for vulnerable homeless people<sup>1</sup>. The number of motel operators willing to partner with the City is also limited; the City has previously housed homeless individuals at the Berkeley Inn with the use of 28-day motel vouchers provided by the county.

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<sup>1</sup> See item #1: [Urgency Ordinance for Leasing the Real Property at 1720 San Pablo Avenue](#), on the December 6, 2022 Berkeley City Council Agenda.

**Opportunity Sites for Homekey Permanent Supportive Housing (Golden Bear Inn) Identified by Respondents to City’s Request for Proposals (RFP).** The City issued an RFP for a Homekey permanent supportive housing site in October 2021, with the option for RFP respondents to submit proposals for opportunity sites citywide. The selection of the Golden Bear Inn at 1620 San Pablo Avenue is the result of an RFP respondent identifying the site and a motel owner willing to sell as well as submitting a viable application to the City—which happened to be the only Homekey application the City received. Permanent supportive housing has been found to be the evidence-based solution to unsheltered homelessness.<sup>2</sup>

**The San Pablo Corridor is a Priority Development Area.** In 2021, the City of Berkeley received a \$750,000 grant from the Metropolitan Transportation Commission (MTC) to begin developing a master plan for the San Pablo Corridor. It is the priority of Councilmember Kesarwani to use the limited grant funds to study effective city policies for filling vacant retail spaces (including by reviewing effective policies in neighboring local jurisdictions) and other strategies for supporting a thriving non-residential sector of small businesses, non-profit organizations, and arts and cultural institutions.

**State Housing Laws Have Taken Away Control from Local Jurisdictions to Deny or Lower the Density of Projects, When They Meet Specific**

**Requirements.** Over the last several years, new state approved housing laws limit both cities’ ability to reject development projects if they comply with local zoning and design rules, such as the Housing Accountability Act, and the number of times neighborhood groups can appeal such projects, such as SB 330. State law affects cities’ authority over development in additional ways: it further limits local government’s authority over development by speeding up approvals if affordable housing is included; it prevents cities from ordering design changes that would result in fewer units being built; and bars governments from changing zoning rules once a project has been proposed. Yet another piece of legislation, California’s Density Bonus law, allows developers to exceed local zoning limits if projects include affordable units. The goal of these housing laws is to keep cities from arbitrarily denying or delaying the construction of much needed housing. As a result, a community’s ability to alter or slow down development projects has been limited.

**Housing Development Along San Pablo Corridor Is Driven by Decisions of Private Property Owners.** In recent years, a number of parcels along the San Pablo Corridor have been developed or plans are underway to do so.

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<sup>2</sup> See: Permanent Supportive Housing: Evaluating the Evidence for Improving Health Outcomes Among People Experiencing Chronic Homelessness, National Academies Press, 2018. Contributors: National Academies of Sciences, Engineering, and Medicine; Policy and Global Affairs; Health and Medicine Division; Science and Technology for Sustainability Program; Board on Population Health and Public Health Practice; Committee on an Evaluation of Permanent Supportive Housing Programs for Homeless Individuals

- 1941 San Pablo Avenue: proposed 7 story mixed use development - in early planning stage
- 1835 San Pablo Avenue: entitled project for mostly market rate housing
- 1740 San Pablo Avenue: 54 units of affordable housing, approved and in process
- 1701 San Pablo Avenue: 110 affordable units for Berkeley Unified School District workforce, approved and in process
- 1620 San Pablo Avenue: 44 units of permanent supportive housing, approved and operating
- 1080 Jones Street, The Jones (at 1500 San Pablo Avenue): 170 units mostly market rate - operating and occupied
- 1201-1205 San Pablo Avenue: 66 units of mostly market rate housing - approved
- 1200 San Pablo Avenue: 7 story project previously approved by the Design Review Commission

The decisions to develop these parcels are not driven by the City, but by private property owners. Development occurs throughout the city where a private property owner wishes to do so.

#### FISCAL IMPACT

The security assessment will require one-time staff attention, and implementation of security measures may result in one-time and/or ongoing costs to the City.

#### ENVIRONMENTAL SUSTAINABILITY

Enhanced safety can encourage more residents to patronize the area on foot or bike, thus reducing vehicle miles traveled.

#### CONTACT PERSON

Rashi Kesarwani, Council Member District 1

(510) 981-7110



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR

Jan 17, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf, Councilmember Harrison,  
Councilmember Humbert, and Councilmember Hahn

Subject: Resolution in Support of SB-36 (Skinner)

RECOMMENDATION

Adopt a Resolution in support of SB-36: Out-of-state criminal charges: prosecution related to abortion and gender-affirming care (Skinner) and send copies to Senator Skinner, Assembly Member Wicks and Governor Newsom.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Since the Supreme Court overturned Roe v. Wade on June 24, 2022 at least 13 states passed laws that make seeking or providing an abortion a felony offense. Four states have enacted laws or regulations banning gender-affirming care and 15 additional states are considering legislation to do so. California, on the other hand, has passed a package of bills that establish it as a safe haven for those fleeing prosecution for seeking abortion and gender-affirming care in other states.

SB-36 seeks to provide protections and supports in California to any person fleeing a felony prosecution, conviction, or sentence in another state for seeking an abortion or gender-affirming care, and to anyone assisting them with getting that care.

The bill would make it illegal for bounty hunters and bail agents to apprehend people who fled criminal prosecution or imprisonment for providing, receiving or supporting abortion or gender-affirming care. Bounty hunters and bail agents who violate the new statute would be guilty of a misdemeanor and face up to a year in jail and forfeiture of their license to operate in California.

SB-36 author Senator Nancy Skinner stated, "My 'Safe Haven' law will send a message to any bounty hunter who tries to enforce another states' reactionary law: Do so and you'll face jail time and lose your license."

ENVIRONMENTAL SUSTAINABILITY

No direct impact.

Resolution in Support of SB-36

CONSENT CALENDAR  
Jan 17, 2023

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: [SB-36](#)



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

SUPPORT FOR SB-36 (SKINNER)

WHEREAS, Since the Supreme Court overturned Roe v. Wade on June 24, 2022 at least 13 states passed laws that make seeking or providing an abortion a felony offense; and

WHEREAS, four states have enacted laws or regulations banning gender-affirming care and 15 additional states are considering legislation to do so; and

WHEREAS, SB-36 seeks to provide protections and supports in the state of California to any person fleeing a felony prosecution, conviction, or sentence in another state for seeking an abortion or gender-affirming care and to anyone assisting them with getting that care; and

WHEREAS, SB-36 would make it illegal for bounty hunters and bail agents to apprehend people who fled criminal prosecution or imprisonment for providing, receiving or supporting an abortion or gender-affirming care; and

WHEREAS, those who violate the new statute would be guilty of a misdemeanor and face up to a year in jail and forfeiture of their license to operate in California, sending a strong message to anyone trying to enforce another states' reactionary law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council supports SB-36.

BE IT FURTHER RESOLVED that the Berkeley City Council thanks Senator Skinner for her leadership in crafting this legislation.

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

**SENATE BILL**

**NO. 36**

**Introduced by Senator Skinner**

**December 05, 2022**

An act to amend Sections 847.5 and 1299.02 of the Penal Code, and to amend Section 11486.5 of, and to add Section 18901.33 to, the Welfare and Institutions Code, relating to out-of-state criminal charges.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 36, as introduced, Skinner. Out-of-state criminal charges: prosecution related to abortion and gender-affirming care.

Existing law authorizes a magistrate to issue a warrant, upon application by a bail bondsman, as described, for an individual fleeing bail in another state and found in this state upon a finding of probable cause for believing that the person is a fugitive. Existing law makes it a misdemeanor to take a person who is a fugitive admitted to bail in another state into custody, except pursuant to a magistrate's order.

This bill would prohibit a magistrate from issuing a warrant for the arrest of an individual whose alleged offense or conviction is for the violation of law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location. The bill would make a bail bondsman who takes such an individual into custody without a warrant guilty of a misdemeanor and ineligible for and subject to

forfeiture of specified licenses. The bill would create a civil cause of action for an individual taken into custody in violation of this provision. By creating a new crime, this bill would create a state-mandated local program.

Existing law, the Bail Fugitive Recovery Persons Act, prohibits a person, other than a certified law enforcement officer, to apprehend, detain, or arrest a bail fugitive unless the person is a licensed a bail fugitive recovery agent, or both a bail licensee and private investigator who are also bail fugitive recovery agents. Existing law makes a violation of the Bail Fugitive Recovery Persons Act a misdemeanor.

This bill would prohibit a person authorized under the act from apprehending, detaining, or arresting a bail fugitive who has been admitted to bail in another state and whose alleged offense or conviction is for the violation of a law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care, if the abortion or care is lawful under the laws of this state, regardless of the recipient's location. The bill would make a violation of this provision a misdemeanor and make the authorized individual ineligible for and subject to forfeiture of specified licenses. The bill would create a civil cause of action for an individual taken into custody in violation of this provision. By expanding the application of a crime, this bill would create a state-mandated local program.

Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families and individuals. Existing federal law establishes the federal Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county. Existing federal regulations disqualify a fleeing felon, as defined, from receiving benefits under the CalFresh program.

This bill would require that the determination of whether a person is fleeing to avoid prosecution for purposes of eligibility in the Calworks program be made pursuant to a specified federal regulation. The bill would also make a person who is fleeing to avoid prosecution, or custody and confinement after conviction, whose alleged offense or conviction is for the violation of a law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care, if the abortion or care is lawful under the laws of this state, regardless of the location of the patient, eligible for benefits under these programs. Because this would expand the eligibility requirements for these programs, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

## **DIGEST KEY**

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

**BILL TEXT****THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT  
AS FOLLOWS:****SECTION 1.**

The Legislature finds and declares all of the following:

- (a) In 2022, following the United States Supreme Court decision overturning Roe v. Wade, California's legislature passed and Governor Gavin Newsom signed a package of bills, led by members of the Legislative Women's Caucus, and complimentary budget actions that established the state as a haven for those fleeing prosecution for seeking abortion and gender-affirming care in other states.
- (b) At least 13 states have passed laws that make seeking or providing an abortion a felony offense.
- (c) Four states have enacted laws or regulations banning gender-affirming care and 15 additional states are considering legislation to do so.
- (d) It is the intent of the legislature to pass legislation to provide protections and supports to any person fleeing a felony prosecution, conviction, or sentence in another state for seeking an abortion or seeking gender-affirming care and to any person assisting the person seeking that care.

**SEC. 2.**

Section 847.5 of the Penal Code is amended to read:

**847.5.**

*If (a) Except as provided in subdivision (b), if a person has been admitted to bail in another state, escapes bail, and is present in this State, the bail bondsman or other person who is bail for such fugitive, may file with a magistrate in the county where the fugitive is present an affidavit stating the name and whereabouts of the fugitive, the offense with which the alleged fugitive was charged or of which ~~he was~~ *they were* convicted, the time and place of same, and the particulars in which the fugitive has violated the terms of ~~his~~ *their* bail, and may request the issuance of a warrant for arrest of the fugitive, and the issuance, after hearing, of an order authorizing the affiant to return the fugitive to the jurisdiction from which ~~he~~ *they* escaped bail. The magistrate may require such additional evidence under oath as ~~he deems~~ *they deem* necessary to decide the issue. If ~~he~~ *the magistrate* concludes that there is probable cause for believing that the person alleged to be a fugitive is such, ~~he~~ *the magistrate* may issue a warrant for ~~his~~ *the person's* arrest. The magistrate shall notify the district attorney of such action and shall direct ~~him~~ *the district attorney* to investigate the case and determine the facts of the matter. When the fugitive is brought before ~~him~~ *the magistrate* pursuant to the warrant, the magistrate shall set a time and place for hearing, and shall advise the fugitive of ~~his~~ *their* right to counsel and to produce evidence at the hearing. ~~He~~ *The magistrate* may admit the fugitive to bail pending the hearing. The district attorney shall appear at the hearing. If, after hearing, the magistrate is satisfied from the evidence that the person is a fugitive ~~he~~ *the magistrate* may issue an order authorizing affiant to return the fugitive to the jurisdiction from which ~~he~~ *they* escaped bail.*

*(b) A magistrate shall not issue a warrant for the arrest of an individual whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location.*

*(c) A bondsman or person authorized, pursuant to subdivision (a) of Section 1299.02, to apprehend, detain, or arrest a fugitive admitted to bail in another state who takes into custody a fugitive admitted to bail in another state whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location, without a magistrate's order, is ineligible for a license issued pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code or Section 1800 of the Insurance Code, and shall forfeit any license already obtained pursuant to those laws.*

*(d) A person who is taken into custody by a bail agent in violation of subdivision (b) may institute and prosecute a civil action for injunctive, monetary, or other appropriate relief against the bondsman and bond company within three years after the cause of action accrues.*

**A**

*(e) A bondsman or other person who is bail for a fugitive admitted to bail in another state who takes the fugitive into custody, except pursuant to an order issued under this section, is guilty of a misdemeanor.*

### SEC. 3.

Section 1299.02 of the Penal Code, as added by Section 21 of Chapter 768 of the Statutes of 2022, is amended to read:

#### 1299.02.

(a) No person, other than a certified law enforcement officer, shall be authorized to apprehend, detain, or arrest a bail fugitive unless that person meets one of the following conditions:

(1) Is a bail as defined in paragraph (2) of subdivision (a) of Section 1299.01 who is also a bail fugitive recovery agent as defined in paragraph (4) of subdivision (a) of Section 1299.01.

(2) Is a bail fugitive recovery agent as defined in paragraph (4) of subdivision (a) of Section 1299.01.

(3) Is a licensed private investigator as provided in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code who is also a bail fugitive recovery agent as defined in paragraph (4) of subdivision (a) of Section 1299.01.

(b) This article shall not prohibit an arrest pursuant to Sections 837, 838, and 839, provided that no consideration is paid or allowed, directly or indirectly, to any person effecting an arrest pursuant to Sections 837, 838, and 839.

(c) Individuals who hold a bail license, bail fugitive recovery license, bail enforcer license, bail runner license, or private investigator license issued by another state shall not apprehend, detain, or arrest bail fugitives in California, unless that individual obtains a bail fugitive recovery agent license issued in this state and complies with California law.

*(d) A person authorized, pursuant to subdivision (a), to apprehend, detain, or arrest a bail fugitive shall not apprehend, detain, or arrest a bail fugitive admitted to bail in another state whose alleged offense or conviction was for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location. A person who violates this subdivision is guilty of a misdemeanor punishable by a fine of five thousand dollars (\$5,000) or by imprisonment in a county jail not to exceed one year, or by both that imprisonment and fine, is ineligible for a license issued pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code or Section 1800 of the Insurance Code, and shall forfeit any license already obtained pursuant to those laws. A person who is taken into custody by a bail agent in violation of this subdivision may institute and*

*prosecute a civil action for injunctive, monetary, or other appropriate relief against the bail fugitive recovery agent within three years after the cause of action accrues.*

~~(d)~~

*(e)* This section shall become operative on July 1, 2023.

SEC. 4.

Section 11486.5 of the Welfare and Institutions Code is amended to read:

11486.5.

(a) An individual shall not be eligible for aid under this chapter if ~~he or she is~~ *the individual is* either:

(1) Fleeing to avoid prosecution, or custody and confinement after conviction, under the laws of the place from which the individual is fleeing, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual is fleeing, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that state. *For the purposes of this section, except as provided in subdivision (c), an individual shall be determined to be fleeing to avoid prosecution, or custody and confinement after conviction, pursuant to Sections 273.11(n)(1)(ii) and 273.11(n)(2) of Title 7 of the Code of Federal Regulations.*

(2) Violating a condition of probation or parole imposed under federal law or the law of any state.

(b) Subdivision (a) shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct.

*(c) For the purposes of this section, an individual is not considered fleeing to avoid prosecution if the felony offense with which the person is charged or convicted is as a result of performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location.*

SEC. 5.

Section 18901.33 is added to the Welfare and Institutions Code, to read:

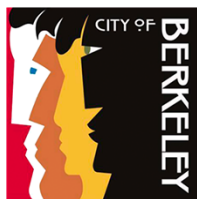
18901.33.

A person who is fleeing to avoid prosecution, or custody and confinement after conviction, whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care is eligible for benefits pursuant to this chapter, if the abortion or care is lawful under the laws of this state, regardless of the recipient's location.

SEC. 6.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 January 17, 2023

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson (Author)  
 Subject: Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for Pacific Center for Human Growth

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember, including \$1,000 from Councilmember Robinson, to Pacific Center for Human Growth to assist with urgent lease signing and renovation costs.

BACKGROUND

Founded in 1973, Pacific Center for Human Growth is the oldest LGBTQIA+ center in the Bay Area, the third oldest in the nation, and operates the only sliding scale mental health clinic for LGBTQIA+ and QTBIPOC people and their families in Alameda County.

Utilizing nearly 200 volunteers and 11 staff members, Pacific Center provides culturally-responsive therapy, peer-to-peer support groups, community outreach services, and facilitated workshops for Alameda County and the greater Bay Area LGBTQIA+ communities. They currently serve over 3,000 people a year through their programs.

Pacific Center is relocating from their Berkeley location on Telegraph Avenue due to the property being sold to a new owner. After months of searching and negotiating, they have successfully secured a space that fits their needs and are signing the new lease on February 1, 2023. They need to raise funds for signing costs, as well as additional funds for the installation of a wheelchair lift to make the space fully accessible.

FINANCIAL IMPLICATIONS

No General Fund impact; \$1,000 is available from Councilmember Robinson's discretionary account.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
 Angie Chen, Legislative Assistant

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 Rigel Robinson has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, Pacific Center for Human Growth, seeks funds in the amount of \$1,000 to assist with urgent needs, including lease signing costs and the installation of a wheelchair lift for ADA accessibility; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of supporting the Bay Area's oldest LGBTQIA+ center and enabling them to continue serving the Berkeley community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the \$1,000 relinquished by Councilmember Robinson from his Council Office Budget and any other Councilmember who wishes to contribute shall be granted to Pacific Center for Human Growth for lease signing and renovation costs.





Office of the City Manager

ACTION CALENDAR  
January 17, 2023  
*(Continued from December 13, 2022)*

To: Honorable Mayor and Members of the City Council

From: Dee William-Ridley, City Manager

Submitted by: Sharon Friedrichsen, Budget Manager

Subject: Status Report - Berkeley's Financial Condition (FY 2012 – FY 2021):  
Pension Liabilities and Infrastructure Need Attention

INTRODUCTION

On May 24, 2022, the City Auditor submitted a Financial Condition audit report<sup>1</sup> to City Council with recommendations to build on the City's financial strengths in order to: (1) help address the City's unfunded capital and deferred maintenance needs and pension liabilities; (2) help the City prepare for unforeseen economic challenges by assessing the risk of the reserves, and ensuring that enterprise funds can balance and avoid recurring shortfalls and (3) to update the City's debt policy to help strengthen the City's ability to assess its general obligation debt capacity.

The purpose of this information item is to update City Council on the status of implementation of the audit report's recommendations. This is the first status report regarding this audit.

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's report included five recommendations. As of the writing of this report, two recommendations have been partly implemented and three recommendations have been started. Please see Attachment 1 for a detailed table of audit report recommendations and implementation progress. The next status report to Council is expected to be presented on June 6, 2023.

BACKGROUND

The audit provides a high-level overview of the City's financial condition over 10 fiscal years. By broadening the scope of financial reporting to incorporate long-term financial

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<sup>1</sup> Audit-Berkeley's Financial Condition (FY 2012 - FY 2021): Pension Liabilities and Infrastructure Need Attention: <https://berkeleyca.gov/sites/default/files/documents/2022-05-24%20Item%2018%20Berkeley%E2%80%99s%20Financial%20Condition.pdf>

trends, financial condition analysis can introduce long-term considerations into the budgeting process, clarify the City's fiscal strengths and weaknesses, and help highlight financial risks that the City needs to address including its unfunded capital and pension liabilities.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

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

#### POSSIBLE FUTURE ACTION

The City Manager's Office will continue to work on implementing the various recommendations, including conducting a risk assessment of the General Fund reserve and developing recommendations regarding fund balance for the various enterprise funds. The Finance Department will continue to assess the debt capacity threshold and update the debt management policy. In addition, the City Manager's Office will continue to assess Council fiscal policies and make recommendations regarding long-term funding strategies to address the City's pension and capital infrastructure liabilities.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTIONS

The audit recommendations are intended to build on the City's financial strengths and help mitigate risks associated with the City's unfunded liabilities.

#### CONTACT PERSON

Sharon Friedrichsen, Budget Manager, 510.981.7000

#### Attachments:

1. Audit Findings, Recommendations, and Status Updates

| Audit Title: Berkeley's Financial Condition (FY 2012 - FY 2021): Pension Liabilities and Infrastructure Need Attention |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |            |              |                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Finding                                                                                                                | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Issue Date | Department   | Status of Audit Recommendations, Corrective Plan, and Progress Summary                                                                                                                                                                                                                                                                                                                |
| The COVID-19 pandemic slowed the City's progress toward its 2027 reserve funding goal.                                 | 1.1 To better prepare the City for unforeseen economic challenges, we recommend that the City Manager complete the risk assessment required by the City's reserve policy as scheduled and propose to the City Council a plan to replenish the Stability and Catastrophic Reserves based on the results of the assessment. This may include revising the funding goal for 2027 to align with the City's financial reality and projected risk level.                                                             | 5/5/2022   | City Manager | <u>Started:</u> City staff are in the process of consulting with the Government Finance Officers Association (GFOA) for technical assistance with the risk assessment.                                                                                                                                                                                                                |
| The COVID-19 pandemic slowed the City's progress toward its 2027 reserve funding goal.                                 | 1.2 To ensure the City's enterprise funds can balance and avoid recurring annual shortfalls, we recommend the City Manager assess the appropriate fund balance for each of the City's enterprise funds, report findings to the City Council and explore financial policy options to manage enterprise fund balances.                                                                                                                                                                                           | 5/5/2022   | City Manager | <u>Started:</u> City staff have started to conduct research and are forming a working group to discuss current approaches utilized by departments and best practices as the first step in developing fund balance policies.                                                                                                                                                           |
| The City's limit for general obligation bond debt is set at 15 percent of total assessed property value.               | 2.1 To strengthen the City's debt management, we recommend that the Finance Department update the Debt Management Policy. The Finance Department may consider revising its current general obligation bond threshold of 15 percent of assessed property value or building upon the City's existing general obligation bond debt limit by considering additional debt capacity factors such as debt per capita, debt to personal income, and/or debt service payments as a proportion of General Fund revenues. | 5/5/2022   | Finance      | <u>Started:</u> the Finance Department is working on updating the debt management policy.                                                                                                                                                                                                                                                                                             |
| The City has taken steps to increase pension funding.                                                                  | 3.1 To maximize the benefit of the Section 115 Trust, we recommend that the City Manager present a plan for adoption by the City Council to assure sufficient contributions to the Trust. This may include taking the steps proposed by the Budget and Finance Committee to increase contributions to the Trust. It may also include a strategy to ensure that the City is able to meet its yearly contribution goals, such as allocating contributions at the beginning of the budget cycle.                  | 5/5/2022   | City Manager | <u>Partly Implemented:</u> The City budgeted funds for the Section 115 Trust and adopted fiscal policies to fund the Section 115 Trust as part of the FY 2023/24 biennial budget process. Staff will be working with an actuary to review the target goal and will continue to explore additional funding options for Council's consideration to increase contributions to the Trust. |

|                                                                                                       |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                 |                     |                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The City reported \$1.2 billion in unfunded capital and deferred maintenance needs in FY 2021.</p> | <p>4.1</p> | <p>To address rising costs for unmet capital needs, we recommend that the City Manager collaborate with the Department of Public Works to implement a funding plan aimed at 1) reducing the City's unfunded capital and deferred maintenance needs, and 2) ensuring regular maintenance of city assets to prevent excessive deferred maintenance costs in the future. This may include prioritizing capital assets that generate the highest deferred maintenance costs.</p> | <p>5/5/2022</p> | <p>City Manager</p> | <p><u>Partly Implemented</u>: The City has updated its fiscal policies to increase funding for unfunded capital and deferred maintenance needs.</p> |
|-------------------------------------------------------------------------------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|



Office of the City Manager

PUBLIC HEARING  
January 17, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks, Recreation and Waterfront  
 Subject: Changes to Selected Camps Program Fees

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution approving new fees and increasing current fees for select recreation programs and facility rentals; and rescinding Resolution No. 70,193 N.S. and all amendatory resolutions.

FISCAL IMPACTS OF RECOMMENDATION

The proposed new fees and fee increases will provide additional revenue to the Camps Fund to offset the cost of delivering programs and managing facilities at Berkeley Tuolumne Camp, Echo Lake Camp, Cazadero Camp and Berkeley Day Camp. The proposed changes to fees would raise an estimated \$258,000 in annual revenue to the Camps Fund, of which an estimated \$124,000 would come from Tuolumne fee changes; \$89,000 would come from Echo Lake fee changes; and \$45,000 would come from Berkeley Day Camp changes. These fee increases will help the City offset the costs to operate the camps.

The Camps Fund is a self-supporting fund, with revenues expected to cover expenditures. The Fund has a structural deficit of approx. \$260,000/year, and an additional \$270,000 in costs is expected in FY24 due to projected increases in staff wages. The proposed fee increases will raise an estimated \$258,000 in revenue to offset these costs, (see Table 1). Improvements in program registration and nightly occupancy will be needed to fully offset costs and reduce the structural deficit.

**Table 1 - Impact of Fees Increases on the Camps Fund**

| <b>Camps Fund: FY24</b> | <b>FY24 Budget</b> | <b>FY24 Projected</b><br>(includes additional cost, but<br><b>no change to fees</b> ) | <b>FY24 Projected</b><br>(includes additional cost,<br><b>and change to fees</b> ) |
|-------------------------|--------------------|---------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| Total Revenues          | \$3,412,972        | \$3,464,972                                                                           | \$3,722,972**                                                                      |
| Total Expenditures      | \$3,671,222        | \$3,981,222*                                                                          | \$3,981,222                                                                        |
| Net Revenue (Deficit)   | (\$258,250)        | (\$516,250)                                                                           | (\$258,250)                                                                        |

\*Includes \$270,000 in cost increases for staff wages.

\*\*Includes \$258,000 in new fee revenue.

CURRENT SITUATION AND ITS EFFECTS

Historically, Berkeley Tuolumne Camp revenues offset losses in other camp programs at Echo Lake, Cazadero and Berkeley Day Camp. When Berkeley Tuolumne Camp was destroyed in the 2013 Rim Fire, the City worked to improve cost recovery at the other camps; but a structural

deficit still remains. The current structural deficit is approx. \$260,000/year, with reserves expected to be depleted in FY25.

On January 19, 2022, Council adopted new fees for Berkeley Tuolumne Camp, increased fees for non-residents and rentals at Echo Lake Camp, increased scholarships, and added new subsidized programs focused on diversity, equity and inclusion (DEI) (Resolution No. 70,193-N.S.) On June 28, 2022, with the approval of the FY23-24 budget, Council allocated \$75,000/year to offset the costs of the new DEI subsidized programs. These were further offset by \$13,058 in donations made by campers at the time of registration.

These fees and funding enabled the City to run programs at the new Berkeley Tuolumne Camp (BTC) during the summer of 2022, and to expand that programming to a broader and more diverse group of residents at all our camps. Despite these successes, camp programs did not fully recover costs in 2022 as BTC Family Camp was limited to 7 weeks instead of the more traditional 9 weeks of summer due to ongoing construction; BTC attendance was not as strong as anticipated because of COVID-19 concerns; and a full week of Echo Lake Youth Camp was cancelled due to staff illness. Due to these costs, along with the Camps Fund’s structural deficit and a need to increase staff wages by 20% have led to a need for additional fee raises for the summer of 2023.

**Scholarships and DEI Programs**

In 2022, the City took several steps to improve diversity, equity and inclusion in recreation camp programs:

- Increased scholarships by expanding income eligibility and aligning City and school district eligibility thresholds.
- Created a Fresh Adventures program at BTC and Echo Lake Camp, targeted to new camper families from historically underserved backgrounds.
- Hosted a Teen Family Weekend at BTC for teens and their families from Berkeley middle schools and high schools.
- Focused staff recruitment efforts on attracting people of color, and increased representation among our camp staff. In 2021 Echo Lake Camp had 10% Black Indigenous People of Color (BIPOC) on staff and this past summer it had 37% BIPOC on staff. Berkeley Tuolumne Camp had 28% BIPOC staff this past summer.
- Increased community outreach efforts with partners including BUSD, Healthy Black Families, Berkeley Jr. Jackets, McGee Baptist Church and Ebenezer Baptist Church to encourage community members to come to camp.
- Made changes to camp programming, songs, and traditions to make them more inclusive.

The total value of scholarships and subsidized Camps Fund programs in 2022 exceeded \$206,000 (see Table 2); compared to \$52,870 in 2021. These programs and scholarships were partially offset by \$88,058 in Council-allocated General Fund for DEI programs and community donations. The remaining \$65,354 was unfunded.

**Table 2 – Camps Fund Scholarships and Subsidized Programs, 2022**

| <b>Subsidized Programs</b>           | <b>Total Subsidy</b> |
|--------------------------------------|----------------------|
| Scholarships at BTC, Echo & Day Camp | (112,718)            |
| Fresh Adventures at BTC & Echo       | (51,136)             |

|                            |                  |
|----------------------------|------------------|
| Teen Family Weekend at BTC | (42,428)         |
| <b>Total</b>               | <b>(206,282)</b> |

**Increased Salaries and Other Costs to Operate Camps**

Costs to deliver camp programs are increasing. City of Berkeley daily staff wages have fallen significantly behind other like municipalities and bus transportation costs are expected to increase by \$40,000. Staff pay rates at Berkeley Tuolumne Camp and Echo Lake Camp are below market compared to neighboring jurisdictions, including Oakland, San Jose, and San Francisco.

**Proposed Fee Increases**

Fee increases averaging 12% are proposed across Berkeley Tuolumne Camp, Echo Lake Camp and Berkeley Day Camp programs. The proposed fee increases and new fees will help to cover the costs of these programs and allow the City to continue to make these programs more accessible to Berkeley Residents.

Fee changes are proposed to go into effect January 18, 2023. The proposed changes are described below, detailed in Attachment 1, and compared with other jurisdictions in Attachment 2.

Berkeley Day Camp

An increase of 12% is proposed for Berkeley Day Camp fees which would increase the resident rate for the 5-day core program (9:00am – 3:30pm) from \$240 to \$269. The increased fees will offset increased costs of staffing, materials, and equipment related to Day Camp operations. Fees for Berkeley Day Camp have not been increased in two years. Even with the proposed 12% increase, Berkeley Day Camp will continue to be one of the most affordable summer day camps in the area, as shown in Attachment 2, Table 3.

Berkeley Echo Lake Camp

The following increases are proposed for Echo Lake Camp fees to offset higher costs, particularly in staffing and bus transportation: a 12% increase in Youth Camp and Counselor-in-Training session fees, a 10% increase in week-long and mid-week Family Camp session fees, and a 14% increase in weekend Family Camp session fees. A 12% fee increase is proposed for 50 & Better Camp. Additional Camper fees will increase by \$15 per day for session-based programs, and we have added Nightly Tent rates for Sunday through Wednesday nights. We are also proposing the elimination of the shoulder season rental fees and propose to keep these fees the same as for regular season rentals. The proposed refundable Damage Deposit for Camp Rentals has been increased to \$2,000. The proposed increases maintain our market rate or below prices as shown in Attachment 2, Tables 1 and 2.

Berkeley Tuolumne Camp

The fee increases proposed for Berkeley Tuolumne Camp will offset higher staffing costs. Family Camp fees are proposed to increase by 14% for weekend sessions and by 10% for mid-week and week-long sessions; Counselor-in-Training fees are proposed to increase by 12%. A 12% fee increase is proposed for 50 & Better Camp. Additional Camper fees will increase by \$15 per day for session-based programs and we have added Nightly Tent rates for Sunday through Wednesday nights. We are also proposing the elimination of the shoulder season rental fees and propose to keep these fees the same as for regular season rentals. The proposed refundable Damage Deposit for Camp Rentals has been increased to \$2,000.

We have added a new program to the BTC schedule called Leader-in-Training (LIT), where incoming 8<sup>th</sup> and 9<sup>th</sup> grade youth will develop leadership skills that will help prepare them for work, college, and adulthood. It is priced at the same level as Echo Lake Youth Camp.

The proposed increases maintain our market rate pricing as shown in Attachment 2, Tables 1 and 2.

### BACKGROUND

The Camps Fund is comprised of four program areas:

- Berkeley Tuolumne Camp (BTC), offering Family Camp, Counselor-in-Training, and other programs serving all age groups, located near Yosemite National Park; and
- Berkeley Echo Lake Camp, offering Family Camp, Youth Camp, Counselor-in-Training and other programs serving all age groups, located near South Lake Tahoe; and
- Berkeley Day Camp, a 9-week summer day camp program offered in City parks; and
- Berkeley Cazadero Camp, operated by Cazadero Performing Arts Camp and offering music and performing arts programs, located in Sonoma County.

Following the destruction of BTC in the Rim Fire in 2013, the City began a 9-year rebuilding process that included 6 years of negotiations with the US Forest Service, FEMA and insurance, 3 years of planning and design work, 2 years of construction, and 1 year of planning for camp operations. With over 100 structures spread across 30 acres, the BTC Rebuild was one of the largest and most complex construction projects ever undertaken by the City of Berkeley. The total project cost exceeded \$54 million, more than 95% of which was funded by insurance and FEMA.

The Camp's reconstruction lasted two years, starting in May 2020 and was substantially complete in mid-June 2022, in time for a 100-year celebration of the Camp's opening in 1922. City staff worked quickly to prepare camp for operations and welcomed back campers to BTC Family Camp the last week of June.

The Camps Fund is required to be self-supporting and does not receive revenue from the General Fund. Fee increases are required to cover program expenditures.

### ENVIRONMENTAL SUSTAINABILITY

The proposed fee increases will support sustainability in these camp programs which provide direct and indirect environmental benefits. Camp programs connect the community with the environment, emphasize the importance of environmental stewardship, and often teach youth and community members about our local environmental resources and how to preserve them.

### CONTACT PERSON

Christina Erickson, Deputy Director, 510-981-6703

Denise Brown, Youth and Recreation Services Manager, 510-981-6707

Attachments:

1. Recreation Fees: Current vs. Proposed
2. Fee Comparisons
3. Resolution  
Exhibit A: Fee Schedule
4. Notice of Public Hearing



## ATTACHMENT 1

**Recreation Fee Schedule: Current vs. Proposed\***

\*New fees or changes to existing fees are highlighted in yellow.

| Program Area                                                                                                                                                                          | Unit of Measure | Resident    | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-------------|---------------------|--------------|-------------------------|
| <b>I. DIRECTOR'S AUTHORITY TO IMPLEMENT NEW FEES</b>                                                                                                                                  |                 |             |                     |              |                         |
| The Director of Parks Recreation and Waterfront, or his/her designee, reserves the right to establish fees for new Recreation programs based on comparison with other municipalities. |                 |             |                     |              |                         |
| Various                                                                                                                                                                               | Various         | Up to \$350 |                     | Up to \$420  |                         |
| <b>II. FACILITY RENTAL CHARGES</b>                                                                                                                                                    |                 |             |                     |              |                         |
| <b>1. Room Rentals Regular Hours (1-hour minimum); Non-Regular Hours (2-hour minimum)</b>                                                                                             |                 |             |                     |              |                         |
| James Kenney (JK), Live Oak (LO)<br>Frances Albrier (FA), Martin Luther King (MLK)                                                                                                    |                 |             |                     |              |                         |
| <b>A. Youth, Senior, Disabled</b>                                                                                                                                                     |                 |             |                     |              |                         |
| Regular Hours                                                                                                                                                                         | Hour            | \$41.00     |                     | \$49.00      |                         |
| Non-Regular Hours                                                                                                                                                                     | Hour            | \$61.00     |                     | \$73.00      |                         |
| <b>B. All Other</b>                                                                                                                                                                   |                 |             |                     |              |                         |
| <b>Auditorium (FA), Social Hall (LO)</b>                                                                                                                                              |                 |             |                     |              |                         |
| Regular Hours                                                                                                                                                                         | Hour            | \$67.00     |                     | \$80.00      |                         |
| Non-Regular Hours                                                                                                                                                                     | Hour            | \$82.00     |                     | \$98.00      |                         |
| <b>Fireside Room (LO), Community Room (JK)</b>                                                                                                                                        |                 |             |                     |              |                         |
| Regular Hours                                                                                                                                                                         | Hour            | \$52.00     |                     | \$62.00      |                         |
| Non-Regular Hours                                                                                                                                                                     | Hour            | \$67.00     |                     | \$80.00      |                         |
| <b>Game Room (FA, MLK)<br/>Arts &amp; Crafts Room (FA, JK, LO)<br/>Meeting Room (JK, LO, MLK)</b>                                                                                     |                 |             |                     |              |                         |
| Regular Hours                                                                                                                                                                         | Hour            | \$46.00     |                     | \$55.00      |                         |
| Non-Regular Hours                                                                                                                                                                     | Hour            | \$62.00     |                     | \$74.00      |                         |

| Program Area                                                                                                                   | Unit of Measure | Resident     | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|--------------------------------------------------------------------------------------------------------------------------------|-----------------|--------------|---------------------|--------------|-------------------------|
| <b>C. Multi Room Discount</b>                                                                                                  |                 |              |                     |              |                         |
| 2nd room                                                                                                                       | Rental          | 25% discount |                     | 25% discount |                         |
| 3rd room, each additional room                                                                                                 | Rental          | 50% discount |                     | 50% discount |                         |
| <b>D. Gym Rentals (JK, MLK)</b>                                                                                                |                 |              |                     |              |                         |
| Regular Hours                                                                                                                  | Hour            | \$64.00      |                     | \$77.00      |                         |
| Non-Regular Hours                                                                                                              |                 | \$75.00      |                     | \$90.00      |                         |
| <b>E. Filming Fee</b>                                                                                                          |                 |              |                     |              |                         |
| Parks and Facilities                                                                                                           | ½ Day           | \$400.00     |                     | \$400.00     |                         |
|                                                                                                                                | Full Day        | \$800.00     |                     | \$800.00     |                         |
| <b>F. Surcharges</b>                                                                                                           |                 |              |                     |              |                         |
| Table & Chair Set-Up                                                                                                           | Rental          | \$63.00      |                     | \$76.00      |                         |
| Kitchen Use                                                                                                                    | Rental          | \$86.00      |                     | \$103.00     |                         |
| Small Storage Room                                                                                                             | Month           | \$21.00      |                     | \$25.00      |                         |
| Large Storage Room                                                                                                             | Month           | \$31.00      |                     | \$37.00      |                         |
| Stage Use w/Room Rental                                                                                                        | Hour            | \$26.00      |                     | \$31.00      |                         |
| P/A system & staff operation                                                                                                   | Hour            | \$42.00      |                     | \$50.00      |                         |
| Cleaning/Damage Deposit All Rentals (Refundable)                                                                               | Rental          | \$200.00     |                     | \$200.00     |                         |
| <b>2. City Athletic Fields</b>                                                                                                 |                 |              |                     |              |                         |
| <b>A. Cedar Rose, Codornices, Glendale-La Loma, Grove, James Kenney, Ohlone, San Pablo, Willard, Rosa Parks, Thousand Oaks</b> |                 |              |                     |              |                         |
| Youth non-profit leagues                                                                                                       | 2-Hours         | \$36.00      |                     | \$43.00      |                         |
| Adults, for-profits, private schools                                                                                           | 2-Hours         | \$72.00      |                     | \$86.00      |                         |
| Maintenance Deposit                                                                                                            |                 | 40% of Fee   |                     |              |                         |
| <b>B. Gabe's Fields at Harrison Park, Natural Turf</b>                                                                         |                 |              |                     |              |                         |
| Youth non-profit leagues                                                                                                       | 2-Hours         | \$29.00      |                     | \$35.00      |                         |
| Adults, for-profits, private schools                                                                                           | 2-Hours         | \$72.00      |                     | \$86.00      |                         |

| Program Area                                                                             | Unit of Measure              | Resident | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|------------------------------------------------------------------------------------------|------------------------------|----------|---------------------|--------------|-------------------------|
| <b>C. Gilman Fields, Natural Turf</b>                                                    |                              |          |                     |              |                         |
| Youth non-profit leagues                                                                 | 2-Hours                      | \$29.00  |                     | \$35.00      |                         |
| Adults, for-profits, private schools                                                     | 2-Hours                      | \$72.00  |                     | \$96.00      |                         |
| <b>D. Gilman Fields, Synthetic Turf</b>                                                  |                              |          |                     |              |                         |
| Youth non-profit leagues                                                                 | 2-Hours                      | \$40.00  |                     | \$48.00      |                         |
| Adults, for-profits, private schools                                                     | 2-Hours                      | \$91.00  |                     | \$109.00     |                         |
| <b>E. Sports Field User Fines (Policy Violations: Applicable to All Athletic Fields)</b> |                              |          |                     |              |                         |
| Playing on Closed Grass Fields                                                           | 1st Offense                  | \$250.00 |                     | \$250.00     |                         |
|                                                                                          | 2nd Offense                  | \$500.00 |                     | \$500.00     |                         |
| Running practices in main goal areas                                                     | 1st Offense within 12 months | \$50.00  |                     | \$50.00      |                         |
|                                                                                          | 2nd Offense within 12 months | \$100.00 |                     | \$100.00     |                         |
|                                                                                          | 3rd Offense within 12 months | \$200.00 |                     | \$200.00     |                         |
| Dogs, Alcohol, Trash, Wheeled vehicles                                                   | Incident                     | \$100.00 |                     | \$100.00     |                         |
| Field Monitor                                                                            | Hourly                       | \$25.00  |                     | \$25.00      |                         |
| <b>F. Additional Rules (Applicable to all athletic fields)</b>                           |                              |          |                     |              |                         |
| Weekday slots used before 3:30pm throughout the year are discounted 50%                  |                              |          |                     |              |                         |
| Weekday slots 5:30pm-7:00pm are charged as full two-hour slot                            |                              |          |                     |              |                         |
| All other slots are pro-rated in 30-minute increments                                    |                              |          |                     |              |                         |
| <b>3. Skate Park Rental (only available AM hours)</b>                                    |                              |          |                     |              |                         |
| <b>A. Morning Hours (includes 2 staff members)</b>                                       | Hour                         | \$250.00 |                     | \$300.00     |                         |

| Program Area                                                                                                                            | Unit of Measure | Resident | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------|----------|---------------------|--------------|-------------------------|
| <b>B. Birthday Party (includes 2 staff members &amp; lesson)</b>                                                                        | Hour            | \$350.00 |                     | \$420.00     |                         |
| Cleaning/Damage Deposit (refundable)                                                                                                    | Rental          | \$200.00 |                     | \$200.00     |                         |
| <b>4. Tennis Courts</b>                                                                                                                 |                 |          |                     |              |                         |
| <b>A. Day Use (All Courts): Cedar Rose, Grove, James Kenney, Live Oak, Rose Garden, Roy Oakes, San Pablo, Strawberry Creek, Willard</b> |                 |          |                     |              |                         |
| Adult                                                                                                                                   | Hour            | \$7.00   |                     | \$8.00       |                         |
| Youth, Senior, Disabled                                                                                                                 | Hour            | \$5.00   |                     | \$6.00       |                         |
| <b>B. Night Use/Lighted Courts: Cedar Rose, Grove, James Kenney, Live Oak, San Pablo, Strawberry Creek, Willard</b>                     |                 |          |                     |              |                         |
| Adult                                                                                                                                   | Hour            | \$10.00  |                     | \$12.00      |                         |
| Youth, Senior, Disabled                                                                                                                 | Hour            | \$8.00   |                     | \$10.00      |                         |
| <b>5. Swim Centers (1-hour minimum) King, West Campus</b>                                                                               |                 |          |                     |              |                         |
| 1-35 people                                                                                                                             | Hour            | \$100.00 |                     | \$120.00     |                         |
| 36-70 people                                                                                                                            | Hour            | \$145.00 |                     | \$174.00     |                         |
| 71-100 people                                                                                                                           | Hour            | \$177.00 |                     | \$212.00     |                         |
| 101-150 people                                                                                                                          | Hour            | \$217.00 |                     | \$260.00     |                         |
| Cleaning/Damage Deposit (refundable)                                                                                                    | Rental          | \$200.00 |                     | \$200.00     |                         |
| <b>6. Picnic Areas (4-hour minimum)</b>                                                                                                 |                 |          |                     |              |                         |
| <b>A. Aquatic Park</b>                                                                                                                  | 4-hours         | \$45.00  |                     | \$54.00      |                         |
| <b>B. Cedar Rose</b>                                                                                                                    | 4-hours         | \$30.00  |                     | \$36.00      |                         |
| <b>C. Codornices Park Area 1</b>                                                                                                        | 4-hours         | \$75.00  |                     | \$90.00      |                         |
| <b>D. Codornices Park Area 2</b>                                                                                                        | 4-hours         | \$60.00  |                     | \$72.00      |                         |
| <b>E. Cragmont</b>                                                                                                                      | 4-hours         | \$45.00  |                     | \$54.00      |                         |
| <b>F. Grove</b>                                                                                                                         | 4-hours         | \$30.00  |                     | \$36.00      |                         |
| <b>G. James Kenney</b>                                                                                                                  | 4-hours         | \$45.00  |                     | \$54.00      |                         |
| <b>H. King School</b>                                                                                                                   | 4-hours         | \$30.00  |                     | \$36.00      |                         |
| <b>I. Live Oak Park (Areas 1 &amp; 2)</b>                                                                                               | 4-hours         | \$60.00  |                     | \$72.00      |                         |
| <b>J. Ohlone Park @ McGee</b>                                                                                                           | 4-hours         | \$45.00  |                     | \$54.00      |                         |

| Program Area                                                                                    | Unit of Measure | Resident | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|-------------------------------------------------------------------------------------------------|-----------------|----------|---------------------|--------------|-------------------------|
| <b>K. San Pablo Park</b>                                                                        | 4-hours         | \$30.00  |                     | \$36.00      |                         |
| <b>L. Strawberry Creek</b>                                                                      | 4-hours         | \$30.00  |                     | \$36.00      |                         |
| <b>M. Shorebird Park: Areas 1, 2</b>                                                            | 4-hours         | \$60.00  |                     | \$60.00      |                         |
| <b>N. Shorebird Park: Area 3</b>                                                                | 4-hours         | \$45.00  |                     | \$45.00      |                         |
| <b>O. Cesar Chavez: Area 1</b>                                                                  | 4-hours         | \$45.00  |                     | \$45.00      |                         |
| <b>P. Cesar Chavez: Area 2 (large picnic area)</b>                                              | 4-hours         | \$200.00 |                     | \$200.00     |                         |
| <b>Bounce House Permit</b>                                                                      | Per Use         | \$20.00  |                     | \$25.00      |                         |
| <b>7. Parks &amp; Open Space (not athletic fields)</b>                                          |                 |          |                     |              |                         |
| <b>A. Special Events</b>                                                                        |                 |          |                     |              |                         |
| 1-99 Participants                                                                               | Day             | \$180.00 |                     | \$350.00     |                         |
| 100-249 Participants                                                                            | Day             | \$270.00 |                     | \$500.00     |                         |
| 250-499 Participants                                                                            | Day             | \$350.00 |                     | \$700.00     |                         |
| 500+ Participants                                                                               | Day             | \$550.00 |                     | \$1,000.00   |                         |
| Cleaning/Damage Deposit (refundable)                                                            | Day             | \$700.00 |                     | \$700.00     |                         |
| <b>Special Events – Additional Days</b>                                                         |                 |          |                     |              |                         |
| 1-99 Participants                                                                               | Day             | \$170.00 |                     | \$340.00     |                         |
| 100-249 Participants                                                                            | Day             | \$230.00 |                     | \$460.00     |                         |
| 250-499 Participants                                                                            | Day             | \$250.00 |                     | \$600.00     |                         |
| 500+ Participants                                                                               | Day             | \$450.00 |                     | \$900.00     |                         |
| <b>B. John Hinkel Amphitheater</b>                                                              | Day             | \$120.00 |                     | \$144.00     |                         |
| Cleaning/Damage Deposit (refundable)                                                            |                 | \$350.00 |                     | \$350.00     |                         |
| <b>C. Camp Day Use Fee</b>                                                                      |                 |          |                     |              |                         |
| 1-50 Participants                                                                               | Day             | \$50.00  |                     | \$50.00      |                         |
| 51-100 Participants                                                                             | Day             | \$100.00 |                     | \$100.00     |                         |
| 101-150 Participants                                                                            | Day             | \$150.00 |                     | \$150.00     |                         |
| <b>D. Small Turf Areas in Parks (Ages 8 yrs &amp; under; Mon-Fri only; Max 3 days per week)</b> |                 |          |                     |              |                         |
| Ohlone Park, Aquatic Park, James Kenney Park, Live Oak Park                                     | 2-Hours         | \$25.00  |                     | \$30.00      |                         |

| Program Area                                                         | Unit of Measure | Resident   | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|----------------------------------------------------------------------|-----------------|------------|---------------------|--------------|-------------------------|
| <b>8. Weddings &amp; Events<br/>(4-hour minimum)</b>                 |                 |            |                     |              |                         |
| <b>A. Rose Garden</b>                                                | 4-Hours         | \$1,000.00 |                     | \$1,200.00   |                         |
| Each Additional Hour (after 4 hours)                                 | Hour            | \$170.00   |                     | \$204.00     |                         |
| <b>B. Cragmont, Live Oak Park, &amp; John Hinkel (outside areas)</b> | 4-Hours         | \$450.00   |                     | \$540.00     |                         |
| Each Additional Hour (after 4 hours)                                 | Hour            | \$75.00    |                     | \$90.00      |                         |
| <b>C. Spinnaker Way Vista</b>                                        | 4-Hours         | \$750.00   |                     | \$750.00     |                         |
| Each Additional Hour (after 4 hours)                                 | Hour            | \$170.00   |                     | \$170.00     |                         |
| <b>D. Yacht Club Point</b>                                           | 4-Hours         | \$750.00   |                     | \$750.00     |                         |
| Each Additional Hour (after 4 hours)                                 | Hour            | \$170.00   |                     | \$170.00     |                         |
| Cleaning/Damage Deposit (refundable)                                 | Rental          | \$700.00   |                     | \$700.00     |                         |
| <b>III. SWIM CENTER FEES</b>                                         |                 |            |                     |              |                         |
| <b>1. Admissions<br/>(Public &amp; Family Swim, Laps)</b>            |                 |            |                     |              |                         |
| Adult (Drop-in)                                                      | Swim            | \$6.00     |                     | \$6.00       |                         |
| Adult (10-Swim Card)                                                 | 10-Swims        | \$51.00    |                     | \$51.00      |                         |
| Adult (Monthly)                                                      | Month           | \$73.00    |                     | \$73.00      |                         |
| Youth, Senior, Disabled (Drop-In)                                    | Swim            | \$3.00     |                     | \$3.00       |                         |
| Youth Senior Disabled (10-Swim Card)                                 | 10-Swims        | \$22.00    |                     | \$22.00      |                         |
| Youth Senior Disabled (Monthly Card)                                 | Month           | \$37.00    |                     | \$37.00      |                         |
| <b>2. Red Cross Swim Sessions</b>                                    |                 |            |                     |              |                         |
| Adult                                                                | Session         | \$75.00    |                     | \$90.00      |                         |
| Youth, Senior, Disabled                                              | Session         | \$72.00    |                     | \$84.00      |                         |
| Organized Youth Groups (Residents only)                              |                 |            |                     |              |                         |
| 10-15 participants                                                   | Session         | \$65.00    |                     | -            |                         |
| 16-21 participants                                                   | Session         | \$62.00    |                     | -            |                         |
| 22-32 participants                                                   | Session         | \$54.00    |                     | -            |                         |
| 33-43 participants                                                   | Session         | \$48.00    |                     | -            |                         |
| 44-54 participants                                                   | Session         | \$39.00    |                     | -            |                         |
| 55+ participants                                                     | Session         | \$37.00    |                     | -            |                         |

| Program Area                                                                             | Unit of Measure | Resident | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|------------------------------------------------------------------------------------------|-----------------|----------|---------------------|--------------|-------------------------|
| <b>3. Premium Classes</b>                                                                |                 |          |                     |              |                         |
| Continuous & Coached Workouts: water aerobics, parent/tot, stroke technique, Master Swim |                 |          |                     |              |                         |
| Adult (Drop-in)                                                                          | Swim            | \$7.00   |                     | \$7.00       |                         |
| Adult (10-Swim Card)                                                                     | 10-Swims        | \$66.00  |                     | \$66.00      |                         |
| Adult (Monthly)                                                                          | Month           | \$82.00  |                     | \$82.00      |                         |
| Youth, Senior, Disabled (Drop-In)                                                        | Swim            | \$5.00   |                     | \$5.00       |                         |
| Youth Senior Disabled (10-Swim Card)                                                     | 10-Swims        | \$40.00  |                     | \$40.00      |                         |
| Youth Senior Disabled (Monthly Card)                                                     | Session         | \$57.00  |                     | \$57.00      |                         |
| <b>4. Private Swim Lessons (1/2 hour session)</b>                                        |                 |          |                     |              |                         |
| Individual (One-on-One)                                                                  | Lesson          | \$30.00  |                     | \$36.00      |                         |
| Semi-Private Lesson (2 or more Participants)                                             | Lesson          | \$50.00  |                     | \$60.00      |                         |
| <b>IV. RECREATION PROGRAMS</b>                                                           |                 |          |                     |              |                         |
| <b>1. Sports</b>                                                                         |                 |          |                     |              |                         |
| <b>A. Adult Softball League</b>                                                          |                 |          |                     |              |                         |
| 4 Game Season                                                                            | Team            | \$320.00 |                     | \$384.00     |                         |
| 8 Game Season                                                                            | Team            | \$640.00 |                     | \$715.00     |                         |
| 10 Game Season                                                                           | Team            | \$800.00 |                     | \$875.00     |                         |
| <b>B. Adult Basketball League</b>                                                        |                 |          |                     |              |                         |
| 8 Game Season                                                                            | Team            | \$560.00 |                     | \$635.00     |                         |
| 10 Game Season                                                                           | Team            | \$700.00 |                     | \$775.00     |                         |
| <b>C. Adult Volleyball League</b>                                                        |                 |          |                     |              |                         |
| 8 Game Season                                                                            | Team            | \$320.00 |                     | \$384.00     |                         |
| 10 Game Season                                                                           | Team            | \$400.00 |                     | \$475.00     |                         |
| 2 Game Season                                                                            | Team            | \$480.00 |                     | \$555.00     |                         |
| 15 Game Season                                                                           | Team            | \$600.00 |                     | \$675.00     |                         |
| <b>D. Open Gym Volleyball</b>                                                            | Drop-In         | \$5.00   |                     | \$5.00       |                         |
| <b>E. Youth Baseball</b>                                                                 |                 |          |                     |              |                         |
| Individual                                                                               | Session         | \$51.00  |                     | \$61.00      |                         |
| <b>F. Youth Hoops League</b>                                                             |                 |          |                     |              |                         |
| Individual                                                                               | Session         | \$30.00  |                     | \$36.00      |                         |

| Program Area                                                                    | Unit of Measure | Resident                               | Resident (proposed) | Non-Resident                           | Non-Resident (proposed) |
|---------------------------------------------------------------------------------|-----------------|----------------------------------------|---------------------|----------------------------------------|-------------------------|
| <b>G. Youth Twilight Basketball</b>                                             |                 |                                        |                     |                                        |                         |
| Individual                                                                      | Session         | \$27.00                                |                     | \$32.00                                |                         |
| <b>H. Youth Flag Football League</b>                                            |                 |                                        |                     |                                        |                         |
| Individual                                                                      | Session         | \$30.00                                |                     | \$36.00                                |                         |
| <b>I. Tennis Lessons</b>                                                        |                 |                                        |                     |                                        |                         |
| Youth                                                                           | Session         | \$73.00                                |                     | \$88.00                                |                         |
| Adult                                                                           | Session         | \$107.00                               |                     | \$128.00                               |                         |
| <b>J. Skate Park Lessons &amp; Classes</b>                                      |                 |                                        |                     |                                        |                         |
| Full Day                                                                        | Session         | \$258.00                               |                     | \$310.00                               |                         |
| 1/2 Day Camp                                                                    | Session         | \$195.00                               |                     | \$234.00                               |                         |
| Park Introduction                                                               | Session         | \$11.00                                |                     | \$13.00                                |                         |
| Trick Clinic                                                                    | Session         | \$11.00                                |                     | \$13.00                                |                         |
| Private Lessons                                                                 | Hour            | \$43.00                                |                     | \$52.00                                |                         |
| Group Lessons                                                                   | Session         | \$108.00                               |                     | \$130.00                               |                         |
| <b>2. Programs at Centers</b>                                                   |                 |                                        |                     |                                        |                         |
| <b>A. After School Program Registration Fee (Frances Albrier, James Kenney)</b> |                 |                                        |                     |                                        |                         |
| Individual                                                                      | Week            | \$25.00                                |                     | \$30.00                                |                         |
| <b>B. Community Center Camp Programs (Winter, Spring, Summer)</b>               |                 |                                        |                     |                                        |                         |
| Core                                                                            | 30 hours        | \$101.00                               |                     | \$121.00                               |                         |
| AM Extended Care                                                                | 5 hours         | \$10.00                                |                     | \$12.00                                |                         |
| PM Extended Care                                                                | 15 hours        | \$30.00                                |                     | \$36.00                                |                         |
| <b>3. Camp Programs</b>                                                         |                 |                                        |                     |                                        |                         |
| <b>A. Berkeley Day Camp</b>                                                     |                 |                                        |                     |                                        |                         |
| Youth Core Program                                                              | 5-Days          | \$240.00                               | \$269.00            | \$288.00                               | \$323.00                |
| AM Extended Care                                                                | 5-Days          | \$51.00                                | \$57.00             | \$61.00                                | \$68.00                 |
| PM Extended Care                                                                | 5-Days          | \$79.00                                | \$88.00             | \$95.00                                | \$106.00                |
| Counselor-In-Training                                                           | 10-Days         | \$194.00                               | \$217.00            | \$232.00                               | \$260.00                |
| Cancelled Reservation                                                           | Session         | 25% of reservation not to exceed \$150 |                     | 25% of reservation not to exceed \$150 |                         |



| Program Area                                    | Unit of Measure | Resident   | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|-------------------------------------------------|-----------------|------------|---------------------|--------------|-------------------------|
| <b>B. Echo Lake Camp</b>                        |                 |            |                     |              |                         |
| <b>50 &amp; Better Camp</b>                     |                 |            |                     |              |                         |
| 50 & Better Camp Tent (up to 2 campers)         | 5-Day           | \$730.00   | \$818.00            | \$876.00     | \$981.00                |
| 50 & Better Camp Tent (up to 2 campers)         | 4-Day           | \$580.00   | \$650.00            | \$696.00     | \$780.00                |
| 50 & Better Camp Tent (up to 2 campers)         | Weekend         | \$460.00   | \$515.00            | \$552.00     | \$618.00                |
| 50 & Better Camp Additional Camper              | 1-Day           | \$40.00    | \$55.00             | \$48.00      | \$66.00                 |
| <b>Counselor-In-Training</b>                    |                 |            |                     |              |                         |
| Counselor-In-Training                           | 2-Week          | \$400.00   | \$448.00            | \$480.00     | \$538.00                |
| Counselor-In-Training                           | 1-Week          | \$275.00   | \$308.00            | \$330.00     | \$370.00                |
| <b>Family Camp Sessions</b>                     |                 |            |                     |              |                         |
| Full-Week Standard Tent (up to 3 campers)       | 7-Day           | \$1,675.00 | \$1,843.00          | \$2,010.00   | \$2,212.00              |
| Full-Week Low-Occupancy Tent                    | 7-Day           | \$1,450.00 | \$1,595.00          | \$1,740.00   | \$1,914.00              |
| Nightly Rate: Sun, Mon, Tues, or Wed            | 1-Night         | N/A        | \$450.00            | N/A          | \$540.00                |
| 5-Day Session - Standard Tent (up to 3 campers) | 5-Day           | \$1,375.00 | Eliminated          | \$1,650.00   | Eliminated              |
| 5-Day Session - Low Occupancy tent              | 5-Day           | \$1,206.25 | Eliminated          | \$1,447.50   | Eliminated              |
| Weekend Standard Tent (up to 3 campers)         | 4-Day           | \$1,225.00 | \$1,397.00          | \$1,470.00   | \$1,676.00              |
| Weekend Low-Occupancy Tent                      | 4-Day           | \$1,075.00 | \$1,226.00          | \$1,290.00   | \$1,471.00              |
| Mid-Week Standard Tent (up to 3 campers)        | 4-Day           | \$1,100.00 | \$1,210.00          | \$1,320.00   | \$1,452.00              |
| Mid-Week Low-Occupancy Tent                     | 4-Day           | \$965.00   | \$1,062.00          | \$1,158.00   | \$1,274.00              |
| Additional Camper Fee (1-Day)                   | 1-Day           | \$65.00    | \$90.00             | \$78.00      | \$108.00                |
| Additional Camper Session-Based Daily Rate      | 1-Day           | N/A        | \$80.00             | N/A          | \$96.00                 |
| <b>Day Use Fees</b>                             |                 |            |                     |              |                         |
| Adult (15+) Day Use                             | 1-Day           | \$108.00   |                     | \$129.60     |                         |
| Youth (7-14) Day Use                            | 1-Day           | \$72.00    |                     | \$86.40      |                         |
| Child (3-6) Day Use                             | 1-Day           | \$54.00    |                     | \$64.80      |                         |

| Program Area                                              | Unit of Measure | Resident | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|-----------------------------------------------------------|-----------------|----------|---------------------|--------------|-------------------------|
| <b>Group Rental Rates</b>                                 |                 |          |                     |              |                         |
| Adult (15+)                                               | 1-Day           | \$85.00  |                     | \$102.00     |                         |
| Youth (7-14)                                              | 1-Day           | \$71.50  |                     | \$85.80      |                         |
| Child (3-6)                                               | 1-Day           | \$52.80  |                     | \$63.36      |                         |
| Infant (0-3)                                              | 1-Day           | \$0.00   |                     | \$0.00       |                         |
| <b>New Camper Welcome Weekend</b>                         | Weekend         | \$195.00 |                     | \$234.00     |                         |
| <b>School Outdoor Education</b>                           |                 |          |                     |              |                         |
| Teachers & Adult Chaperones                               | 1-Day           | \$60.00  |                     | \$72.00      |                         |
| Youth Participants                                        | 1-Day           | \$45.00  |                     | \$54.00      |                         |
| <b>Shoulder Season Rentals</b>                            |                 |          |                     |              |                         |
| Shoulder Season Tent Rental (no meals, up to 3 campers)   | 1-Night         | \$97.75  | Eliminated          | \$117.30     | Eliminated              |
| Shoulder Season Tent Rental (with meals, up to 3 campers) | 1-Night         | \$195.50 | Eliminated          | \$234.60     | Eliminated              |
| <b>Work Weekend</b>                                       | Weekend         | \$0.00   |                     | \$0.00       |                         |
| <b>Youth Camp</b>                                         |                 |          |                     |              |                         |
| 5-Day Program                                             | 5-Days          | \$600.00 | \$672.00            | \$720.00     | \$806.00                |
| 6-Day Program                                             | 6-Days          | \$720.00 | \$806.00            | \$864.00     | \$967.00                |
| 7-Day Program                                             | 7-Days          | \$840.00 | \$941.00            | \$1,008.00   | \$1,129.00              |
| Per Day Fee                                               | 1-Day           | \$120.00 | \$134.00            | \$144.00     | \$161.00                |
| <b>Wedding Rental</b>                                     |                 |          |                     |              |                         |
| Wedding Rental                                            | 4-Hours         | \$750.00 |                     | \$900.00     |                         |
| Wedding Rental - Each Additional Hour (after 4 hours)     | Hour            | \$125.00 |                     | \$150.00     |                         |
| <b>C. Tuolumne Camp</b>                                   |                 |          |                     |              |                         |
| <b>50 &amp; Better Camp</b>                               |                 |          |                     |              |                         |
| 50 & Better Camp Tent (up to 2 campers)                   | 5-Day           | \$900.00 | \$1,008.00          | \$1,080.00   | \$1,210.00              |
| 50 & Better Camp Tent (up to 2 campers)                   | 4-Day           | \$720.00 | \$806.00            | \$864.00     | \$967.00                |
| 50 & Better Camp Tent (up to 2 campers)                   | Weekend         | \$540.00 | \$605.00            | \$648.00     | \$726.00                |
| 50 & Better Camp Additional Camper per day                | 1-Day           | \$45.00  | \$60.00             | \$54.00      | \$72.00                 |
| <b>Leaders in Training (LIT)</b>                          | 1-Week          | N/A      | \$941.00            | N/A          | \$1,129.00              |
| Program Area                                              | Unit of Measure | Resident | Resident (proposed) | Non-Resident | Non-Resident (proposed) |

|                                            |                        |                 |                            |                     |                                |
|--------------------------------------------|------------------------|-----------------|----------------------------|---------------------|--------------------------------|
| <b>Counselor-In-Training</b>               |                        |                 |                            |                     |                                |
| Counselor-In-Training                      | 2-Week                 | \$415.00        | \$465.00                   | \$498.00            | \$558.00                       |
| Counselor-In-Training                      | 1-Week                 | \$275.00        | \$308.00                   | \$330.00            | \$370.00                       |
| <b>Family Camp</b>                         |                        |                 |                            |                     |                                |
| Full-Week Standard Tent (up to 3 campers)  | 1-Week                 | \$1,995.00      | \$2,195.00                 | \$2,394.00          | \$2633.00                      |
| Full-Week Low-Occupancy Tent               | 1-Week                 | \$1,715.00      | \$1887.00                  | \$2,058.00          | \$2,264.00                     |
| Weekend Standard Tent (up to 3 campers)    | 4-Day                  | \$1,460.00      | \$1,664.00                 | \$1,752.00          | \$1,997.00                     |
| Weekend Low-Occupancy Tent                 | 4-Day                  | \$1,280.00      | \$1459.00                  | \$1,536.00          | \$1,751.00                     |
| Mid-Week Standard Tent (up to 3 campers)   | 4-Day                  | \$1,300.00      | \$1,430.00                 | \$1,560.00          | \$1,716.00                     |
| Mid-Week Low Occupancy Tent                | 4-Day                  | \$1,100.00      | \$1,210.00                 | \$1,320.00          | \$1452.00                      |
| Nightly Rate: Sun, Mon, Tues, or Wed       | 1-Day                  | N/A             | \$525.00                   | N/A                 | \$630.00                       |
| <b>Family Camp Day Use Fees</b>            |                        |                 |                            |                     |                                |
| Adult (15+) Day Use                        | 1-Day                  | \$135.00        |                            | \$162.00            |                                |
| Youth (7-14) Day Use                       | 1-Day                  | \$90.00         |                            | \$108.00            |                                |
| Child (3-6) Day Use                        | 1-Day                  | \$68.00         |                            | \$81.60             |                                |
| Additional Camper Fee (1-Day)              | 1-Day                  | \$75.00         | \$100.00                   | \$90.00             | \$120.00                       |
| Additional Camper Session-Based Daily Rate | 1-Day                  | N/A             | \$90.00                    | N/A                 | \$108.00                       |
| <b>Group Rental Rates</b>                  |                        |                 |                            |                     |                                |
| Adult (15+)                                | 1-Day                  | \$110.00        |                            | \$132.00            |                                |
| Youth (7-14)                               | 1-Day                  | \$93.00         |                            | \$111.60            |                                |
| Child (3-6)                                | 1-Day                  | \$78.00         |                            | \$93.60             |                                |
| Infant (0-3)                               | 1-Day                  | \$0.00          |                            | \$0.00              |                                |
| <b>New Camper Welcome Weekend</b>          | Weekend                | \$195.00        |                            | \$234.00            |                                |
| <b>School Outdoor Education</b>            |                        |                 |                            |                     |                                |
| Adult Chaperones                           | 1-Day                  | \$75.00         |                            | \$90.00             |                                |
| Youth Participants                         | 1-Day                  | \$56.00         |                            | \$67.20             |                                |
| <b>Shoulder Season Rentals</b>             |                        |                 |                            |                     |                                |
| Shoulder Season Tent Rental (no meals)     | 1-Night                | \$115.00        | Eliminated                 | \$138.00            | Eliminated                     |
| Shoulder Season Tent Rental (with meals)   | 1-Night                | \$230.00        | Eliminated                 | \$276.00            | Eliminated                     |
| <b>Program Area</b>                        | <b>Unit of Measure</b> | <b>Resident</b> | <b>Resident (proposed)</b> | <b>Non-Resident</b> | <b>Non-Resident (proposed)</b> |

|                                                                                                  |                                                |                        |            |                        |            |
|--------------------------------------------------------------------------------------------------|------------------------------------------------|------------------------|------------|------------------------|------------|
| <b>Work Weekend</b>                                                                              | Weekend                                        | \$0.00                 |            | \$0.00                 |            |
| <b>Youth Camp</b>                                                                                |                                                |                        |            |                        |            |
| 5-Day Program                                                                                    | 5-Days                                         | \$750.00               | \$840.00   | \$900.00               | \$1,008.00 |
| 6-Day Program                                                                                    | 6-Days                                         | N/A                    | \$1,008.00 | N/A                    | \$1,210.00 |
| 7-Day Program                                                                                    | 7-Days                                         | \$1,050.00             | \$1,176.00 | \$1,260.00             | \$1,411.00 |
| Per Day Fee                                                                                      | 1-Day                                          | \$150.00               | \$168.00   | \$180.00               | \$202.00   |
| <b>Wedding Rental</b>                                                                            |                                                |                        |            |                        |            |
| Wedding Rental                                                                                   | 4-Hours                                        | \$1,000.00             |            | \$1,200.00             |            |
| Wedding Rental - Each Additional Hour (after 4 hours)                                            | Hour                                           | \$150.00               |            | \$180.00               |            |
| <b>D. Resident Camp Surcharges</b>                                                               |                                                |                        |            |                        |            |
| Family Camp Program Deposit Payment                                                              |                                                | \$500 per registration |            | \$500 per registration |            |
| Late Fee                                                                                         | \$75 if balance is not paid by dates specified |                        |            |                        |            |
| Cleaning / Damage Deposit                                                                        | Rental                                         | \$300.00               | \$2,000.00 | \$300.00               | \$2,000.00 |
| Changes to Reservation resulting in reduction in length of stay (30 days or more before arrival) | Reservation                                    | \$100.00               |            | \$100.00               |            |
| Cancel Reservation (30 days or more before arrival)                                              | 25% of reservation not to exceed \$150         |                        |            |                        |            |
| Cancel Reservation (due to emergency or illness, with Dr's excuse)                               | Reservation                                    | No Charge              |            | No Charge              |            |

| Program Area                                  | Unit of Measure | Resident | Resident (proposed) | Non-Resident | Non-Resident (proposed) |
|-----------------------------------------------|-----------------|----------|---------------------|--------------|-------------------------|
| <b>4. Waterfront Programs</b>                 |                 |          |                     |              |                         |
| <b>A. Adventure Playground</b>                |                 |          |                     |              |                         |
| Individual Admission (anyone over 1 year old) | Day             | \$1.00   |                     | \$1.00       |                         |
| Group size 5-10                               | 2-hours         | \$75.00  |                     | \$75.00      |                         |
| Group size 11-20                              | 2-hours         | \$105.00 |                     | \$105.00     |                         |
| Group size 21-30                              | 2-hours         | \$150.00 |                     | \$150.00     |                         |
| Group size 31-40                              | 2-hours         | \$180.00 |                     | \$180.00     |                         |
| <b>B. Education Programs</b>                  |                 |          |                     |              |                         |
| Animal                                        | Session         | \$200.00 |                     | \$200.00     |                         |
| Low Tide                                      | Session         | \$200.00 |                     | \$200.00     |                         |
| Research Boat Trip                            | Session         | \$225.00 |                     | \$225.00     |                         |
| Sail Boat Trip                                | Session         | \$255.00 |                     | \$255.00     |                         |
| Docent Training                               | Session         | \$65.00  |                     | \$65.00      |                         |
| Special Program Request                       | Hour            | \$65.00  |                     | \$65.00      |                         |
| Marine Biology                                | 4-Days          | \$75.00  |                     | \$75.00      |                         |
| Marine Biology                                | 8-Days          | \$150.00 |                     | \$150.00     |                         |
| Boating                                       | 4-Days          | \$150.00 |                     | \$150.00     |                         |
| Canoeing                                      | 3-Days          | \$55.00  |                     | \$55.00      |                         |

## ATTACHMENT 2

**Table 1: Family Camp Program Fees – Per Session Fee Comparison**

Note: This analysis compares the total combined fee for a Family Camp stay during primary program periods for a 7-day stay for a family of three Berkeley Residents. Other Camp programs have fee models that differ from the City of Berkeley's, which may include different levels of program offerings, separate meal plans, capital improvement recovery surcharges, and fees for electricity or other special accommodations. This analysis assumes base program accommodations with meal plan for length of stay. Session fees are pro-rated or extended where applicable.

| <b>Agency</b>                         | <b>Fee</b>     |
|---------------------------------------|----------------|
| <b>Berkeley Echo Lake Family Camp</b> | <b>\$1,843</b> |
| San Jose Family Camp at Yosemite      | \$1,860        |
| Camp Mather                           | \$2,100        |
| <b>Berkeley Tuolumne Camp</b>         | <b>\$2,195</b> |
| Lair of the Bear (UC Berkeley)        | \$2,900        |

**Table 2: Youth Camp Program Fees – Per Session Comparison**

Note: This analysis compares the per camper rate for a Youth Camp Enrollment during primary program periods for a 6-day session. Other camps have varied schedule models and fees have been adapted for comparative purposes. Where camps include additional surcharges or operational fees in addition to the base rate, such rates have been calculated for comparison. Session fees are pro-rated or extended where applicable.

| <b>Agency</b>                             | <b>Fee</b>     |
|-------------------------------------------|----------------|
| <b>Berkeley Echo Lake Camp (proposed)</b> | <b>\$806</b>   |
| Camp Concord                              | \$825          |
| <b>Berkeley Tuolumne Camp (proposed)</b>  | <b>\$1,008</b> |
| Camp Winnarainbow                         | \$1,250        |
| Camp Tawonga                              | \$1,695        |
| Camp Trinity at Bar 717 Ranch             | \$2,000        |

**Table 3: Day Camp Program Fees- Per Session Comparison**

Note: This analysis compares the per camper rate for a Day Camp Enrollment during primary program periods for a 5-day session. Other camps have varied schedule models and fees have been adapted for comparative purposes. Session fees are pro-rated or extended where applicable.

| Agency                                   | Fee                                                   |
|------------------------------------------|-------------------------------------------------------|
| Albany YMCA                              | \$183*<br>Does not include required<br>membership fee |
| <b>Berkeley Day Camp (proposed)</b>      | <b>\$269</b>                                          |
| UC Berkeley Youth Recreation Summer Camp | \$480                                                 |
| Kids for the Bay                         | \$485                                                 |
| Trackers Bay                             | \$575                                                 |

**ATTACHMENT 3**

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

NEW FEES AND INCREASING CURRENT FEES FOR SELECT RECREATION PROGRAMS AND FACILITY RENTALS; AND RESCINDING RESOLUTION NO. 70,193 N.S. AND ALL AMENDATORY RESOLUTIONS

WHEREAS, on January 19, 2022, Council adopted the new Fee Schedule for Recreation Division programs (Resolution No. 70,193-N.S.); and

WHEREAS, the proposed Echo Lake Camp, Tuolumne Camp, and Berkeley Day Camp new fees and fee increases will provide additional revenue to the Camps Fund which will help cover the cost of delivering programs; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the rates and charges set forth in Exhibit A are hereby fixed and established for the Parks and Recreation programs and shall be effective January 18, 2023, unless otherwise noted in Exhibit A.

BE IT FURTHER RESOLVED that Resolution No. 70,193 N.S. and all amendatory resolutions are hereby rescinded effective January 18, 2023.

Exhibit A: Fee Schedule



## ATTACHMENT 3

**Exhibit A:****Recreation Fee Schedule***Effective January 18, 2023 (unless otherwise noted below)*

| <b>Program Area</b>                                                                                                                                                                   | <b>Unit of Measure</b> | <b>Resident</b> | <b>Non- Resident</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-----------------|----------------------|
| <b>I. DIRECTOR'S AUTHORITY TO IMPLEMENT NEW FEES</b>                                                                                                                                  |                        |                 |                      |
| The Director of Parks Recreation and Waterfront, or his/her designee, reserves the right to establish fees for new Recreation programs based on comparison with other municipalities. |                        |                 |                      |
| Various                                                                                                                                                                               | Various                | Up to \$350     | Up To \$420          |
| <b>II. FACILITY RENTAL CHARGES</b>                                                                                                                                                    |                        |                 |                      |
| <b>1. Room Rentals - Regular Hours (1 hour minimum); Non-Regular Hours (2 hour minimum)</b>                                                                                           |                        |                 |                      |
| James Kenney (JK) Live Oak (LO)<br>Frances Albrier (FA), Martin Luther King (MLK)                                                                                                     |                        |                 |                      |
| <b>A. Youth, Senior, Disabled</b>                                                                                                                                                     |                        |                 |                      |
| Regular Hours                                                                                                                                                                         | Hour                   | \$41.00         | \$49.00              |
| Non-Regular Hours                                                                                                                                                                     | Hour                   | \$61.00         | \$73.00              |
| <b>B. All Other</b>                                                                                                                                                                   |                        |                 |                      |
| <b>Auditorium (FA) &amp; Social Hall (LO)</b>                                                                                                                                         |                        |                 |                      |
| Regular Hours                                                                                                                                                                         | Hour                   | \$67.00         | \$80.00              |
| Non-Regular Hours                                                                                                                                                                     | Hour                   | \$82.00         | \$98.00              |
| <b>Fireside Room (LO), Community Room (JK)</b>                                                                                                                                        |                        |                 |                      |
| Regular Hours                                                                                                                                                                         | Hour                   | \$52.00         | \$62.00              |
| Non-Regular Hours                                                                                                                                                                     | Hour                   | \$67.00         | \$80.00              |
| <b>Game Room (FA, MLK) Arts &amp; Crafts Room (FA, JK, LO)<br/>Meeting Room (JK, LO, MLK)</b>                                                                                         |                        |                 |                      |
| Regular Hours                                                                                                                                                                         | Hour                   | \$46.00         | \$55.00              |
| Non-Regular Hours                                                                                                                                                                     | Hour                   | \$62.00         | \$74.00              |
| <b>C. Multi Room Discount</b>                                                                                                                                                         |                        |                 |                      |
| 2nd room                                                                                                                                                                              | Rental                 | 25% discount    | 25% discount         |
| 3rd room, each additional room                                                                                                                                                        | Rental                 | 50% discount    | 50% discount         |

| Program Area                                                                                                                  | Unit of Measure | Resident   | Non- Resident |
|-------------------------------------------------------------------------------------------------------------------------------|-----------------|------------|---------------|
| <b>D. Gym Rentals (JK, MLK)</b>                                                                                               |                 |            |               |
| Regular Hours                                                                                                                 | Hour            | \$64.00    | \$77.00       |
| Non-Regular Hours                                                                                                             |                 | \$75.00    | \$90.00       |
| <b>E. Filming Fee</b>                                                                                                         |                 |            |               |
| Parks and Facilities                                                                                                          | ½ Day           | \$400.00   | \$400.00      |
|                                                                                                                               | Full Day        | \$800.00   | \$800.00      |
| <b>F. Surcharges</b>                                                                                                          |                 |            |               |
| Table & Chair Set-Up                                                                                                          | Rental          | \$63.00    | \$76.00       |
| Kitchen Use                                                                                                                   | Rental          | \$86.00    | \$103.00      |
| Small Storage Room                                                                                                            | Month           | \$21.00    | \$25.00       |
| Large Storage Room                                                                                                            | Month           | \$31.00    | \$37.00       |
| Stage Use w/Room Rental                                                                                                       | Hour            | \$26.00    | \$31.00       |
| P/A system & staff operation                                                                                                  | Hour            | \$42.00    | \$50.00       |
| Cleaning/Damage Deposit All Rentals (Refundable)                                                                              | Rental          | \$200.00   | \$200.00      |
| <b>2. City Athletic Fields</b>                                                                                                |                 |            |               |
| <b>Cedar Rose, Codornices, Glendale - La Loma, Grove, James Kenney, Ohlone, San Pablo, Willard, Rosa Parks, Thousand Oaks</b> |                 |            |               |
| Youth non-profit leagues                                                                                                      | 2-Hours         | \$36.00    | \$43.00       |
| Adults, for-profits, private schools                                                                                          | 2-Hours         | \$72.00    | \$86.00       |
| Maintenance Deposit                                                                                                           |                 | 40% of fee | 40% of fee    |
| <b>Gabe's Fields at Harrison Park, Natural Turf</b>                                                                           |                 |            |               |
| Youth non-profit leagues                                                                                                      | 2-Hours         | \$29.00    | \$35.00       |
| Adults, for-profits, private schools                                                                                          | 2-Hours         | \$72.00    | \$86.00       |
| <b>Gilman Fields, Natural Turf</b>                                                                                            |                 |            |               |
| Youth non-profit leagues                                                                                                      | 2-Hours         | \$29.00    | \$35.00       |
| Adults, for-profits, private schools                                                                                          | 2-Hours         | \$72.00    | \$96.00       |
| <b>Gilman Fields, Synthetic Turf</b>                                                                                          |                 |            |               |
| Youth non-profit leagues                                                                                                      | 2-Hours         | \$40.00    | \$48.00       |
| Adults, for-profits, private schools                                                                                          | 2-Hours         | \$91.00    | \$109.00      |
| <b>Sports Field User Fines (Policy Violations: Applicable to All Athletic Fields)</b>                                         |                 |            |               |
| Playing on Closed Grass Fields                                                                                                | 1st Offense     | \$250.00   | \$250.00      |
|                                                                                                                               | 2nd Offense     | \$500.00   | \$500.00      |

| Program Area                                                                                                                            | Unit of Measure              | Resident | Non- Resident |
|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------|---------------|
| Running practices in main goal areas                                                                                                    | 1st Offense within 12 months | \$50.00  | \$50.00       |
|                                                                                                                                         | 2nd Offense within 12 mo     | \$100.00 | \$100.00      |
|                                                                                                                                         | 3rd Offense within 12 mo     | \$200.00 | \$200.00      |
| Dogs, Alcohol, Trash, Wheeled vehicles                                                                                                  | Incident                     | \$100.00 | \$100.00      |
| Field Monitor                                                                                                                           | Hourly                       | \$25.00  | \$25.00       |
| <b>Additional Rules (Applicable to all athletic fields)</b>                                                                             |                              |          |               |
| Weekday slots used before 3:30pm throughout the year are discounted 50%                                                                 |                              |          |               |
| Weekday slots 5:30pm-7:00pm are charged as full two-hour slot                                                                           |                              |          |               |
| All other slots are pro-rated in 30 minute increments                                                                                   |                              |          |               |
| <b>3. Skate Park Rental (only available AM hours)</b>                                                                                   |                              |          |               |
| <b>A. Morning Hours (includes 2 staff members)</b>                                                                                      | Hour                         | \$250.00 | \$300.00      |
| <b>B. Birthday Party (includes 2 staff members &amp; lesson)</b>                                                                        | Hour                         | \$350.00 | \$420.00      |
| Cleaning/Damage Deposit (refundable)                                                                                                    | Rental                       | \$200.00 | \$200.00      |
| <b>4. Tennis Courts</b>                                                                                                                 |                              |          |               |
| <b>A. Day Use (All Courts): Cedar Rose, Grove, James Kenney, Live Oak, Rose Garden, Roy Oakes, San Pablo, Strawberry Creek, Willard</b> |                              |          |               |
| Adult                                                                                                                                   | Hour                         | \$7.00   | \$8.00        |
| Youth, Senior, Disabled                                                                                                                 | Hour                         | \$5.00   | \$6.00        |
| <b>B. Night Use/Lighted Courts: Cedar Rose, Grove, James Kenney, Live Oak, San Pablo, Strawberry Creek, Willard</b>                     |                              |          |               |
| Adult                                                                                                                                   | Hour                         | \$10.00  | \$12.00       |
| Youth, Senior, Disabled                                                                                                                 | Hour                         | \$8.00   | \$10.00       |

| Program Area                                              | Unit of Measure | Resident | Non- Resident |
|-----------------------------------------------------------|-----------------|----------|---------------|
| <b>5. Swim Centers (1-hour minimum) King, West Campus</b> |                 |          |               |
| 1-35 people                                               | Hour            | \$100.00 | \$120.00      |
| 36-70 people                                              | Hour            | \$145.00 | \$174.00      |
| 71-100 people                                             | Hour            | \$177.00 | \$212.00      |
| 101-150 people                                            | Hour            | \$217.00 | \$260.00      |
| Cleaning/Damage Deposit (refundable)                      | Rental          | \$200.00 | \$200.00      |
| <b>6. Picnic Areas (4-hour minimum)</b>                   |                 |          |               |
| <b>A. Aquatic Park</b>                                    | 4-hours         | \$45.00  | \$54.00       |
| <b>B. Cedar Rose</b>                                      | 4-hours         | \$30.00  | \$36.00       |
| <b>C. Codornices Park Area 1</b>                          | 4-hours         | \$75.00  | \$90.00       |
| <b>D. Codornices Park Area 2</b>                          | 4-hours         | \$60.00  | \$72.00       |
| <b>E. Cragmont</b>                                        | 4-hours         | \$45.00  | \$54.00       |
| <b>F. Grove</b>                                           | 4-hours         | \$30.00  | \$36.00       |
| <b>G. James Kenney</b>                                    | 4-hours         | \$45.00  | \$54.00       |
| <b>H. King School</b>                                     | 4-hours         | \$30.00  | \$36.00       |
| <b>I. Live Oak Park (Areas 1 &amp; 2)</b>                 | 4-hours         | \$60.00  | \$72.00       |
| <b>J. Ohlone Park @ McGee</b>                             | 4-hours         | \$45.00  | \$54.00       |
| <b>K. San Pablo Park</b>                                  | 4-hours         | \$30.00  | \$36.00       |
| <b>L. Strawberry Creek</b>                                | 4-hours         | \$30.00  | \$36.00       |
| <b>M. Shorebird Park: Areas 1, 2</b>                      | 4-hours         | \$60.00  | \$60.00       |
| <b>N. Shorebird Park: Area 3</b>                          | 4-hours         | \$45.00  | \$45.00       |
| <b>O. Cesar Chavez: Area 1</b>                            | 4-hours         | \$45.00  | \$45.00       |
| <b>P. Cesar Chavez: Area 2 (large picnic area)</b>        | 4-hours         | \$200.00 | \$200.00      |
| <b>Bounce House Permit</b>                                | Per Use         | \$20.00  | \$25.00       |
| <b>7. Parks &amp; Open Space (not athletic fields)</b>    |                 |          |               |
| <b>A. Special Events</b>                                  |                 |          |               |
| 1-99 Participants                                         | Day             | \$180.00 | \$350.00      |
| 100-249 Participants                                      | Day             | \$270.00 | \$500.00      |
| 250-499 Participants                                      | Day             | \$350.00 | \$700.00      |
| 500+ Participants                                         | Day             | \$550.00 | \$1,000.00    |
| Cleaning/Damage Deposit (refundable)                      | Day             | \$700.00 | \$700.00      |

| Program Area                                                                                 | Unit of Measure | Resident   | Non- Resident |
|----------------------------------------------------------------------------------------------|-----------------|------------|---------------|
| <b>Special Events – Additional Days</b>                                                      |                 |            |               |
| 1-99 Participants                                                                            | Day             | \$170.00   | \$340.00      |
| 100-249 Participants                                                                         | Day             | \$230.00   | \$460.00      |
| 250-499 Participants                                                                         | Day             | \$250.00   | \$600.00      |
| 500+ Participants                                                                            | Day             | \$450.00   | \$900.00      |
| <b>B. John Hinkel Amphitheater</b>                                                           | Day             | \$120.00   | \$144.00      |
| Cleaning/Damage Deposit (refundable)                                                         |                 | \$350.00   | \$350.00      |
| <b>Camp Day Use Fee</b>                                                                      |                 |            |               |
| 1-50 Participants                                                                            | Day             | \$50.00    | \$50.00       |
| 51-100 Participants                                                                          | Day             | \$100.00   | \$100.00      |
| 101-150 Participants                                                                         | Day             | \$150.00   | \$150.00      |
| <b>Small Turf Areas in Parks (Ages 8 yrs &amp; under; Mon-Fri only; Max 3 days per week)</b> |                 |            |               |
| Ohlone Park, Aquatic Park, James Kenney Park, Live Oak Park                                  | 2-Hours         | \$25.00    | \$30.00       |
| <b>8. Weddings (4-hour minimum)</b>                                                          |                 |            |               |
| <b>A. Rose Garden</b>                                                                        | 4-Hours         | \$1,000.00 | \$1,200.00    |
| Each Additional Hour (after 4 hours)                                                         | Hour            | \$170.00   | \$204.00      |
| <b>B. Cragmont, Live Oak Park, &amp; John Hinkel (outside areas)</b>                         | 4-Hours         | \$450.00   | \$540.00      |
| Each Additional Hour (after 4 hours)                                                         | Hour            | \$75.00    | \$90.00       |
| <b>C. Spinnaker Way Vista</b>                                                                | 4-Hours         | \$750.00   | \$750.00      |
| Each Additional Hour (after 4 hours)                                                         | Hour            | \$170.00   | \$170.00      |
| <b>D. Yacht Club Point</b>                                                                   | 4-Hours         | \$750.00   | \$750.00      |
| Each Additional Hour (after 4 hours)                                                         | Hour            | \$170.00   | \$170.00      |
| Cleaning/Damage Deposit (refundable)                                                         | Rental          | \$700.00   | \$700.00      |
| <b>III. SWIM CENTER FEES</b>                                                                 |                 |            |               |
| <b>1. Admissions (Public &amp; Family Swim, Laps)</b>                                        |                 |            |               |
| Adult (Drop-in)                                                                              | Swim            | \$6.00     | \$6.00        |
| Adult (10-Swim Card)                                                                         | 10-Swims        | \$51.00    | \$51.00       |
| Adult (Monthly)                                                                              | Month           | \$73.00    | \$73.00       |
| Youth, Senior, Disabled (Drop-In)                                                            | Swim            | \$3.00     | \$3.00        |

| Program Area                                                                             | Unit of Measure | Resident | Non- Resident |
|------------------------------------------------------------------------------------------|-----------------|----------|---------------|
| Youth Senior Disabled (10-Swim Card)                                                     | 10-Swims        | \$22.00  | \$22.00       |
| Youth Senior Disabled (Monthly Card)                                                     | Month           | \$37.00  | \$37.00       |
| <b>2. Red Cross Swim Sessions</b>                                                        |                 |          |               |
| Adult                                                                                    | Session         | \$75.00  | \$90.00       |
| Youth, Senior, Disabled                                                                  | Session         | \$72.00  | \$84.00       |
| Organized Youth Groups (Residents only)                                                  |                 |          |               |
| 10-15 participants                                                                       | Session         | \$65.00  | -             |
| 16-21 participants                                                                       | Session         | \$62.00  | -             |
| 22-32 participants                                                                       | Session         | \$54.00  | -             |
| 33-43 participants                                                                       | Session         | \$48.00  | -             |
| 44-54 participants                                                                       | Session         | \$39.00  | -             |
| 55+ participants                                                                         | Session         | \$37.00  | -             |
| <b>3. Premium Classes</b>                                                                |                 |          |               |
| Continuous & Coached Workouts: water aerobics, parent/tot, stroke technique, Master Swim |                 |          |               |
| Adult (Drop-in)                                                                          | Swim            | \$7.00   | \$7.00        |
| Adult (10-Swim Card)                                                                     | 10-Swims        | \$66.00  | \$66.00       |
| Adult (Monthly)                                                                          | Month           | \$82.00  | \$82.00       |
| Youth, Senior, Disabled (Drop-In)                                                        | Swim            | \$5.00   | \$5.00        |
| Youth Senior Disabled (10-Swim Card)                                                     | 10-Swims        | \$40.00  | \$40.00       |
| Youth Senior Disabled (Monthly Card)                                                     | Session         | \$57.00  | \$57.00       |
| <b>4. Private Swim Lessons (1/2 hour session)</b>                                        |                 |          |               |
| Individual (One-on-One)                                                                  | Lesson          | \$30.00  | \$36.00       |
| Semi-Private Lesson (2 or more Participants)                                             | Lesson          | \$50.00  | \$60.00       |
| <b>IV. RECREATION PROGRAMS</b>                                                           |                 |          |               |
| <b>1. Sports</b>                                                                         |                 |          |               |
| <b>A. Adult Softball League</b>                                                          |                 |          |               |
| 4 Game Season                                                                            | Team            | \$320.00 | \$384.00      |
| 8 Game Season                                                                            | Team            | \$640.00 | \$715.00      |
| 10 Game Season                                                                           | Team            | \$800.00 | \$875.00      |

| Program Area                                                                            | Unit of Measure | Resident | Non- Resident |
|-----------------------------------------------------------------------------------------|-----------------|----------|---------------|
| <b>B. Adult Basketball League</b>                                                       |                 |          |               |
| 8 Game Season                                                                           | Team            | \$560.00 | \$635.00      |
| 10 Game Season                                                                          | Team            | \$700.00 | \$775.00      |
| <b>C. Adult Volleyball League</b>                                                       |                 |          |               |
| 8 Game Season                                                                           | Team            | \$320.00 | \$384.00      |
| 10 Game Season                                                                          | Team            | \$400.00 | \$475.00      |
| 12 Game Season                                                                          | Team            | \$480.00 | \$555.00      |
| 15 Game Season                                                                          | Team            | \$600.00 | \$675.00      |
| <b>D. Open Gym Volleyball</b>                                                           | Drop-In         | \$5.00   | \$5.00        |
| <b>E. Youth Baseball</b>                                                                |                 |          |               |
| Individual                                                                              | Session         | \$51.00  | \$61.00       |
| <b>F. Youth Hoops League</b>                                                            |                 |          |               |
| Individual                                                                              | Session         | \$30.00  | \$36.00       |
| <b>G. Youth Twilight Basketball</b>                                                     |                 |          |               |
| Individual                                                                              | Session         | \$27.00  | \$32.00       |
| <b>H. Youth Flag Football League</b>                                                    |                 |          |               |
| Individual                                                                              | Session         | \$30.00  | \$36.00       |
| <b>I. Tennis Lessons</b>                                                                |                 |          |               |
| Youth                                                                                   | Session         | \$73.00  | \$88.00       |
| Adult                                                                                   | Session         | \$107.00 | \$128.00      |
| <b>J. Skate Park Lessons &amp; Classes</b>                                              |                 |          |               |
| Full Day                                                                                | Session         | \$258.00 | \$310.00      |
| 1/2 Day Camp                                                                            | Session         | \$195.00 | \$234.00      |
| Park Introduction                                                                       | Session         | \$11.00  | \$13.00       |
| Trick Clinic                                                                            | Session         | \$11.00  | \$13.00       |
| Private Lessons                                                                         | Hour            | \$43.00  | \$52.00       |
| Group Lessons                                                                           | Session         | \$108.00 | \$130.00      |
| <b>2. Programs at Centers</b>                                                           |                 |          |               |
| <b>A. After School Program<br/>Registration Fee (Frances Albrier,<br/>James Kenney)</b> |                 |          |               |
| Individual                                                                              | Week            | \$25.00  | \$30.00       |
| <b>B. Community Center Camp<br/>Programs (Winter, Spring,<br/>Summer)</b>               |                 |          |               |
| Core                                                                                    | 30 hours        | \$101.00 | \$121.00      |

| Program Area                                   | Unit of Measure | Resident                               | Non- Resident                          |
|------------------------------------------------|-----------------|----------------------------------------|----------------------------------------|
| AM Extended Care                               | 5 hours         | \$10.00                                | \$12.00                                |
| PM Extended Care                               | 15 hours        | \$30.00                                | \$36.00                                |
| <b>3. Camp Programs</b>                        |                 |                                        |                                        |
| <b>A. Berkeley Day Camp</b>                    |                 |                                        |                                        |
| Youth Core Program                             | 5-Days          | \$269.00                               | \$323.00                               |
| AM Extended Care                               | 5-Days          | \$57.00                                | \$68.00                                |
| PM Extended Care                               | 5-Days          | \$88.00                                | \$106.00                               |
| Counselor-In-Training                          | 10-Days         | \$217.00                               | \$260.00                               |
| Cancelled Reservation                          | Session         | 25% of reservation not to exceed \$150 | 25% of reservation not to exceed \$150 |
| <b>B. Echo Lake Camp</b>                       |                 |                                        |                                        |
| <b>50 &amp; Better Camp</b>                    |                 |                                        |                                        |
| 50 & Better Camp Tent (up to 2 campers)        | 5-Day           | \$818.00                               | \$981.00                               |
| 50 & Better Camp Tent (up to 2 campers)        | 4-Day           | \$650.00                               | \$780.00                               |
| 50 & Better Camp Tent (up to 2 campers)        | Weekend         | \$515.00                               | \$618.00                               |
| 50 & Better Camp Additional Camper             | 1-Day           | \$55.00                                | \$66.00                                |
| <b>Counselor-In-Training</b>                   |                 |                                        |                                        |
| Counselor-In-Training                          | 2-Week          | \$448.00                               | \$538.00                               |
| Counselor-In-Training                          | 1-Week          | \$308.00                               | \$370.00                               |
| <b>Family Camp</b>                             |                 |                                        |                                        |
| Full-Week Standard Tent (up to 3 campers)      | 7-Day           | \$1,843.00                             | \$2,212.00                             |
| Full-Week Low-Occupancy Tent                   | 7-Day           | \$1,595.00                             | \$1,914.00                             |
| Nightly Rate: Sun, Mon, Tues, or Wed           | 1-Day           | \$450.00                               | \$540.00                               |
| Weekend Standard Tent (up to 3 campers)        | 4-Day           | \$1,397.00                             | \$1,676.00                             |
| Weekend Low-Occupancy Tent                     | 4-Day           | \$1,226.00                             | \$1,471.00                             |
| Mid-Week Standard Tent (up to 3 campers)       | 4-Day           | \$1,210.00                             | \$1,452.00                             |
| Mid-Week Low-Occupancy Tent                    | 4-Day           | \$1,062.00                             | \$1,274.00                             |
| Additional Camper Fee (1-Day)                  | 1-Day           | \$90.00                                | \$108.00                               |
| Additional Camper Fee Session-Based Daily Rate | 1-Day           | \$80.00                                | \$96.00                                |



| Program Area                                          | Unit of Measure | Resident   | Non- Resident |
|-------------------------------------------------------|-----------------|------------|---------------|
| <b>Day Use Fees</b>                                   |                 |            |               |
| Adult (15+) Day Use                                   | 1-Day           | \$108.00   | \$129.60      |
| Youth (7-14) Day Use                                  | 1-Day           | \$72.00    | \$86.40       |
| Child (3-6) Day Use                                   | 1-Day           | \$54.00    | \$64.80       |
| <b>Group Rental Rates</b>                             |                 |            |               |
| Adult (15+)                                           | 1-Day           | \$85.00    | \$102.00      |
| Youth (7-14)                                          | 1-Day           | \$71.50    | \$85.80       |
| Child (3-6)                                           | 1-Day           | \$52.80    | \$63.36       |
| Infant (0-3)                                          | 1-Day           | \$0.00     | \$0.00        |
| <b>New Camper Welcome Weekend</b>                     | Weekend         | \$195.00   | \$234.00      |
| <b>School Outdoor Education</b>                       |                 |            |               |
| Teachers & Adult Chaperones                           | 1-Day           | \$60.00    | \$72.00       |
| Youth Participants                                    | 1-Day           | \$45.00    | \$54.00       |
| <b>Work Weekend</b>                                   | Weekend         | \$0.00     | \$0.00        |
| <b>Youth Camp</b>                                     |                 |            |               |
| 5-Day Program                                         | 5-Days          | \$672.00   | \$806.00      |
| 6-Day Program                                         | 6-Days          | \$806.00   | \$967.00      |
| 7-Day Program                                         | 7-Days          | \$941.00   | \$1,129.00    |
| Per Day Fee                                           | 1-Day           | \$134.00   | \$161.00      |
| <b>Wedding Rental</b>                                 |                 |            |               |
| Wedding Rental                                        | 4-Hours         | \$750.00   | \$900.00      |
| Wedding Rental - Each Additional Hour (after 4 hours) | Hour            | \$125.00   | \$150.00      |
| <b>C. Tuolumne Camp</b>                               |                 |            |               |
| <b>50 &amp; Better Camp</b>                           |                 |            |               |
| 50 & Better Camp Tent (up to 2 campers)               | 5-Day           | \$1,008.00 | \$1,210.00    |
| 50 & Better Camp Tent (up to 2 campers)               | 4-Day           | \$806.00   | \$967.00      |
| 50 & Better Camp Tent (up to 2 campers)               | Weekend         | \$605.00   | \$726.00      |
| 50 & Better Camp Additional Camper per day            | 1-Day           | \$60.00    | \$72.00       |
| <b>Leaders in Training (LIT)</b>                      | 1-Week          | \$941.00   | \$1,129.00    |
| <b>Counselor-In-Training</b>                          |                 |            |               |
| Counselor-In-Training                                 | 2-Week          | \$465.00   | \$558.00      |
| Counselor-In-Training                                 | 1-Week          | \$308.00   | \$370.00      |

| Program Area                                          | Unit of Measure | Resident   | Non- Resident |
|-------------------------------------------------------|-----------------|------------|---------------|
| <b>Family Camp</b>                                    |                 |            |               |
| Full-Week Standard Tent (up to 3 campers)             | 1-Week          | \$2,195.00 | \$2,633.00    |
| Full-Week Low-Occupancy Tent                          | 1-Week          | \$1,887.00 | \$2,264.00    |
| Weekend Standard Tent (up to 3 campers)               | 4-Day           | \$1,664.00 | \$1,997.00    |
| Weekend Low-Occupancy Tent                            | 4-Day           | \$1,459.00 | \$1,751.00    |
| Mid-Week Standard Tent (up to 3 campers)              | 4-Day           | \$1,430.00 | \$1,716.00    |
| Mid-Week Low Occupancy Tent                           | 4-Day           | \$1,210.00 | \$1,452.00    |
| Nightly Rate: Sun, Mon, Tues, or Wed                  | 1-Day           | \$525.00   | \$630.00      |
| <b>Family Camp Day Use Fees</b>                       |                 |            |               |
| Adult (15+) Day Use                                   | 1-Day           | \$135.00   | \$162.00      |
| Youth (7-14) Day Use                                  | 1-Day           | \$90.00    | \$108.00      |
| Child (3-6) Day Use                                   | 1-Day           | \$68.00    | \$81.60       |
| Additional Camper Fee (1-Day)                         | 1-Day           | \$100.00   | \$120.00      |
| Additional Camp Session-Based Daily Rate              | 1-Day           | \$90.00    | \$108.00      |
| <b>Group Rental Rates</b>                             |                 |            |               |
| Adult (15+)                                           | 1-Day           | \$110.00   | \$132.00      |
| Youth (7-14)                                          | 1-Day           | \$93.00    | \$111.60      |
| Child (3-6)                                           | 1-Day           | \$78.00    | \$93.60       |
| Infant (0-3)                                          | 1-Day           | \$0.00     | \$0.00        |
| <b>New Camper Welcome Weekend</b>                     | Weekend         | \$195.00   | \$234.00      |
| <b>School Outdoor Education</b>                       |                 |            |               |
| Adult Chaperones                                      | 1-Day           | \$75.00    | \$90.00       |
| Youth Participants                                    | 1-Day           | \$56.00    | \$67.20       |
| <b>Work Weekend</b>                                   | Weekend         | \$0.00     | \$0.00        |
| <b>Youth Camp</b>                                     |                 |            |               |
| 5-Day Program                                         | 5-Days          | \$840.00   | \$1,008.00    |
| 6-Day Program                                         | 6-Days          | \$1,008.00 | \$1,210.00    |
| 7-Day Program                                         | 7-Days          | \$1,176.00 | \$1,411.00    |
| Per Day Fee                                           | 1-Day           | \$168.00   | \$202.00      |
| <b>Wedding Rental</b>                                 |                 |            |               |
| Wedding Rental                                        | 4-Hours         | \$1,000.00 | \$1,200.00    |
| Wedding Rental - Each Additional Hour (after 4 hours) | Hour            | \$150.00   | \$180.00      |

| Program Area                                                                                     | Unit of Measure                               | Resident               | Non- Resident          |
|--------------------------------------------------------------------------------------------------|-----------------------------------------------|------------------------|------------------------|
| <b>D. Resident Camp Surcharges</b>                                                               |                                               |                        |                        |
| Family Camp Program Deposit Payment                                                              |                                               | \$500 per registration | \$500 per registration |
| Late Fee                                                                                         | \$75 if balance is not paid by date specified |                        |                        |
| Cleaning / Damage Deposit                                                                        | Rental                                        | \$2,000.00             | \$2,000.00             |
| Changes to Reservation resulting in reduction in length of stay (30 days or more before arrival) | Reservation                                   | \$100.00               | \$100.00               |
| Cancel Reservation (30 days or more before arrival)                                              | 25% of reservation not to exceed \$150        |                        |                        |
| Cancel Reservation (due to emergency or illness, with Dr's excuse)                               | Reservation                                   | No Charge              | No Charge              |
| <b>4. Waterfront Programs</b>                                                                    |                                               |                        |                        |
| <b>A. Adventure Playground</b>                                                                   |                                               |                        |                        |
| Individual Admission (anyone over 1 year old)                                                    | Day                                           | \$1.00                 | \$1.00                 |
| Group size 5-10                                                                                  | 2-hours                                       | \$75.00                | \$75.00                |
| Group size 11-20                                                                                 | 2-hours                                       | \$105.00               | \$105.00               |
| Group size 21-30                                                                                 | 2-hours                                       | \$150.00               | \$150.00               |
| Group size 31-40                                                                                 | 2-hours                                       | \$180.00               | \$180.00               |
| <b>B. Education Programs</b>                                                                     |                                               |                        |                        |
| Animal                                                                                           | Session                                       | \$200.00               | \$200.00               |
| Low Tide                                                                                         | Session                                       | \$200.00               | \$200.00               |
| Research Boat Trip                                                                               | Session                                       | \$225.00               | \$225.00               |
| Sail Boat Trip                                                                                   | Session                                       | \$255.00               | \$255.00               |
| Docent Training                                                                                  | Session                                       | \$65.00                | \$65.00                |
| Special Program Request                                                                          | Hour                                          | \$65.00                | \$65.00                |
| Marine Biology                                                                                   | 4-Days                                        | \$75.00                | \$75.00                |
| Marine Biology                                                                                   | 8-Days                                        | \$150.00               | \$150.00               |
| Boating                                                                                          | 4-Days                                        | \$150.00               | \$150.00               |
| Canoeing                                                                                         | 3-Days                                        | \$55.00                | \$55.00                |

## NOTICE OF PUBLIC HEARING

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**Recreation Division Fee Increases**

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said City Council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Department of Parks, Recreation & Waterfront is proposing to increase selected fees, as contained in the attached Recreation Fee Schedule and excerpted below:

| <b>Program Area</b>                     | <b>Unit of Measure</b> | <b>Resident</b>                        | <b>Resident (proposed)</b> | <b>Non-Resident</b>                    | <b>Non-Resident (proposed)</b> |
|-----------------------------------------|------------------------|----------------------------------------|----------------------------|----------------------------------------|--------------------------------|
| <b>3. Camp Programs</b>                 |                        |                                        |                            |                                        |                                |
| <b>A. Berkeley Day Camp</b>             |                        |                                        |                            |                                        |                                |
| Youth Core Program                      | 5-Days                 | \$240.00                               | \$269.00                   | \$288.00                               | \$323.00                       |
| AM Extended Care                        | 5-Days                 | \$51.00                                | \$57.00                    | \$61.00                                | \$68.00                        |
| PM Extended Care                        | 5-Days                 | \$79.00                                | \$88.00                    | \$95.00                                | \$106.00                       |
| Counselor-In-Training                   | 10-Days                | \$194.00                               | \$217.00                   | \$232.00                               | \$260.00                       |
| Cancelled Reservation                   | Session                | 25% of reservation not to exceed \$150 |                            | 25% of reservation not to exceed \$150 |                                |
| <b>B. Echo Lake Camp</b>                |                        |                                        |                            |                                        |                                |
| <b>50 &amp; Better Camp</b>             |                        |                                        |                            |                                        |                                |
| 50 & Better Camp Tent (up to 2 campers) | 5-Day                  | \$730.00                               | \$818.00                   | \$876.00                               | \$981.00                       |
| 50 & Better Camp Tent (up to 2 campers) | 4-Day                  | \$580.00                               | \$650.00                   | \$696.00                               | \$780.00                       |
| 50 & Better Camp Tent (up to 2 campers) | Weekend                | \$460.00                               | \$515.00                   | \$552.00                               | \$618.00                       |
| 50 & Better Camp Additional Camper      | 1-Day                  | \$40.00                                | \$55.00                    | \$48.00                                | \$66.00                        |
| <b>Counselor-In-Training</b>            |                        |                                        |                            |                                        |                                |
| Counselor-In-Training                   | 2-Week                 | \$400.00                               | \$448.00                   | \$480.00                               | \$538.00                       |
| Counselor-In-Training                   | 1-Week                 | \$275.00                               | \$308.00                   | \$330.00                               | \$370.00                       |
| <b>Program Area</b>                     | <b>Unit of Measure</b> | <b>Resident</b>                        | <b>Resident (proposed)</b> | <b>Non-Resident</b>                    | <b>Non-Resident (proposed)</b> |
| <b>Family Camp</b>                      |                        |                                        |                            |                                        |                                |

|                                                           |                        |                 |                            |                     |                                |
|-----------------------------------------------------------|------------------------|-----------------|----------------------------|---------------------|--------------------------------|
| Full-Week Standard Tent (up to 3 campers)                 | 7-Day                  | \$1,675.00      | \$1,843.00                 | \$2,010.00          | \$2,212.00                     |
| Full-Week Low-Occupancy Tent                              | 7-Day                  | \$1,450.00      | \$1,595.00                 | \$1,740.00          | \$1,914.00                     |
| Nightly Rate: Sun, Mon, Tues, or Wed                      | 1-Day                  | N/A             | \$450.00                   | N/A                 | \$540.00                       |
| 5-Day Session - Standard Tent (up to 3 campers)           | 5-Day                  | \$1,375.00      | Eliminated                 | \$1,650.00          | Eliminated                     |
| 5-Day Session - Low Occupancy tent                        | 5-Day                  | \$1,206.25      | Eliminated                 | \$1,447.50          | Eliminated                     |
| Weekend Standard Tent (up to 3 campers)                   | 4-Day                  | \$1,225.00      | \$1,397.00                 | \$1,470.00          | \$1,676.00                     |
| Weekend Low-Occupancy Tent                                | 4-Day                  | \$1,075.00      | \$1,226.00                 | \$1,290.00          | \$1,471.00                     |
| Mid-Week Standard Tent (up to 3 campers)                  | 4-Day                  | \$1,100.00      | \$1,210.00                 | \$1,320.00          | \$1,452.00                     |
| Mid-Week Low-Occupancy Tent                               | 4-Day                  | \$965.00        | \$1,062.00                 | \$1,158.00          | \$1,274.00                     |
| Additional Camper 1 Day                                   | 1-Day                  | \$65.00         | \$90.00                    | \$78.00             | \$108.00                       |
| Additional Camper Session-Based Daily Rate                | 1-Day                  | N/A             | \$80.00                    | N/A                 | \$96.00                        |
| <b>Day Use Fees</b>                                       |                        |                 |                            |                     |                                |
| Adult (15+) Day Use                                       | 1-Day                  | \$108.00        |                            | \$129.60            |                                |
| Youth (7-14) Day Use                                      | 1-Day                  | \$90.00         |                            | \$86.40             |                                |
| Child (3-6) Day Use                                       | 1-Day                  | \$80.00         |                            | \$64.80             |                                |
| <b>Group Rental Rates</b>                                 |                        |                 |                            |                     |                                |
| Adult (15+)                                               | 1-Day                  | \$85.00         |                            | \$102.00            |                                |
| Youth (7-14)                                              | 1-Day                  | \$71.50         |                            | \$85.80             |                                |
| Child (3-6)                                               | 1-Day                  | \$52.80         |                            | \$63.36             |                                |
| Infant (0-3)                                              | 1-Day                  | \$0.00          |                            | \$0.00              |                                |
| <b>New Camper Welcome Weekend</b>                         | Weekend                | \$195.00        |                            | \$234.00            |                                |
| <b>School Outdoor Education</b>                           |                        |                 |                            |                     |                                |
| Teachers & Adult Chaperones                               | 1-Day                  | \$60.00         |                            | \$72.00             |                                |
| Youth Participants                                        | 1-Day                  | \$45.00         |                            | \$54.00             |                                |
| <b>Shoulder Season Rentals</b>                            |                        |                 |                            |                     |                                |
| Shoulder Season Tent Rental (no meals, up to 3 campers)   | 1-Night                | \$97.75         | Eliminated                 | \$117.30            | Eliminated                     |
| Shoulder Season Tent Rental (with meals, up to 3 campers) | 1-Night                | \$195.50        | Eliminated                 | \$234.60            | Eliminated                     |
| <b>Program Area</b>                                       | <b>Unit of Measure</b> | <b>Resident</b> | <b>Resident (proposed)</b> | <b>Non-Resident</b> | <b>Non-Resident (proposed)</b> |
| <b>Work Weekend</b>                                       | Weekend                | \$0.00          |                            | \$0.00              |                                |
| <b>Youth Camp</b>                                         |                        |                 |                            |                     |                                |
| 5-Day Program                                             | 5-Days                 | \$600.00        | \$672.00                   | \$720.00            | \$806.00                       |
| 6-Day Program                                             | 6-Days                 | \$720.00        | \$806.00                   | \$864.00            | \$967.00                       |

|                                                       |                        |                 |                            |                     |                                |
|-------------------------------------------------------|------------------------|-----------------|----------------------------|---------------------|--------------------------------|
| 7-Day Program                                         | 7-Days                 | \$840.00        | \$941.00                   | \$1,008.00          | \$1,129.00                     |
| Per Day Fee                                           | 1-Day                  | \$120.00        | \$134.00                   | \$144.00            | \$161.00                       |
| <b>Wedding Rental</b>                                 |                        |                 |                            |                     |                                |
| Wedding Rental                                        | 4-Hours                | \$750.00        |                            | \$900.00            |                                |
| Wedding Rental - Each Additional Hour (after 4 hours) | Hour                   | \$125.00        |                            | \$150.00            |                                |
| <b>C. Tuolumne Camp</b>                               |                        |                 |                            |                     |                                |
| <b>50 &amp; Better Camp</b>                           |                        |                 |                            |                     |                                |
| 50 & Better Camp Tent (up to 2 campers)               | 5-Day                  | \$900.00        | \$1,008.00                 | \$1,080.00          | \$1,210.00                     |
| 50 & Better Camp Tent (up to 2 campers)               | 4-Day                  | \$720.00        | \$806.00                   | \$864.00            | \$967.00                       |
| 50 & Better Camp Tent (up to 2 campers)               | Weekend                | \$540.00        | \$605.00                   | \$648.00            | \$726.00                       |
| 50 & Better Camp Additional Camper per day            | 1-Day                  | \$45.00         | \$60.00                    | \$54.00             | \$72.00                        |
| <b>Leaders in Training (LIT)</b>                      | 1-Week                 | N/A             | \$941.00                   | N/A                 | \$1,129.00                     |
| <b>Counselor-In-Training</b>                          |                        |                 |                            |                     |                                |
| Counselor-In-Training                                 | 2-Week                 | \$415.00        | \$465.00                   | \$498.00            | \$558.00                       |
| Counselor-In-Training                                 | 1-Week                 | \$275.00        | \$308.00                   | \$330.00            | \$370.00                       |
| <b>Family Camp</b>                                    |                        |                 |                            |                     |                                |
| Full-Week Standard Tent (up to 3 campers)             | 1-Week                 | \$1,995.00      | \$2,195.00                 | \$2,394.00          | \$2,633.00                     |
| Full-Week Low-Occupancy Tent                          | 1-Week                 | \$1,715.00      | \$1887.00                  | \$2,058.00          | \$2,264.00                     |
| Weekend Standard Tent (up to 3 campers)               | 4-Day                  | \$1,460.00      | \$1,664.00                 | \$1,752.00          | \$1,997.00                     |
| Weekend Low-Occupancy Tent                            | 4-Day                  | \$1,280.00      | \$1459.00                  | \$1,536.00          | \$1,751.00                     |
| Mid-Week Standard Tent (up to 3 campers)              | 4-Day                  | \$1,300.00      | \$1,430.00                 | \$1,560.00          | \$1,716.00                     |
| Mid-Week Low Occupancy Tent                           | 4-Day                  | \$1,100.00      | \$1,210.00                 | \$1,320.00          | \$1452.00                      |
| Nightly Rate: Sun, Mon, Tues, or Wed                  | 1-Day                  | N/A             | \$525.00                   | N/A                 | \$630.00                       |
| <b>Program Area</b>                                   | <b>Unit of Measure</b> | <b>Resident</b> | <b>Resident (proposed)</b> | <b>Non-Resident</b> | <b>Non-Resident (proposed)</b> |
| <b>Family Camp Day Use Fees</b>                       |                        |                 |                            |                     |                                |
| Adult (15+) Day Use                                   | 1-Day                  | \$135.00        |                            | \$162.00            |                                |
| Youth (7-14) Day Use                                  | 1-Day                  | \$90.00         |                            | \$108.00            |                                |
| Child (3-6) Day Use                                   | 1-Day                  | \$68.00         |                            | \$81.60             |                                |
| Additional Camper Fee                                 | 1-Day                  | \$75.00         | \$100.00                   | \$90.00             | \$120.00                       |
| Additional Camper Session-Based Daily Rate            | 1-Day                  | N/A             | \$90.00                    | N/A                 | \$108.00                       |

|                                                                                                  |                                                |                        |                            |                        |                                |
|--------------------------------------------------------------------------------------------------|------------------------------------------------|------------------------|----------------------------|------------------------|--------------------------------|
| <b>Group Rental Rates</b>                                                                        |                                                |                        |                            |                        |                                |
| Adult (15+)                                                                                      | 1-Day                                          | \$110.00               |                            | \$132.00               |                                |
| Youth (7-14)                                                                                     | 1-Day                                          | \$93.00                |                            | \$111.60               |                                |
| Child (3-6)                                                                                      | 1-Day                                          | \$78.00                |                            | \$93.60                |                                |
| Infant (0-3)                                                                                     | 1-Day                                          | \$0.00                 |                            | \$0.00                 |                                |
| <b>New Camper Welcome Weekend</b>                                                                | Weekend                                        | \$195.00               |                            | \$234.00               |                                |
| <b>School Outdoor Education</b>                                                                  |                                                |                        |                            |                        |                                |
| Adult Chaperones                                                                                 | 1-Day                                          | \$75.00                |                            | \$90.00                |                                |
| Youth Participants                                                                               | 1-Day                                          | \$56.00                |                            | \$67.20                |                                |
| <b>Shoulder Season Rentals</b>                                                                   |                                                |                        |                            |                        |                                |
| Shoulder Season Tent Rental (no meals)                                                           | 1-Night                                        | \$115.00               | Eliminated                 | \$138.00               | Eliminated                     |
| Shoulder Season Tent Rental (with meals)                                                         | 1-Night                                        | \$230.00               | Eliminated                 | \$276.00               | Eliminated                     |
| <b>Work Weekend</b>                                                                              | Weekend                                        | \$0.00                 |                            | \$0.00                 |                                |
| <b>Youth Camp</b>                                                                                |                                                |                        |                            |                        |                                |
| 5-Day Program                                                                                    | 5-Days                                         | \$750.00               | \$840.00                   | \$900.00               | \$1,008.00                     |
| 6-Day Program                                                                                    | 6-Day                                          | N/A                    | \$1,008.00                 | N/A                    | \$1,210.00                     |
| 7-Day Program                                                                                    | 7-Days                                         | \$1,050.00             | \$1,176.00                 | \$1,260.00             | \$1,411.00                     |
| Per Day Fee                                                                                      | 1-Day                                          | \$150.00               | \$168.00                   | \$180.00               | \$202.00                       |
| <b>Wedding Rental</b>                                                                            |                                                |                        |                            |                        |                                |
| Wedding Rental                                                                                   | 4-Hours                                        | \$1,000.00             |                            | \$1,200.00             |                                |
| Wedding Rental - Each Additional Hour (after 4 hours)                                            | Hour                                           | \$150.00               |                            | \$180.00               |                                |
| <b>D. Resident Camp Surcharges</b>                                                               |                                                |                        |                            |                        |                                |
| Family Camp Program Deposit Payment                                                              |                                                | \$500 per registration |                            | \$500 per registration |                                |
| <b>Program Area</b>                                                                              | <b>Unit of Measure</b>                         | <b>Resident</b>        | <b>Resident (proposed)</b> | <b>Non-Resident</b>    | <b>Non-Resident (proposed)</b> |
| Late Fee                                                                                         | \$75 if balance is not paid by dates specified |                        |                            |                        |                                |
| Cleaning / Damage Deposit                                                                        | Rental                                         | \$300.00               | \$2,000.00                 | \$300.00               | \$2,000.00                     |
| Changes to Reservation resulting in reduction in length of stay (30 days or more before arrival) | Reservation                                    | \$100.00               |                            | \$100.00               |                                |
| Cancel Reservation (30 days or more before arrival)                                              | 25% of reservation                             |                        |                            |                        |                                |

|                                                                    |                     |           |  |           |  |
|--------------------------------------------------------------------|---------------------|-----------|--|-----------|--|
|                                                                    | not to exceed \$150 |           |  |           |  |
| Cancel Reservation (due to emergency or illness, with Dr's excuse) | Reservation         | No Charge |  | No Charge |  |

The hearing will be held on January 17, 2023, at 6:00 p.m. in the School District Board Room, 1231 Addison Street.

For further information, please contact **Denise Brown at 510-981-6707.**

A copy of the agenda material for this hearing will be available on the City's website at [www.berkeleyca.gov](http://www.berkeleyca.gov) as of **January 5, 2023. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 12 days prior to the public hearing.

**Published:** January 6 and January 13, 2023 – The Berkeley Voice  
 Published pursuant to Government Code 6062a

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 I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 5, 2023.

Mark Numainville, City Clerk



Office of the City Manager

PUBLIC HEARING
January 17, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department
Lisa Warhuus, Director, Health, Housing and Community Services Department

Subject: Citywide Affordable Housing Requirements

RECOMMENDATION

Conduct a public hearing and upon conclusion:

1. Adopt first reading of an Ordinance amending the Berkeley Municipal Code Chapter 23.328, updating the citywide Affordable Housing Requirements (AHR) in the Zoning Ordinance, repealing existing administration and zoning code sections that refer to affordable housing requirements, BMC Section 22.20.065, and Section 23.312.040(A)(6), and updating references to BMC Chapter 23.328 throughout the Berkeley Municipal Code (**Attachment 1**), to become effective on April 1, 2023.
2. Adopt a Resolution establishing regulations for a voucher program and establishing an in-lieu fee pursuant to BMC Section 23.328.020(A)(2) (**Attachment 2**) upon the effective date of contemporaneously adopted amendments to BMC Section 23.328, and rescind Resolution No. 68,074-N.S. related to fees, exemptions, and administration of inclusionary affordable housing and in-lieu programs upon the effective date of contemporaneously adopted amendments to BMC Section 23.328 (**Attachment 2**).

SUMMARY

The proposed amendments to affordable housing requirements have been developed in response to City Council referrals and State laws that govern affordable housing requirements. In particular, Assembly Bill 1505 in 2017 reauthorized inclusionary housing requirements on rental properties, allowing for the proposed consolidation of most of the City's affordable housing requirements for rental and ownership properties.

Key elements of the proposed amendments include: establishing a new in-lieu fee calculated on a per square foot basis; setting the same per square foot fee for rental and ownership projects; providing new options by which requirements can be met; and various administrative changes. The revised regulations are designed to be easier to understand, make it easier for applicants to comply, simplify administration and

oversight, and increase transparency by consolidating most affordable housing requirements in one place in the municipal code, eliminating conflicting requirements, and standardizing and simplifying certain fees and requirements.

FISCAL IMPACTS OF RECOMMENDATION

The proposed \$45 per square foot in-lieu fee is roughly equivalent to the 2020 Affordable Housing Mitigation Fee (AHMF) of \$39,746 per rental unit. Since 2015, the City of Berkeley has collected approximately \$38 million in Affordable Housing Mitigation Fees towards the Housing Trust Fund Program. It is challenging to predict future affordable housing fee revenue trends given the variables that are outside of the City's control (e.g., how individual project applicants choose to comply with the City's affordable housing requirements, changes in state law, and broader housing market trends). However, if overall housing development and affordable housing compliance plan trends continue, staff projects generating a similar amount over the next eight-year Housing Element cycle.

CURRENT SITUATION AND ITS EFFECTS

The City's affordable housing requirements for new development are currently found in several sections of the Berkeley Municipal Code, including:

- BMC 21.28: Condominiums and Other Common Interest Subdivisions
- BMC 22.20: Mitigations and Fees—Conditions of Approval for Development Projects
- BMC 23.326: Demolition and Dwelling Unit Controls
- BMC 23.328: Inclusionary Housing
- BMC 23.312: Live/Work
- BMC 13.76: Rent Stabilization and Eviction for Good Cause

Prior to 2009, Berkeley had a single Inclusionary Zoning Ordinance (BMC Chapter 23C.12) which applied to both ownership and rental projects. In 2009, a Court of Appeals decision in *Palmer/Sixth Street Properties LP v. City of Los Angeles* (the "Palmer decision") prevented California jurisdictions from enforcing inclusionary housing requirements on rental properties. In response, Berkeley and many other cities adopted an Affordable Housing Mitigation Fee (AHMF). The AHMF ordinance requires payment of a fee and allows the provision of on-site units as an alternative. This approach allowed Berkeley to achieve its policy goals without violating the restrictions imposed by the Palmer decision. Although the provisions of the Inclusionary Housing Ordinance that applied to rental housing remained in the Berkeley Municipal Code, they were unenforceable and superseded by the AHMF ordinance. Inclusionary provisions related to condominiums remained enforceable.

In 2018, the California Legislature passed AB1505 which effectively overturned the Palmer decision and authorized the implementation of inclusionary housing

requirements applied to rental properties, subject to a development feasibility analysis. This legislation has allowed the City to update its programs to combine rental and ownership requirements under a single inclusionary housing ordinance and make other changes that respond to City Council referrals.

The proposed changes are informed by a memorandum prepared by Street Level Advisors, a firm that assists cities across the nation to develop programs and policies to facilitate equitable development, and by feedback provided by the Planning Commission, Housing Advisory Commission and the Council in 2021 (**Attachment 3**).¹ Updating the City's Affordable Housing Requirements is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support services for our most vulnerable community members.

Key Elements of Proposed Ordinance and Resolution

1. Consolidation of Affordable Housing Requirements. As authorized by Assembly Bill 1505, the proposed amendments impose "inclusionary" or on-site affordable housing requirements and allow the payment of an in-lieu fee, among other options, instead of the current rules which impose a mitigation fee and allow for the provision of on-site units in-lieu of the fee.^{2, 3} The proposed ordinance consolidates the City's existing regulations by addressing both rental and ownership projects in an amended BMC Chapter 23.328, renamed as "Affordable Housing Requirements," thus allowing for the deletion of the sections of the BMC where these topics were formerly addressed (BMC Sections 22.20.065, and 23.312.A6).

The proposed ordinance would become effective on April 1, 2023. Development projects for which either a Building Permit was issued or a preliminary application was submitted on or before April 1, 2023 shall be subject to this Chapter's requirements that were in place as of the preliminary application's submittal date, but shall otherwise be exempt from this Chapter (see section 23.328.050.F of proposed ordinance). The City's inclusionary requirement remains the same: at least 20% of the residential units of a housing development project must be affordable units, as defined in BMC Section 23.238.

2. Establishment of a Per Square Foot In-Lieu Fee. Instead of the existing method of calculating fees on a per-unit basis, the proposed resolution sets the affordable housing in-lieu fee at \$45 per square foot applied to the gross floor area (as defined by BMC Section 23.106.030) of a housing development project. In a

¹ See Background section for more information on the project methodology and public process.

² Street Level Advisors Memorandum (Jan. 2022): Recommendations 1.1, 1.2, 1.3 (as noted above, condo conversion requirements will be addressed in a separate process in the future), 1.4 and 1.5.

³ Bill Text - AB-1505:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1505

mixed-use project, the fee shall not be assessed on any leasable commercial floor area (as defined by BMC section 23.106.040), nor on the common areas that exclusively serve non-residential areas uses. For Live/Work units, the In-Lieu Fee shall be applied to the gross floor area that is designated as non-workspace in the zoning permit approvals consistent with BMC Section 23.312.040.⁴

As stated in Section 23.328.030(B), the proposed ordinance also stipulates that the In-Lieu Fee will be estimated as part of the preliminary Affordable Housing Compliance Plan (which is required to be submitted as part of the zoning permit application) and will be finalized prior to building permit issuance (consistent with the final Affordable Housing Compliance Plan). The In-Lieu Fee must be paid prior to Certificate of Occupancy.

The \$45 per square foot fee is roughly equivalent to the 2020 AHMF for projects with typically sized units.⁵ As is the case with the existing AHMF, the proposed In-Lieu Fee would be automatically adjusted every two years based on the California Construction Cost Index (CCCI). Over the last two years, the CCCI has increased sharply, with a cumulative increase of 16.2%, as compared to increases of approximately 2-4% each year between 2016 and 2020. Effective July 1, 2022, the AHMF increased from \$39,746 to \$46,185 per rental unit (see referenced document list at end of this report). This significant increase is reflective of the escalating costs in construction and inflation affecting housing prices throughout the state. Despite the recent increase, City staff are recommending that the City Council set the new per square foot based in-lieu fee based on the fee level of 2020, which was the basis for the financial feasibility analysis prepared by Street Level Advisors.

City staff will be initiating a new feasibility study later this fiscal year, as recommended by both the Planning and Housing Advisory Commissions. This new study will analyze the feasibility of smaller building development types (e.g., “missing middle” housing), monitor the effects of the newly adopted fees and inclusionary requirements, and establish whether adjustments should be made to the fee level or cost structure. There may be reasons to raise or lower the per square foot fee: to adjust the sliding scale for smaller projects, better align the developer cost of the inclusionary versus fee options, or to make other changes to reflect market conditions as the city emerges from the pandemic and faces inflationary, recessionary, and other market influences.

3. Incentive to Increase Affordable Units Serving Extremely Low-Income (ELI) Households (up to 30% of AMI). The City’s current rules require that 40% of all Very Low Income (VLI; up to 50% of AMI) units be offered first to Housing Choice

⁴ See definitions for “Floor Area, Gross” and “Floor Area, Leasable (BMC 23.106.030, under “F”) and draft ordinance (Attachment 1) for “Housing Development Project” (section 23.328.020).

⁵ SLA Jan. 2022 Memo, Recommendations 2.1 and 3.1.

voucher holders, and 40% be offered first to Shelter+Care voucher holders. The proposed changes would require that all of the required VLI units be offered to voucher holders (50% to Housing Choice voucher holders and 50% to Shelter+Care voucher holders) before being marketed to other income-eligible households. This change, along with the way that the City's requirements interact with the State Density Bonus, will serve to slightly increase the share of ELI tenants served, without adding layers of complexity to the program, since voucher holders in both programs generally have incomes well below 30% AMI.⁶

4. Standardization of Ownership and Rental Fees. The feasibility analysis prepared by Street Level Advisors found that the City's existing requirements for ownership/condominium projects resulted in an equivalent per square foot fee ranging from \$54 to \$75, which is considerably higher than the equivalent per square foot fees estimated for rental projects (\$45 per square foot). The imposition of a higher fee discourages development of new home ownership projects. Setting the fee at \$45 per square foot for both rental and ownership projects would "level the playing field" and still generate substantial in-lieu fees per unit, since ownership units tend to be larger than rental units. The proposed ordinance authorizes the City Council to set fees, and the proposed resolution sets the affordable housing in-lieu fee at \$45 per gross residential square foot for both rental and ownership projects. This approach will be revisited as part of the new feasibility study.⁷

5. Standardization of Live-Work Requirements. The proposed ordinance consolidates the affordable housing requirements for live/work units from BMC 23.312 into BMC 23.328, and removes the exemption from inclusionary and fee requirements for live/work projects. The same requirements would apply to live/work projects as any other project. Live/work projects would also retain the existing marketing provision, to proactively ensure that the developer reaches out to income-eligible persons performing a work activity appropriate to the unit and district where the property is located.⁸

6. Land Dedication Option. The proposed ordinance adds an option for project applicants to dedicate land, if authorized by the City Manager, for an approved non-profit housing developer (see proposed ordinance Section 23.328.030.C). Donated land must meet specified criteria to ensure that the land is suitable for development of affordable housing, including having appropriate infrastructure, an absence of hazardous materials or other hazards, and be of equal or greater in value than the in-lieu fee that otherwise would be required.⁹

⁶ See SLA Recommendation 4.1.

⁷ See SLA Recommendation 6.1.

⁸ SLA Jan. 2022 Memo: Recommendations 7.1.

⁹ SLA Jan. 2022 Memo: Recommendation 8.1.

7. Family-Sized Units Option. During the process of developing the recommendations, policymakers expressed interest in promoting the development of affordable units that are suitable for families, but actively discourage units with high bedroom counts. The draft ordinance adds an option for project applicants to propose an alternative mix of affordable unit types whose total size is at least 20% of the residential Gross Floor Area (rather than a unit-for-unit equivalent), in order to achieve a mix of affordable units including two- and three-bedroom units. Review and approval of the proposal would be at the discretion of the City Manager or their designee.¹⁰ This option has been further revised from earlier proposals, which would have provided a similar option by right if a project applicant provided affordable units including a specified level of two- or three-bedroom units. The current option better addresses staff implementation concerns by establishing a process by which a proposal can be reviewed holistically to ensure that unit size, unit mix and overall number of units provided and households served meet the intent of the ordinance.

8. Removal of Exemption for Most Group Living Accommodation (GLA) Projects. The proposed ordinance would remove the current exemption for GLAs from inclusionary and fee requirements. Fraternities, sororities and other specially designated units recognized by the University of California would retain their exemption. The proposed ordinance would also prohibit affordable units from having more than three bedrooms in order to reduce administrative burdens.¹¹

9. Eliminate Exemption for Small Projects and Establish Tiered Fees. The proposed resolution eliminates the exemption for projects of one to four units and replaces it with a tiered fee for projects with less than 12,000 square feet in residential Gross Floor Area (BMC 23.106.030), by reducing the fee by \$2 per square foot for each 1,000 square foot increment less than 12,000 sf (see Table 1 below and Attachment 2).¹²

The proposed fee structure is intended to address concerns expressed about the potential for developers to segment their projects into smaller projects of four units or less in order to circumvent existing rules, while also reducing the fee for smaller projects. The threshold of 12,000 square feet (roughly equivalent to 12 to 15 units) to start the phased reduction provides a relatively long phase-in of the full fee with small increments, to remove incentives for applicants to intentionally size projects just below the level of the next fee amount step.

¹⁰ SLA Jan. 2022 Memo: Recommendation 9.1.

¹¹ SLA Jan. 2022 Memo: Recommendations 11.1 and 11.2.

¹² SLA Jan. 2022 Memo: Recommendations 12.1 and 12.2.

Table 1. Proposed Tiered Square Foot Based Fee

Applicable Gross Floor Area (BMC 23.328.030(B))	Fee per Square Foot
12,000+	\$45
11,000-11,999	\$43
10,000-10,999	\$41
9,000-9,999	\$39
8,000-8,999	\$37
7,000-7,999	\$35
6,000-6,999	\$33
5,000-5,999	\$31
4,000-4,999	\$29
3,000-3,999	\$27
2,000-2,999	\$25
1,000-1,999	\$23
<1,000	\$21

11. Cap Annual Rate of Rent Increases.¹³ As recommended by the Housing Advisory Commission (HAC), the proposed ordinance stipulates that any percentage increase in rent of an affordable unit shall be the lesser of 65% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region (as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics for the twelve-month period ending the previous December 31), or 65% of the corresponding increase in AMI for the same calendar year. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%). This is consistent with how the Rent Stabilization Board calculates rent increases, but is a change from the existing affordable housing requirements, which tie rent increases to the increase in Area Median Income (AMI) only. When the affordable units are vacant and re-rented, the property owner can increase the rent based on the affordability category of the unit.

The Planning Commission recommended that rent increases be tied to AMI two years after adoption of ordinance. Staff do not recommend this approach because annual rent adjustments are typically smaller and therefore more manageable for tenants. Increasing rents based on AMI after two years may create a larger rent increase that is more difficult for tenants to predict/budget. This is reflective of staff experience managing properties that have “banked” increases in the past and implement multiple year increases at once.

The goal is to ensure that rent increases do not result in a high housing cost burden or displacement of existing tenants. Over the past decade, annual increases in AMI are generally higher than the average increase in income of lower income

¹³ SLA Jan. 2022 Memo: Recommendation 13.

households, resulting in unintended adverse impacts to tenants. Although CPI-U has traditionally been more stable than AMI, this may change given the current inflationary cycle. Staff recommend tying rent increases to the lesser of annual increases in CPI-U or AMI.

12. Administrative Changes. The proposed ordinance also recommends four administrative changes:¹⁴

- a. Affordable Housing Compliance Plan. The proposed ordinance language was clarified to better define the enforceable agreement (the “Affordable Housing Compliance Plan”) that applicants are required to submit and when such a plan must be submitted to the City. The Compliance Plan must specify how an applicant will comply with City affordable housing requirements, including the number and type of affordable units, the amount of In-Lieu Fees, and/or the parcels of land (or portions thereof) that will be provided and/or paid, and must be submitted to the Zoning Officer at the time of application.
- b. Authorization of administrative citations. The proposed ordinance explicitly authorizes the creation of a proposed schedule of fines for monitoring and compliance violations to be included in the program guidelines.
- c. Deduction of required fees/costs from gross rent. The proposed ordinance requires that any mandatory fees imposed by the property-owner as a condition of tenancy, as well as an allowance for tenant-paid utilities, be included in the determination of whether a unit is affordable to Very Low-Income or Low-Income Households.
- d. Increase administrative set-aside from 10% to 15%. The proposed ordinance states that 15% of In-Lieu Fees collected may be used to pay for administration of the In-Lieu Fee or the Housing Trust Fund program, due to the increasing size and complexity of the City’s portfolio of HTF units. This also allows staff to better budget for administrative expenses given the unpredictable nature of market-based fee revenue. At least 85% of In-Lieu Fees collected shall be deposited into the City’s Housing Trust Fund program.

Other Policy Considerations

Staff are also advancing proposed changes to the City’s regulation of demolitions (BMC Chapter 23.326). Demolition requirements help protect existing rental-controlled housing by regulating and compensating for the elimination of such units which occurs through modifications to existing housing stock (e.g., removing kitchens, combining units). The modifications currently under consideration retain, modify and expand existing requirements for the replacement of protected units and the provision of relocation benefits for displaced tenants, while bringing the local ordinance into better alignment with recent updates to state law. Staff anticipate bringing revisions to the

¹⁴ SLA Jan. 2022 Memo: Recommendation 14.1 - 14.4.

demolition requirements to City Council in early 2023, subsequent to additional review by the 4x4 Committee and Planning Commission.

In addition, a number of proposed changes to the City's condominium conversion regulations were presented in the memorandum prepared by Street Level Advisors. These included simplifying the calculation of the required fee, reducing the fees under certain circumstances and allowing flexibility in the use of the fees. These recommendations require additional consideration and may require additional nexus and feasibility analyses. Changes to BMC Chapter 21.28, Condominiums and Other Common Interest Subdivisions, will be considered in a future, separate item.

BACKGROUND

The City of Berkeley has a strong history of programs and initiatives to retain existing affordable and rent controlled tenant housing, protect tenants from displacement, and create new affordable housing, including deed-restricted income-qualified housing. City Council has adopted multiple, interrelated referrals to explore revisions to the City's affordable housing requirements for new development that are currently codified in several sections of the Berkeley Municipal Code (**Attachment 4**).

There have also been changes to State laws that govern affordable housing requirements, streamlining, dwelling unit replacement, and density bonus incentives. There are also numerous locally adopted implementing resolutions that set fee amounts and exemptions. In addition, the City has administrative guidelines and practices to implement the State and local requirements.

The City engaged the consulting firm Street Level Advisors to evaluate existing regulations and potential changes in order to comprehensively update the City's affordable housing requirements. The work to date has included:

- **October 2020:** Street Level Advisors presented a range of identified policy issues and solicited feedback from the public and stakeholders including affordable housing developers and advocates, market-rate developers, Planning Commission, Housing Advisory Commission, Zoning Adjustments Board, and Rent Stabilization Board.
- **May 2021:** Street Level Advisors prepared a memorandum analyzing 14 categories of potential changes to the City's affordable housing requirements based on Council referrals and stakeholder and public feedback. Staff and Street Level Advisors presented the proposed changes to the Planning Commission and at a City Council worksession to inform drafting of the ordinance and resolution.¹⁵

¹⁵ May 18, 2021 Council Worksession Report: <https://berkeleyca.gov/sites/default/files/documents/2021-05-18%20WS%20Item%2002%20Updating%20Citywide%20Affordable.pdf>

- **March 2022:** Staff presented the proposed resolution and ordinance to the Planning Commission and the Housing Advisory Commission and requested a recommendation to bring to the City Council.

Both Commissions approved the staff recommendations with a few modifications, including the following recommendations:

- **Update feasibility analysis.** Both Commissions recommended new evaluations of the in-lieu fee within one to two years (HAC and PC, respectively), including tracking distribution of fees, on-site units, mixed compliance projects, small project and ownership projects, including co-housing/community housing. As noted above, staff will be initiating a new feasibility study later this fiscal year.
- **Cap annual rent increases for inclusionary units.** The Planning Commission recommended that rent increases should be tied to Area Median Income after two years of ordinance adoption. The Housing Advisory Commission (HAC) recommended that rent increases should be tied to 65% of Consumer Price Index (CPI), which is consistent with the manner in which the Rent Stabilization Board calculates rent increases. The proposed ordinance was revised to tie rent increases to 65% of CPI.
- **Ensure definitions of terms are included in the chapter and/or in the zoning ordinance glossary.** As recommended by the Planning Commission, the proposed draft ordinance and the draft resolution have been revised for clarity. Staff have revised the drafts to include definitions and clearer references regarding how the proposed in-lieu fee would be applied and calculated.
- **Require Very Low-Income units to be first offered to voucher holders.** The Planning Commission recommended that the existing regulations remain in place such that 80% of Very Low-Income units be required to be offered to voucher holders (40% to Shelter+Care and 40% to Section 8 voucher holders) instead of proposed ordinance increase to 100% (50% to Shelter+Care and 50% to Section 8 voucher holders). The HAC agreed with the draft ordinance as proposed by staff.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Infill affordable housing may reduce greenhouse gas emissions when located near transit, job centers, and other amenities. The proposed changes are intended to continue to facilitate on-site affordable housing units and fees available to the Housing Trust Fund for affordable housing developers in order to support the provision of affordable housing and housing support services for our City's most vulnerable community members.

RATIONALE FOR RECOMMENDATION

The recommended changes are primarily in response to policy referrals from City Council related to affordable housing development. The new ordinance is intended to maintain or increase the number of on-site affordable housing units and the amount of

fees available to the Housing Trust Fund, while addressing a number of other policy considerations and concerns regarding the complexity of existing regulations, and maintaining the overall feasibility of housing development in Berkeley.

ALTERNATIVES CONSIDERED

The Planning Commission and Housing Advisory Commission each discussed the merits of setting the fee at a level either higher or lower than the recommended \$45 per square foot.

Staff considered raising the proposed per square foot in-lieu fee by 16.2% to match the recent automatic adjustment to the existing Affordable Housing Mitigation Fee on July 1, 2022, which would be equivalent to \$52 per square foot. Street Level Advisors recommended considering adjustments to the fee once the housing market had stabilized following the fluctuations that resulted from the pandemic, and to concurrently conduct an updated feasibility analysis within the next three years to determine what fee level typical projects could support. Given the recent increase in construction costs and inflation overall, it seems prudent to base further increases in fees on updated feasibility analyses prior to adjusting the level of the fee.

Staff also considered a modified tiered fee structure that would provide a fee discount to any project with fewer than 8,000 square feet (roughly equivalent to 8-10 units) and phase in the fee more quickly in \$3 increments, as shown in Table 2 below. Reductions below 8,000 square feet could eliminate the value of phasing in the \$45 square foot fee versus charging a lower fee for smaller projects.

Table 2. Modified Tiered Square Foot Based Fee

Applicable Gross Floor Area (BMC 23.328.030(B))	Fee per Square Foot
8,000+	\$45
7,000-7,999	\$42
6,000-6,999	\$39
5,000-5,999	\$36
4,000-4,999	\$33
3,000-3,999	\$30
2,000-2,999	\$27
1,000-1,999	\$24
<1,000	\$21

Some Planning Commission members expressed concerns regarding the removal of the exemption of one- to four-unit projects prior to completing a feasibility analysis on these types of projects. The City Council could consider modifying the effective date of

the tiered fee structure and/or the exemption of small projects for a specified period of time by which the new feasibility study will likely have been completed (e.g. 18 – 24 months). The City Council could also consider maintaining the existing exemption for one- to four-unit projects and/or not adopt the tiered fee structure.

Staff also considered introducing a limited local density bonus program for small projects and Group Living Accommodations (where individuals generally lease bedrooms and not apartments). The program would prohibit the provision of on-site affordable units in these types of projects, and allow additional development as would be allowed under the State Density Bonus in exchange for payment of a fee (instead of on-site units). After further review and consideration, staff have concluded that the proposed tiered fee for small projects (less than 12,000 sf), and the definition of affordable units being limited to three bedrooms or less, serve to address the goal of incentivizing smaller projects to select the in-lieu fee option.

The Council could also consider no changes to the current structure of having an Affordable Housing Mitigation Fee and an in-lieu inclusionary requirement.

CONTACT PERSON

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Margot Ernst, Housing Division Manager, Health Housing and Community Services, mernst@cityofberkeley.info.

Attachments:

- 1: Draft Ordinance
- 2: Draft Resolution
- 3: Updating Affordable Housing Requirements for the City of Berkeley: Analysis and Recommendations. Prepared by Street Level Advisors, Revised February 2022.
- 4: Summary of Council Referrals Related to Affordable Housing Requirements
- 5: Public Hearing Notice

Links to Referenced Documents:

- 1: Off-Agenda Memo Regarding Bi-annual Increase to Affordable Housing Mitigation Fee, July 13, 2022:
https://berkeleyca.gov/sites/default/files/documents/Affordable%20Housing%20Mitigation%20Fee%20Increase%20071322_0.pdf
- 2: City Council Worksession Report: Citywide Affordable Housing Requirements Update, May 18, 2021:
<https://berkeleyca.gov/sites/default/files/documents/2021-05-18%20WS%20Item%2002%20Updating%20Citywide%20Affordable.pdf>
- 3: Planning Commission Report: Citywide Affordable Housing Requirements Update, May 5, 2021:

<https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-03-02%20PC%20Agenda%20Packet.pdf>

ORDINANCE NO. -N.S.

AFFORDABLE HOUSING REQUIREMENTS; AMENDING BERKELEY MUNICIPAL
CODE TITLES 22 AND 23

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

Section 1. That Berkeley Municipal Code Section 22.20.065, and Section 23.312.040(A)(6) are hereby repealed.

Section 2. That Berkeley Municipal Code Chapter 23.328 is repealed and re-enacted to read as follows:

23.328.010 Findings and Purpose.

A. The State of California has established a Regional Housing Needs Allocation (RHNA) process under which it allocates a “fair share” of the regional housing need, updated periodically, to each local jurisdiction. The “fair share” allocated to Berkeley increased significantly based on the regional housing needs determination finalized in late 2021. The sixth cycle of the RHNA for the San Francisco Bay Area allocates to Berkeley a “fair share” that calls for adequate sites for 8,934 housing units for the period from 2023 to 2031, including sites for 2,446 Very Low-Income units, 1,408 Low Income units, and 1,416 Moderate Income units. Under the state Housing Element Law, the City must update its Housing Element to provide adequate sites for its updated “fair share” allocation by 2023.

B. The Bay Area suffers from a shortage of affordable housing. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise, which leads to displacement of low income residents and exacerbates the shelter crisis that has led to unacceptably high rates of homelessness in the City of Berkeley and the Bay Area region.

C. In 1990, the City established the Housing Trust Fund program to pool available funding for affordable housing development. The Housing Trust Fund program is funded

by federal, state, and local revenues, including by in-lieu and mitigation fees paid by developers of market-rate housing projects under the City's existing affordable housing ordinances.

D. The City Council hereby finds that there is a legitimate public interest in the provision of affordable housing to address the crises of displacement, homelessness, and lack of housing affordability in the City, and that there is a significant and increasing need for affordable housing in the City to meet the City's regional share of housing needs under the California Housing Element Law.

E. The City Council further finds that the public interest would best be served if new affordable housing were integrated into new market-rate residential developments to facilitate economically diverse housing, while also providing alternative options to the on-site construction of affordable housing such as the payment of fees to replenish the City's Housing Trust Fund program and allowing for the construction of affordable housing on land dedicated by market-rate housing developers.

F. The City Council intends that this Ordinance be construed as an amendment to the City's existing affordability requirements, and that the repeal and re-enactment of any requirement shall not be construed to relieve a party of any outstanding obligation to comply with the requirements applicable to any previously approved Housing Development Project.

23.328.020 Definitions.

A. "Affordable Unit" means a Residential Unit that is in perpetuity affordable to Very Low Income Households or Lower-Income Households, as defined in California Health and Safety Code sections 50052.5 and 50053.

B. "Affordable Housing Compliance Plan" means an enforceable commitment by an Applicant to comply with the requirements of this Chapter that identifies the number and type of Affordable Units, the amount of In-Lieu Fees, and/or the parcels of land (or portions thereof) that will be provided and/or paid by the Applicant to comply with those requirements.

C. "AMI" means the area median income applicable to the City of Berkeley, as defined by the U.S. Department of Housing and Urban Development, or its successor provision, or as established by the City of Berkeley in the event that such median income figures are no longer published by the U.S. Department of Housing and Urban Development.

D. "Applicant" means any individual, person, firm, partnership, association, joint venture, corporation, entity, combination of entities or authorized representative thereof, who applies to the City for any Housing Development Project.

E. "Housing Development Project" means a development project, including a Mixed-Use Residential project (as defined in 23.502.020(M)(13), involving the new construction of at least one Residential Unit. Projects with one or more buildings shall be considered as a sole Housing Development Project and not as individual buildings.

F. "Housing Trust Fund" means the program to finance low and moderate-income housing established by Resolution No. 55,504-N.S., or any successor fund established for the same purpose.

G. "Lower-Income Household" means a household whose income does not exceed the low-income limits applicable to Alameda County, as defined in California Health and Safety Code section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

H. "Regulatory Agreement and Declaration of Restrictive Covenants" means, for the purposes of this Chapter, a legally binding agreement recorded against the property to codify the requirements and conditions of a Housing Development Project providing Affordable Units.

I. "Residential Unit" means, for purposes of this Chapter, any Dwelling Unit, any Live/Work Unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter, "Residential Unit" shall not include any Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

J. "Very Low-Income Household" means a household whose income is no more than 50% of AMI, as defined in California Health and Safety Code section 50105.

23.328.030 Affordable Housing Requirements.

A. Requirement to Construct Affordable Units

1. Except as otherwise provided in this Chapter, no permit for the construction of any Housing Development Project shall be issued unless at least 20% of the Residential Units are Affordable Units. When the calculation results in a fractional unit, an Applicant will round up to the nearest whole unit. The Affordable Units shall have the same proportion of unit types (i.e., number of bedrooms) and average size as the market rate units (provided, however, that no Affordable Unit may have more than three bedrooms).

2. In lieu of providing Affordable Units pursuant to Paragraph 1, an Applicant may propose an alternative mix of unit-types to comply with this Chapter by providing Affordable Units that comprise at least 20% of the applicable "Floor Area, Gross" of the Housing Development Project as defined in section 23.328.030(B)(2) in order to achieve a mix of Affordable Units including two-bedroom or three-bedroom units. The City Manager or their designee may approve the proposed alternative mix of unit- types that meet the requirements of this section.

3. Affordable Units shall be (a) reasonably dispersed throughout the Housing Development Project; and (b) comparable to other Residential Units in the Housing Development Project in terms of appearance, materials, and finish quality. Residents of Affordable Units shall have access to the same common areas and amenities that are available to residents of other Residential Units in the Housing Development Project.

4. The City Manager or their designee shall adopt rules and regulations (a) establishing the affordable sales price or affordable rent for each Affordable Unit, consistent with the requirements of Health and Safety Code sections 50052.5

and 50053; and (b) ensuring that Affordable Units are sold or rented to Very Low Income and Lower Income Households, consistent with the requirements of this Chapter.

5. Rental Units.

- a. At least 50% of the required Affordable Units in the Housing Development Project shall be offered at a rent that is affordable to Very Low-Income Households, up to a maximum requirement of 10% of the total units in the Housing Development Project if the project provides more Affordable Units than are otherwise required by this Chapter.
- b. In determining whether a unit is affordable to Very Low Income or Low Income Households, maximum allowable rent for any affordable unit shall be reduced by an amount equal to the value of the City-published utility allowance provided for Tenant-paid utilities and any other mandatory fee imposed by the property owner as a condition of tenancy.
- c. Any percentage increase in rent of an occupied Affordable Unit shall not exceed the lesser of 65% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 31, or 65% of the percentage increase in AMI for the same calendar year. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%).
- d. Affordable Units designated for Very Low Income Households shall be offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or any similar state or federally funded rent subsidy program prior to being offered to other potential tenants. The Council may establish related program requirements by resolution.
- e. The owner of any Affordable Unit offered for rent must report to the

City annually the occupancy and rents charged for each Affordable Unit, and any other information required pursuant to rules and regulations adopted by the City Manager or their designee.

6. Ownership Units. Inclusionary units in ownership projects shall be sold at a price that is affordable to an appropriate-sized household whose income is no more than 80 percent of the AMI.

7. All Affordable Units shall be subject to a recorded affordability restriction requiring in perpetuity that each Affordable Unit be sold at an affordable sales price or offered for rent at an affordable rent, as defined in this Chapter.

8. Affordable Live/Work Units shall be proactively marketed by the Applicant and/or owner to income-eligible persons performing a work activity permitted in the district where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units.

9. An Affordable Unit that is constructed to qualify for a density bonus under Government Code section 65915 that otherwise meets the requirements of this Chapter shall qualify as an Affordable Unit under this Chapter.

B. Option to Pay In-Lieu Fee

1. In lieu of providing some or all of the Affordable Units required under this Chapter (including any fractional units), an Applicant may elect to pay a fee, the amount of which the City Council may establish by resolution ("In-Lieu Fee"). The City Council may by resolution differentiate among types, classes, and locations of Housing Development Projects to the extent permitted by law; may establish separate fees and criteria for the provision of units that are affordable to Very Low Income Households and units that are affordable to Low Income Households; and may establish the method for calculation of the In-Lieu Fee.

2. In-Lieu Fees shall be applied to the "Floor Area, Gross" (as defined by BMC Section 23.106.030) of a Housing Development Project. However, in a mixed-use project, the fee shall not be assessed on any "Floor Area, Leasable"

(as defined by BMC section 23.106.040), nor on any common areas that exclusively serve a non-residential use. For Live/Work units, the In-Lieu Fee shall be applied to the “Floor Area, Gross” that is designated as non-workspace in the zoning permit approvals consistent with BMC section 23.312.040.

3. In-Lieu Fees shall be estimated as part of the preliminary Affordable Housing Compliance Plan and finalized at the time of building permit issuance, consistent with the final Affordable Housing Compliance Plan.

4. In-Lieu Fees shall be paid prior to the issuance of the first Certificate of Occupancy, or if no Certificate of Occupancy is required, prior to the initial occupancy of the Housing Development Project.

5. Up to 15% of In-Lieu Fees collected may be used to pay for administration of the In-Lieu Fee or the Housing Trust Fund program. At least 85% of In-Lieu Fees collected shall be deposited into the City’s Housing Trust Fund program.

C. Option to Dedicate Land

1. At the discretion of the City Manager or their designee, the requirements of this Chapter may be satisfied by the dedication of land in lieu of constructing Affordable Units within the Housing Development Project if the City Manager or their designee determines that all of the following criteria have been met:

a. Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to issuance of building permit of the Housing Development Project pursuant to an agreement between the Applicant and the City.

b. The site has a General Plan designation that authorizes residential uses and is zoned for residential development at a density to accommodate at least the number of Affordable Units that would otherwise be required under Paragraph A.

c. The site is suitable for development of the Affordable Units, taking into consideration its configuration, physical characteristics, location, access, adjacent uses, and applicable development standards and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.

d. Infrastructure to serve the dedicated site, including, but not limited to, streets and public utilities, are available at the property line and have adequate capacity to serve the maximum allowable residential density permitted under zoning regulations.

e. The site has been evaluated for the presence of hazardous materials and for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.

f. The value of the site upon the date of dedication is equal to or greater than the in-lieu fee that would otherwise be required under Paragraph A. The value of the site shall be determined pursuant to the program guidelines approved by the City Manager or their designee.

2. The City shall solicit proposals from affordable housing developers to construct restricted income units on the site dedicated to the City, but if the City is unable to obtain a qualified affordable housing developer to construct a viable affordable housing development on the property within two years of its solicitation or to commence construction within five years, the City may sell, transfer, lease, or otherwise dispose of the dedicated site for any purpose. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

23.328.040 Waiver or Modification of Affordable Housing Requirements.

A. The City Manager or their designee may waive or modify up to fifty percent of the requirements of this Chapter at their sole discretion where any of the following conditions are established:

1. A project providing low- or moderate-income housing is funded in whole or in part by the City's Housing Trust Fund program;
2. The implementation of the requirements of this Chapter would violate the rights of any person under the California or United States Constitutions, any federal law, or any state law governing a matter of statewide concern and applicable to a charter city; or
3. The benefits of the project to the City outweigh the detriment of foregoing the provision of Affordable Housing or the contribution of In-Lieu fees to the Housing Trust Fund program. In weighing the benefits and detriment to the City, the following factors may be considered:
 - a. The impact of the requirements of this Chapter on the feasibility of a Housing Development Project;
 - b. Other economically beneficial uses of the Applicant's property;
 - c. The burdens the Housing Development Project places on the City in terms of increased demand for affordable housing, childcare, public facilities or amenities, or other impacts which reasonably may be anticipated to be generated by or attributable to the Housing Development Project; and
 - d. The impact on the Housing Trust Fund program of foregoing the payment of any In-Lieu fee that would otherwise be made.

B. Waivers or modifications greater than fifty percent of the amount which otherwise would be required by this Chapter shall be subject to the approval of City Council.

C. The Applicant shall bear the burden of proof to establish eligibility for a waiver or modification of the requirements of this Chapter.

23.328.050 Implementation.

A. The Applicant for any Use Permit or Zoning Certificate for a Housing Development Project shall submit a preliminary Affordable Housing Compliance Plan to the Zoning Officer at the time of application. The preliminary Affordable Housing Compliance Plan shall be incorporated as a condition of approval of any Use Permit or Zoning Certificate issued to the Applicant. No building permit may be issued for the project until the final Affordable Housing Compliance Plan is approved.

B. The Applicant must execute a Regulatory Agreement and Declaration of Restrictive Covenants to regulate all Affordable Units provided in a Housing Development Project. No building permit may be issued for the project until the Regulatory Agreement and Declaration of Restrictive Covenants are executed.

C. The Affordable Housing Compliance Plan and/or Regulatory Agreement and Declaration of Restrictive Covenants may be amended administratively, provided that the Zoning Officer finds them to be in full compliance with the provisions of this ordinance and State law, prior to issuance of Certificate of Occupancy.

D. The City Manager or their designee may promulgate additional rules and regulations consistent with the requirements of this Chapter.

E. The City Council may by resolution establish fees for the implementation and administration of this Chapter and may establish administrative penalties for violations of this Chapter.

F. Exemptions.

1. A Housing Development Project for which either a building permit was issued on or before April 1, 2023 or a preliminary application including all of the information required by subdivision (a) of California Government Code section 65941.1 was submitted on or before April 1, 2023 shall be subject to this

Chapter's requirements that were in place as of the preliminary application's submittal date but shall otherwise be exempt from this Chapter. This exemption shall expire upon the occurrence of any of the circumstances defined in paragraphs (2), (6), or (7) of subdivision (o) of California Government Code section 65589.5 or in subdivision (d) of California Government Code section 65941.

2. A Residential Unit that replaces a unit existing as of April 1, 2023 that has been destroyed by fire, earthquake or other disaster, or that was previously subject to a mitigation fee or inclusionary housing requirement.
3. A Residential Unit existing as of April 1, 2023 that is expanded, renovated, or rehabilitated.

Section 3. The Berkeley Municipal Code Section 23.330.070 is hereby amended to read as follows:

23.330.070 Qualifying Units.

Qualifying units must meet the standards set forth in ~~Section 23.328.040 (Requirements Applicable to All Inclusionary Units)~~ Chapter 23.328 (Affordable Housing Requirements).

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

RESOLUTION NO. _____

ADOPTING REGULATIONS FOR VOUCHER PROGRAM AND ESTABLISHING AN IN-LIEU FEE TO SUPPORT THE PROVISION OF AFFORDABLE HOUSING PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 23C.12.030.B, AND RESCINDING RESOLUTION 65,074-N.S.

WHEREAS, Berkeley Municipal Code (“BMC”) Section 23.328 establishes a requirement that 20% of Residential Units (as defined) in market-rate developments be offered for rent or sale at affordable rents or prices, as defined (“Affordable Units”); and

WHEREAS, BMC Section 23.328 authorizes the City Council to establish by resolution preferences for renting Affordable Units offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or similar state or federally funded rent subsidy programs; and

WHEREAS, BMC Section 23.328 authorizes developers of market-rate housing to pay a fee in lieu of complying with the requirement to provide on-site affordable housing (“In-Lieu Fee”); and

WHEREAS, BMC Section 23.328 authorizes the City Council to establish the In-Lieu Fee by resolution, and further authorizes the Council to differentiate among types, classes, and locations of Housing Development Projects to the extent permitted by law; to establish separate fees and criteria for the provision of units that are affordable to Very Low Income Households and units that are affordable to Low Income Households; and to establish the method for calculating the In-Lieu Fee; and

WHEREAS, the City retained Street Level Advisors to provide analysis and recommendations for updating the City’s affordable housing requirements, the scope of which included a financial feasibility study of the City’s affordable housing mitigation fees; and

WHEREAS, Street Level Advisors prepared a Financial Feasibility Analysis dated April 27, 2021, which determined that an In-Lieu Fee of \$45 per square foot of the residential Gross Floor Area (as defined in BMC 23.106.030) would be financially feasible; and

WHEREAS, Street Level Advisors recommended certain modifications to the \$45 per square foot affordable housing fee that would not adversely impact the financial feasibility of housing development projects, such as charging a lower / tiered fee for smaller projects.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. All Affordable Units shall be offered to tenants in accordance with Council-adopted

eligibility preference criteria. All Very Low-Income Units, comprising a portion of the Affordable Units authorized and provided for by BMC Section 23.328, must be offered to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*) before being marketed to other income-eligible households. The allocations shall be divided equally between the Section 8 Program (50%) and the Shelter Plus Care Program (50%). The majority of the Very Low-Income units shall be designated for the Shelter Plus Care Program when there is an uneven number of units.

2. The initial In-Lieu Fee authorized and provided for by BMC Section 23.328 shall be \$45 per square foot of the Gross Floor Area (BMC 23.106.030) for the residential portion of the Housing Development Project, as defined in BMC Section 23.328.020 and shall be automatically increased biennially based on changes to the California Construction Cost Index unless otherwise provided for by BMC Section 23.328 or by this Resolution.
3. Housing Development Projects subject to BMC Section 23.328 may provide less than the required number of Affordable Units in the Housing Development Project and pay a proportionately reduced In-Lieu Fee, calculated as follows: the fee per square foot multiplied by the total Gross Floor Area (BMC 23.106.030) of the residential portion of the Housing Development Project, multiplied by the percentage of the applicable requirement remaining after accounting for any on-site Affordable Units provided. Projects that provide no on-site Affordable Units will have an applicable requirement multiplier of one.
4. For Housing Development Projects of less than 12,000 square feet of applicable Gross Floor Area (pursuant BMC 23.328.030(B)), the In-Lieu Fee shall be calculated as follows:

Applicable Gross Floor Area (BMC 23.328.030(B))	Fee per Square Foot
12,000+	\$45
11,000-11,999	\$43
10,000-10,999	\$41
9,000-9,999	\$39
8,000-8,999	\$37
7,000-7,999	\$35
6,000-6,999	\$33
5,000-5,999	\$31
4,000-4,999	\$29
3,000-3,999	\$27
2,000-2,999	\$25
1,000-1,999	\$23
<1,000	\$21

BE IT FURTHER RESOLVED, Resolution No. 68,074-N.S. is hereby rescinded and is of no force or effect on any Housing Development Project that obtains a building permit after the effective date of this resolution, but shall continue to apply to those projects that were approved and subject to its provisions or the provisions of predecessor resolutions and ordinances addressing the same subject matter.

BE IT FURTHER RESOLVED, the rescission of Resolution No. 68,074-N.S. and this Resolution shall be effective upon the effective date of contemporaneously adopted amendments to BMC Section 23.328.



Street Level Advisors

**Updating Affordable Housing Requirements for
The City of Berkeley, CA
Analysis and Recommendations**

Revised February 2022¹

¹ Previous version: 4/27/21. See 5/5/21 PC Meeting - Item 9 – Attachment 1:
[https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209(1).pdf)

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Summary of Proposed Changes

	CURRENT	PROPOSED OPTION(S)
Ordinance	Rental: Affordable Housing Mitigation Fee (BMC 22.20.065)	Affordable Housing Requirements Ordinance (one ordinance that addresses requirements for rental, ownership and live/work units)
	Ownership: Inclusionary Housing Requirements (BMC 23C.12)	
On-site Unit Income Targets	Rental: 10% of total units @ 50% of AMI, 10% of total units at 80% of AMI	No change
	Ownership: 20% of total units @ 80% of AMI	
Base Fee	Rental: \$39,746 per market rate unit	\$45 per gross residential square foot
	Ownership: 62.5% of the difference between market and affordable price for inclusionary unit.	
VLI Incentive	40% of VLI units marketed to Housing Choice Voucher holders, 40% to Shelter+Care holders.	All VLI Units must be offered to voucher holders first (50% to Housing Choice and 50% to Shelter + Care).
Mixed Compliance Incentive	Projects that provide less than 20% on-site receive the same reduction in fee whether units are VLI or LI	More expensive/higher need VLI units reduce remainder fee by more than LI units.
Live Work and GLA	Live Work Ordinance (BMC 23E.20) exempts projects from IH and AHMF, requires 20% of live work units be affordable at 80% of AMI. Units with Group Living Accommodations (GLA) occupancy are also exempt.	Remove special exemption for Live Work and GLA units. Affirmative marketing of Live Work units to artists/others who need larger units still required.
Land Dedication	None	Create new Land Dedication Option
Family Size Unit Incentive	None	Projects that provide 2 and 3-bedroom BMR units may choose to provide 20% of total Residential Square Feet instead of 20% of units.
Condo Conversion	Nexus Fee calculation or 8% of market value. 50% reduction in fee for owner occupied units	8% of market value. 50% reduction expanded to include tenants who buy units at conversion, and nonprofit/cooperative/cohousing projects
Maximum Unit Size	None	Projects with average unit size >3BR may not choose on-site unit option
Small Project Exemption	Projects with <5 units are exempt	Exemption removed; Reduced fee for projects with fewer than 12,000 gross residential square feet, phased in as size increases. Offer a local density bonus to projects providing <5 BMR units that

		choose in lieu fee.
Cap on rent increases	BMR Unit rents increase along with HUD Area Median Income	Limit annual rent increases to the change in the Consumer Price Index

Overarching Goals for Updating Requirements:

Center racial and economic equity by reversing exclusionary zoning

Berkeley has committed to pioneering policies that attempt to undo some of the harm caused by exclusionary zoning practices. In addition to its rent control and tenant protection policies, the City’s Inclusionary Housing requirements are central to its efforts to build a more racially and economically integrated future.

Two key goals of the program are to ensure that affordable housing is included in all parts of the City and to promote the inclusion of affordable units within market-rate housing.

There has been quite a bit of academic research into the benefits of economic integration and the emerging consensus is that the location of affordable housing matters.² Much of the City’s affordable housing is concentrated in neighborhoods with the greatest health and safety challenges and the least economic opportunity. Integrating affordable housing into every neighborhood offers significant health and economic advantages, particularly for low-income children. While the same research has consistently not found additional benefits from locating affordable units in the same buildings as market rate housing (beyond the neighborhood benefits), requiring affordable units in new market rate buildings has been a key way that cities have succeeded in locating affordable housing in certain ‘high opportunity’ neighborhoods.

Currently, both the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing Requirements (IHO) ordinances allow developers to choose to either provide on-site units or pay a fee into the City’s Affordable Housing Trust Fund program. Several recent Council referrals have focused on either reducing or eliminating the fee option in order to encourage more on-site affordable housing units in mixed income buildings. Other council referrals have called on the City to encourage payment of fees, which allow investment in non-profit owned 100% affordable projects. These projects leverage outside affordable housing funding to build more units at deeper levels of affordability and also offer critical social services.

While increasing the share of on-site affordable units continues to be an important community goal, it is important to note that this is not the only way that Berkeley is achieving the goal of

² The Urban Institute compiled a very helpful summary of several dozen research studies on the benefits of mixed income communities. urban.org/uploadedpdf/412292-effects-from-living.pdf

overcoming the legacy of segregation. Most of Berkeley falls into what is generally considered a moderate- to high-opportunity area, in part because the City offers high-quality schools to students regardless of which neighborhood they live in. At the same time, Berkeley has been successful in locating nonprofit affordable housing in most parts of the City. These broader realities reduce the pressure on the City's inclusionary housing policy to produce affordable units on-site in every building and allow the City to pursue a balanced strategy of private and publicly sponsored provision of affordable housing in every neighborhood. An appropriate goal might be for the City to target a mix of on-site units in most market rate buildings while maintaining the collection of critical fees to support nonprofit affordable properties.

Though our analysis confirmed that Berkeley's current rules appear to strongly favor payment of the fee, the actual record of projects over the past few years paints a different picture and shows that Berkeley's current policy is already achieving this kind of mix, with the majority of projects providing on-site units and paying a prorated fee.

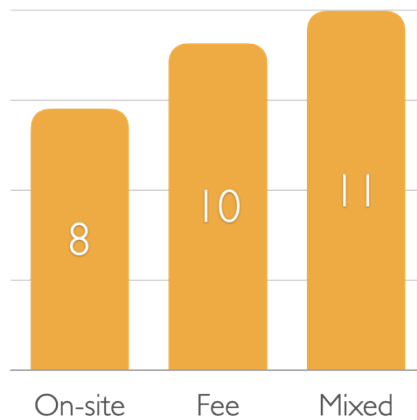
Currently, providing an on-site affordable unit is generally far more costly to a developer than paying the associated fee. Just as an example, Street Level Advisors calculated that for a hypothetical Berkeley rental property, providing one on-site Very Low Income unit would reduce the resale value of a building by about \$483,000. One on-site Low Income unit would reduce the building value by \$340,000. Opting out of providing either of those units would require payment of an Affordable Housing Mitigation Fee totaling only \$198,730.³ While the specifics differ for each building based on the local market rents, in this example on-site costs more than twice as much as paying the current fee.

We estimate that the current AHMF costs roughly \$45 per gross residential foot, and the on-site requirements cost a typical project roughly \$114 per foot.

In spite of this, between 2012 and 2020 nearly two-thirds of Berkeley's projects have included some affordable units on-site and just under one-third have fully complied through the on-site option. Figure 3 shows that the mixed compliance option (some units plus some fee) has been the most popular option. There are likely several reasons for this, including political pressures, but one clear factor is the State Density Bonus (SDB). The State requires cities to allow developers who include affordable units to build more units on a site than would otherwise be allowed and to take advantage of certain planning and zoning concessions which make it easier to get projects built. Under the current rules, projects that provide at least 11% of their base project units affordable to Very Low-Income residents qualify for the maximum benefit under the Density Bonus. These benefits cause many Berkeley projects to include 11% affordable units on-site and pay the fee for the remaining units. A recent change to state law will allow a 50% density bonus to projects that provide 15% VLI units (among other options). This change should result in even more on-site units in Berkeley even under the current City ordinance.

³ Because Berkeley requires \$39,746 per unit or 1 on-site unit for every 5 units (20%), every on-site unit that is included reduces the fee by 5 times \$39,746.

FIGURE 1: Compliance Option Selected 2012 - 2020



Encourage a mix of units and fees

The changes proposed below clarify Berkeley's policy to make on-site affordable units the preferred default requirement for both rental and ownership projects but allow payment of a fee as an alternative in order to:

- 1) continue to generate significant fee revenue to support nonprofit affordable housing projects throughout the City, and
- 2) offer flexibility for projects to choose between multiple compliance options depending on different circumstances.

Ideally, the proposed changes will encourage a mix of fees and units over time with fees coming primarily from projects where on-site units would be less feasible (e.g. due to economies of scale) or more difficult to monitor.

The proposed Affordable Housing Requirements ordinance would be structured so that providing on-site units is the default requirement for nearly all projects, with an exception for small projects and co-living type projects which would be encouraged to pay the fee. It might be possible to remove the fee option entirely, but state law requires cities to offer multiple compliance options such as a fee in their inclusionary housing ordinances. Ideally, the program would be structured such that the cost to a project of providing units on-site is more similar to the cost of paying the fee. This would maintain flexibility but reduce the incentive to pay the fee rather than provide units.

Over time, strong demand for housing in Berkeley should mean that higher fees are practical, but our analysis of current market conditions suggests that 2021 is a particularly risky time to raise Berkeley's housing fees. The Covid-19 pandemic has created uncertainty in the real estate market and led to falling rents throughout the region. The multi-family rental prototypes we studied earned returns that were just barely above the minimums required for financial feasibility. The recommendations below call for restructuring the fee to be calculated on a per square-foot basis but setting it, for the moment, at a level which is financially comparable to

the current fee for most projects. Once the housing market has recovered from the effects of the pandemic, we recommend evaluating a fee increase which would bring the cost of the fee option closer to the cost of on-site compliance.

More immediately, the proposed changes recognize the growing popularity of mixed compliance based on the State Density Bonus and aim to increase the number of on-site units primarily by increasing the prevalence of these mixed compliance projects. Together these changes should increase the number of affordable units provided on-site within market rate projects throughout Berkeley without dramatically reducing the affordable housing fee revenue that the City's HTF program receives.

Continue Berkeley's legacy of value capture

A key goal of Berkeley's inclusionary housing ordinance and Affordable Housing Mitigation Fee has been to ensure that new real estate development projects in Berkeley contribute benefits for the whole community. This principle of Public Value Capture (or Land Value Capture) calls on the City to closely evaluate the profitability of real estate projects and set its housing requirements at a level which captures a share of the profits to support housing for our lowest income residents. Careful value capture requires close attention to the financing and economic realities of development in order to ensure that the City is capturing the appropriate amount of financial returns.

Appendix A contains a detailed description of Street Level Advisors financial feasibility study. Building on past studies conducted in support of Berkeley's Affordable Housing Mitigation Fee, we analyzed a single hypothetical rental and a single condominium building prototype in order to better understand the financial feasibility of these projects under the current program and under the proposed changes described below.

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For our rental prototype (described in Appendix A), the proposed fee of \$45 per gross square foot results in a virtually identical return to what the project would see under the current fee. A higher fee (\$55 per square-foot) would result in a marginal return. The proposed approach of providing more 'credit' for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site

affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

Figure 2: Comparison of Returns - Rental

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee \$	Yield on Cost	% of Base	% of Total
Current Policy								
\$39,746 Per Unit Fee	72	0	0	0	\$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	\$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	\$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	\$2,106,538	5.10%	15%	10%
Proposed Alternatives								
\$45 Per Foot Fee	72	0	0	0	\$2,967,750	5.07%	0%	0%
\$55 Per Foot Fee	72	0	0	0	\$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	\$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	\$2,184,925	5.12%	15%	10%

For ownership projects, there is no Yield on Cost metric; feasibility is generally evaluated based on the profit from sales as a percent of the total development cost. Because there have been very few recent condo projects in Berkeley, it is not possible to identify the exact threshold for feasibility. One common benchmark considers projects that earn more than 10% profit to be “feasible.” We found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above this 10% threshold. The proposed switch to a \$45 per square-foot fee would result in profit just above 10% while a higher \$55 per square-foot fee would result in profit closer to 9%.

Figure 3: Comparison of Returns - Ownership

Scenario	Total Units	LI Units	Fee \$	Profit % of Cost
Current Policy				
Current Fee (based on sale prices)	56	0	\$3,810,847	8.00%
Onsite Units	56	11	\$0	1.13%
Proposed Alternatives				
\$45 Per Foot Fee	56	0	\$2,767,050	10.88%
\$55 Per Foot Fee	56	0	\$3,381,950	9.16%

Continue progress on housing goals

The Bay Area and the Berkeley community need more housing. Rapidly rising housing costs and growing displacement pressures are the result of a systemic shortage of housing. While building more housing alone would not be sufficient to address the current inequities, we cannot

overcome our housing challenges without building significantly more housing. The Regional Housing Needs Allocation (RHNA) requires Berkeley to permit nearly 9,000 new homes at all income levels during the period from 2023 to 2031.

To meet this historic challenge, Berkeley's affordable housing policies must balance two critical but competing goals.

- 1) We must set affordable housing requirements high enough to produce meaningful levels of affordable housing, and
- 2) We must ensure that they are not too high for developers to accommodate.

If Berkeley sets its requirements too low, it may see construction that only serves to further existing inequity and racial exclusion. But if requirements are set too high, the result could be that little or no new housing is built, which would itself perpetuate the inequities which drive ongoing displacement of existing residents and push prices and rents up to levels which effectively prevent new low- and moderate-income households, including many households of color, from moving to Berkeley.

Berkeley's current affordable housing requirements (both the on-site requirements and the fee options) are somewhat higher than other East Bay jurisdictions (see Figure 6 below). But in spite of the relatively high costs, construction is continuing in Berkeley. Even during the pandemic, builders continue to undertake new residential projects. This suggests that Berkeley's requirements do not dramatically overburden development. However, Street Level Advisors' feasibility analysis (Appendix A) finds that the current requirements are only marginally financially feasible in today's environment. This suggests that Berkeley could see more building overall - including more affordable housing development - by slightly reducing the cost of compliance for some projects.

The proposed changes include many small adjustments to current requirements intended to make it easier for developers to understand and comply with program rules and for the City to oversee and administer. This will also facilitate transparency for the community at large. These changes are explicitly intended to make it easier to build the new housing that Berkeley desperately needs. However, the proposed changes attempt to achieve this while simultaneously maintaining or increasing the overall contribution that new market-rate housing makes to the provision of affordable housing in Berkeley.

Under the proposed changes, some types of projects are asked to contribute more and others less (relative to the existing inclusionary requirements), but the goal is to maintain or increase the number of on-site units and the amount of fees available to the HTF program. The proposed changes do this by reducing the fee assessed to projects with relatively smaller units and increasing the fee on projects with large or extra large units. They will also slightly reduce the fee due from projects that provide some units on-site. These changes should encourage more projects to build some units on-site while also improving overall feasibility so that more housing projects are able to move forward.

Work within the City's existing administrative capacity

Berkeley's current affordable housing requirements are among the most complex in the region, but the City has fewer administrative staff than many other jurisdictions. HHCS currently has a total of 1.3 FTE to implement the BMR program:

- 0.20 FTE to work on new projects (apply requirements, meet with applicants, draft and execute regulatory agreements);
- 1.0 FTE monitor for completed projects, funded by an annual monitoring fee on BMR units; and
- 0.10 FTE related policy work and program supervision.

Adopting changes to the City's affordable housing requirements that increase administrative requirements would only be possible if new General Funds could be identified to support the implementation. As the City's BMR portfolio expands, funding for an additional monitor should be a consideration as well. Implementing local affordability requirements is not an eligible use of federal funds, so local funds are required to support this activity.

The proposed changes described below add complexity to the rules in several places but attempt to offset the complexity by streamlining and eliminating administrative challenges in several other places. The goal is to design a program which the City can successfully implement with existing staffing resources.

Proposed Changes in Detail:

1. Consolidate Affordable Housing Requirements into a single framework

Proposed Changes:

- 1.1. Combine the requirements of the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing (IH) ordinances into a single “Affordable Housing” ordinance which would impose on-site affordable housing requirements for both ownership and rental projects.
- 1.2. The fee would be structured as an “in lieu fee” offered as an alternative to on-site units, rather than as a mitigation fee.
- 1.3. The new ordinance would also replace the affordable housing requirements sections of the Condo Conversion and Live/Work ordinances.
- 1.4. To the extent possible, standardize the requirements that are applied to different projects to simplify implementation of the program.
- 1.5. The new ordinance would apply to all new project applications received after a date specified several months after adoption.

Background and Analysis:

Prior to 2009, Berkeley had a single Inclusionary Zoning Ordinance (BMC Chapter 23C.12) which applied to both ownership and rental projects. In 2009, a Court of Appeals decision known as *Palmer/Sixth Street Properties LP v. City of Los Angeles* prevented California jurisdictions from enforcing inclusionary housing requirements on rental properties. Like many other cities, Berkeley responded by adopting an Affordable Housing Mitigation Fee (AHMF) (BMC section 22.20.065). Instead of requiring on-site units and then offering an in lieu fee as an alternative, the AHMF ordinance requires payment of a fee and allows the provision of on-site units as an alternative. This approach allowed Berkeley to achieve its policy goals without violating the restrictions imposed by the Palmer decision. But it created a situation in which the City had two different ordinances that attempt to impose similar requirements. The provisions of the Inclusionary Housing Ordinance that applied to rental housing remained in the Berkeley Municipal Code but were unenforceable and superseded by the AHMF ordinance.

In 2018, the California Legislature passed AB1505 which effectively overturned the Palmer decision and authorized the implementation of inclusionary housing requirements applied to rental properties. This legislation has allowed a number of cities to update their programs to combine rental and ownership requirements under a single inclusionary housing ordinance.

For example, in June 2019, the Mountain View City Council completed a two-phase process to update its Below Market Rate Program requirements. Mountain View now requires any new residential development, whether rental or ownership, to provide 15% of its units at affordable

rents.⁴ Similarly, after suspending its inclusionary rental housing requirement in 2011 to comply with the Palmer decision, the City of Menlo Park updated its Below Market Rate Housing Program to subject all new residential developments to its affordable housing requirements.⁵

Berkeley's new Affordable Housing Requirements (AHR) ordinance would address both rental and ownership projects (including Live/Work and Group Living Accommodations) and would impose an on-site affordable housing requirement for both while allowing payment of an in lieu fee.

2. Calculate the fee on a per square-foot basis

Proposed Change:

- 2.1. Calculate affordable housing fees on a per square-foot basis instead of per unit. Initially set the fee at \$45 per gross residential square foot, which is roughly equivalent to the current fee for projects with typically sized units. Collect the fee at the time of Certificate of Occupancy eliminating the current discount for earlier payment. Increase the fee amount automatically based on the change in the California Construction Cost Index.

Background and Analysis:

Some stakeholders have expressed concerns that projects that propose units with large numbers of bedrooms are not being required to pay an appropriate fee. Because Berkeley charges its AHMF on a per unit basis, a project that chooses to include a number of 5-bedroom units for example, would pay far less proportionally than a similarly sized project with studio, 1- and 2-bedroom units. It is not clear whether this savings is enough to cause developers to choose much larger bedroom configurations since these large unit 'co-living' projects are a trend nationwide. But it is clear that Berkeley's ordinance creates an incentive for projects that select this configuration and there does not seem to be a public policy reason for Berkeley to prefer these extra-large units. While there are benefits to projects that include 'family sized' 2 and 3-Bedroom units (discussed in proposed change #9 below), beyond 3 bedrooms, new units are generally housing multiple unrelated individuals rather than families.

A number of cities have changed to calculating in lieu fees on a per square-foot basis. San Francisco and Santa Barbara both made this change in 2019 and San Jose made a similar change in early 2021. Instead of charging a flat fee per unit, the City would charge the fee for each square foot of residential space in the building regardless of how the building is divided up into

⁴ City of Mountain View, Below Market Rate Program, <https://www.mountainview.gov/depts/comdev/preservation/homebuying/bmrhousing/default.asp>

⁵ City of Menlo Park, BMR Requirements for Residential Developers, <https://www.menlopark.org/DocumentCenter/View/1493/BMR-Requirements-for-Residential-Developers>

units. As an example, a 25,000 square foot building would pay the same fee whether it was split up into 50 small studios or 15 multi-bedroom co-living units.

Currently, in Berkeley, every rental project would pay \$39,746 per unit (assuming that they provided no units on-site). For a typical project, this is equivalent to a fee of \$45 per gross residential square foot, as illustrated in the table below.

“Gross Square Feet – Residential” is defined as all of the square footage of a new building (as defined in BMC 23F.04.010) minus any exclusively commercial space or indoor parking area. In a typical project, the gross square footage is roughly 1.25 times the net square footage.

We conducted a market analysis in order to estimate a per square-foot fee which would be equivalent to the current AHMF. We collected data on the unit sizes of 18 recent Berkeley projects. We then multiplied the average unit sizes by 1.25 to estimate the gross square footage of each of these projects. For each project, we calculated an ‘equivalent per square-foot fee’ by dividing the fee that the project would have paid under the current rules (assuming no on-site units) by the gross square footage. The equivalent per square-foot fees ranged from \$38 to \$65. The typical fee was approximately \$45 which corresponds to an average unit size of 705 square feet.⁶ Figure 4 shows the distribution of average unit sizes and equivalent square foot fees.

Figure 4: Impact of unit size on equivalent square foot fee calculation

⁶ This excludes several outlier projects with very large or very small units.

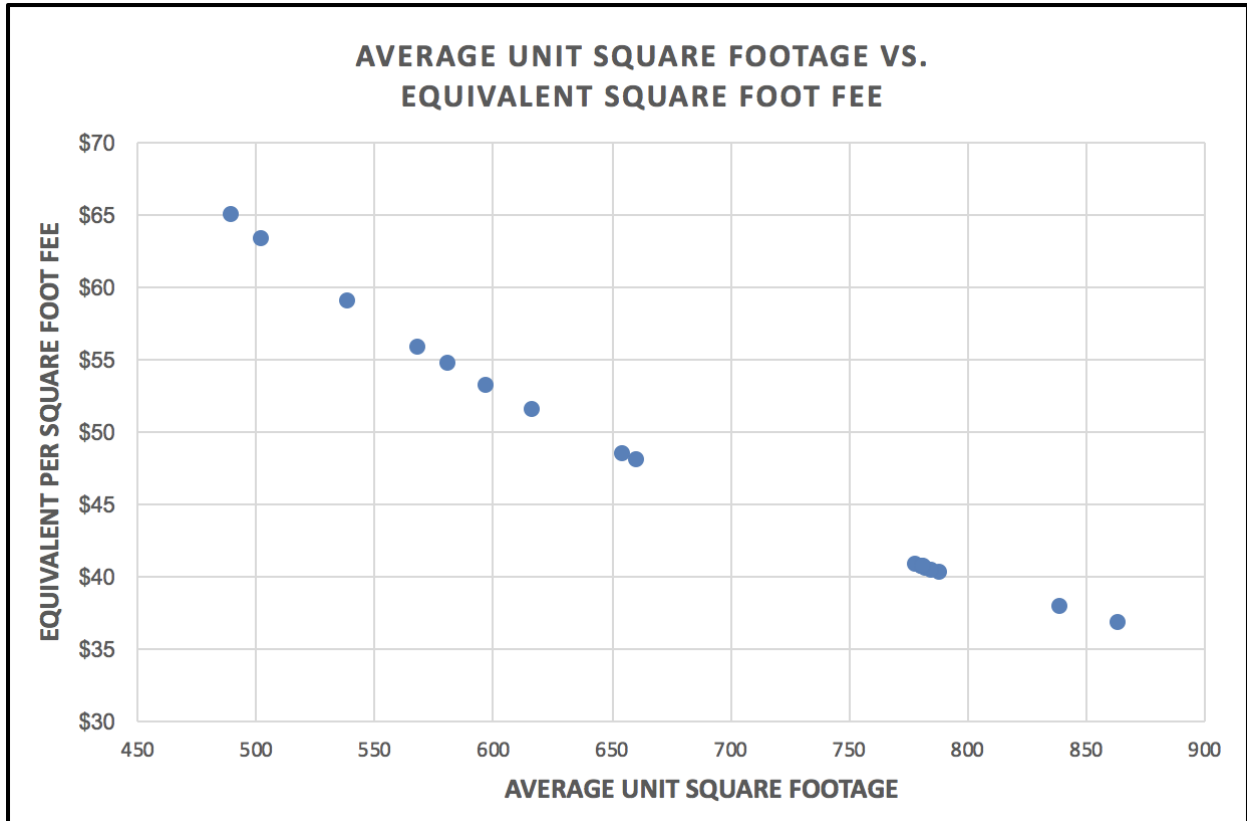


Figure 5 shows a sample of recent projects in order to illustrate the impact of switching to a per square-foot fee. Under the current per unit fee, projects that have the same number of units like Avalon and Hillside Village would pay the same amount of fee. The equivalent per square-foot fees (\$37.91 vs. \$48.14) show that Avalon is getting a much better deal by paying less relative to its size.

The per square-foot fee adjusts for the difference in project sizes. If Berkeley switched to a standard fee of \$45 per square-foot, projects with small units such as the Delaware Apartments would pay a lower total fee while projects with large units such as Higby would pay higher total fees.

Figure 5: Equivalent per foot fees for recent projects - Examples

Project Name	Total Units	Average Unit Square Footage	Current Fee (Assuming \$39,746 per unit)	Equivalent Per square-foot Fee	Projected Fee (assuming \$45/sq.foot)
Higby	98	864	\$3,895,108	\$36.82	\$4,760,145
Avalon	94	839	\$3,736,124	\$37.91	\$4,434,615
Stonefire	98	782	\$3,895,108	\$40.65	\$4,311,900
Hillside Village	94	661	\$3,736,124	\$48.14	\$3,492,405
The Dwight	99	617	\$3,934,854	\$51.57	\$3,433,680
The Delaware	51	581	\$2,027,046	\$54.72	\$1,667,025

For comparison, Figure 6 provides fee levels for nearby jurisdictions.

Figure 6: Comparison of Inclusionary Housing Requirements and Fee Levels for Other Jurisdictions

City	% Affordable Housing Required On-site	Fee	Notes
Alameda	15% for all multifamily projects	\$20,342 Per Unit	No alternative to fee for buildings of 9 or fewer units
Emeryville	20% for all multifamily projects	\$31,032 Per Unit	
Fremont	12.9% for rental	\$27.00 Per Residential Square Foot	
Hayward	6% for rental, 10% for ownership	\$19.37 Per Residential Square Foot	Lower fees for high-density condos
Livermore	10% downtown, 15% everywhere else	\$29.23 Per Residential Square Foot	Projects with 10 or more units may not pay fee
Oakland	10% if low- or moderate- income units, 5% if very low-income units	For multi-family: \$22,000 per unit in Zone 1, \$17,750 in Zone 2, \$12,000 in Zone 3	
Pleasanton	15% for all multifamily projects	\$45,083 per unit	
San Francisco	20% for small projects, 25% for large rental, 33% for large ownership	\$199.50 Per Gross square foot times affordable percent	Equivalent to \$60 per square-foot for many projects.
San Jose (proposed)	15% for all multifamily projects	Moderate Market Areas: \$18.26 per net residential foot Strong Market Areas: \$43	

The current AHMF ordinance allows developers to choose between paying a higher fee (currently \$39,746) at the Certificate of Occupancy when a project is nearly complete or a reduced fee (currently \$36,746) earlier when a project receives a building permit. Nearly all projects have selected the higher fee because of the high value that developers place on the ability to pay the fee later. Paying later reduces their financing costs and lowers their overall financial risk. Removing the option to pay early would recognize this reality and eliminate an additional element of administrative complexity and communication challenge.

The existing Affordable Housing Mitigation Fee is automatically adjusted by the annual percentage change in the California Construction Cost Index published by the California Department of General Services, every other year. The automatic adjustment is applied to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment. This automatic adjustment ensures that the fee keeps pace (roughly) with what it costs the City and its nonprofit partners to construct new affordable housing using the fee revenue. This method should remain in place.

3. Evaluate the potential for higher fees when the market is stronger

Proposed Change:

- 3.1. In order to encourage more on-site units, phase in a slightly higher fee once the housing market has stabilized. Conduct an updated feasibility analysis within 3 years, increase the per square-foot fee if the analysis shows that typical projects could support the higher fee.

Background and Analysis:

Under current market conditions, Berkeley's on-site compliance option (20%) is significantly more costly for most projects relative to the cost of the Affordable Housing Mitigation Fee or In-lieu Fee. This creates an incentive for projects to choose to pay the fee instead of providing units on-site. In spite of this incentive, the majority of projects have provided some level of on-site units because the State Density Bonus provides an even stronger incentive to include affordable units on-site, and the units count against the fee obligation as well.

Ideally, the on-site unit and in-lieu fee requirements would be more closely aligned so that they represented similar costs for most projects. This kind of alignment would likely result in a higher number of on-site units without entirely eliminating the fee revenue which is critical to Berkeley's HTF program. Aligning the economics of these two options would require either raising the fee or lowering the on-site requirement considerably.

In rough terms, the on-site requirement would need to be lowered to about 15% in order to represent a cost to most rental projects that was equivalent to the cost of the current AHMF. However, none of the local stakeholders we spoke with suggested that there would be public support for lowering Berkeley's on-site requirement.

A number of stakeholders, on the other hand, suggested raising the fee. This seems to be the more obvious path to aligning the cost of the two options and increasing the share of units on-site. However, our feasibility analysis (Appendix A) suggests that 2021 would be a particularly risky time to raise the affordable housing fee. The Covid-19 pandemic has created uncertainty in the real estate market. Rents in Berkeley have fallen significantly and rents in high-cost newly constructed buildings may have fallen more than the average. At the same time, construction costs have not (yet) fallen leaving most multi-family housing developments in a precarious position. Builders are still moving forward with new rental buildings in Berkeley but the City's volume of new applications has fallen relative to recent years. It seems likely that Berkeley will continue to be a desirable location for new housing over the long term but it is not yet clear whether there will be a protracted slow down in new building throughout the region following the pandemic.

While the level of local fees, including affordable housing fees, is just one small factor that developers consider when they decide whether or not to move forward with a project, Berkeley already charges more than most other East Bay jurisdictions and increasing the fee at this time could contribute to a greater slow down in new building.

For this reason, we are recommending that Berkeley allow for a period of housing market recovery before considering an increase in the Affordable Housing Fee. The City could plan on an update to the feasibility analysis in one to three years or wait for evidence that either rents have begun increasing or that construction costs have begun to fall before reconsidering the level of the fee.

4. Incentivize Extremely Low-Income (30% of AMI) units

Proposed Changes:

- 4.1. Require all VLI Units to be offered to voucher holders (50% to Housing Choice Voucher Holders and 50% to Shelter + Care Voucher Holders) before being marketed to other income eligible households.

Alternative:

- 4.2. Retain the current rules which require 40% of VLI units be offered first to Housing Choice Voucher Holders and another 40% be offered first to Shelter + Care Voucher Holders.

Background and Analysis:

A number of local stakeholders have expressed a desire to see Berkeley's program provide relatively more units to serve Extremely Low-income (ELI) households (below 30% of Area Median Income) who face the most acute housing challenges.

Some cities achieve this by creating a formula which allows developers to substitute a smaller number of units targeting Extremely Low Income residents for some portion of otherwise required on-site BMR units. Los Angeles's Transit Oriented Communities (TOC) program requires affordable units in exchange for a significant density bonus. The TOC program allows developers to choose between providing a greater number of low-income units or a smaller number of more deeply affordable Extremely Low Income units. Even though the rents on the ELI units are much lower, many developers have chosen this option because they can provide fewer affordable units (and more market rate units). Between 30% and 50% of the BMR units produced through the program have targeted ELI households and this program has driven a significant increase in the total number of income restricted ELI units produced in LA. In 2020, 34% of new BMR units in LA were restricted to ELI tenants.

While this type of approach might increase the number of ELI units in Berkeley, it is worth noting that Berkeley is already a national leader in serving ELI households through inclusionary housing. *Currently 29% of Berkeley's BMR tenants have incomes below 30% of AMI* and the share of ELI tenants is likely to increase noticeably under current rules. Berkeley's AHMF requires that at least half of BMR units must target 50% of AMI and, *of those, 40% must be offered first to Housing Choice voucher holders from the Housing Authority and another 40% must be offered first to Shelter Plus Care voucher holders managed by the City's Housing and Community Services division.* Voucher holders in both programs generally have incomes well below 30% of AMI. And because of the acute shortage of inexpensive market rate housing, most of the households that receive vouchers in Berkeley are unable to use them in the market. This approach has benefits for developers as well. The City allows the property to receive the contract rent offered by the subsidy program as long as the tenant's share of rent is below the BMR limit. The contract rents are generally far below the market rent for brand new buildings but also quite a bit higher than the BMR affordable rent for 50% AMI units. Because of the voucher, the ELI tenants, on the other hand, generally pay much less than the 50% AMI affordable rent.

In addition, because of the way Berkeley's requirements interact with the State Density Bonus (SDB), developers tend to favor the 50% AMI units. As a result, 77% of Berkeley's BMR units approved since 2012 have been regulated as 50% AMI units. If this pattern continues and, going forward, 80% of these units are reserved for voucher holders, then we would expect voucher holders to make up 62% of new BMR tenants.

A 2020 State law (AB 2345) expands the SDB beginning in January 2021. Developers will now be allowed to build 50% more units if they provide at least 15% VLI units (among other options). This new law should result in a greater number of on-site VLI units and, as a result, a greater number of ELI/voucher tenants. At some point, it is likely that the City would exhaust

the supply of unused vouchers and some of these units would ultimately be leased to Very low Income tenants (below 50% of AMI) instead.

In addition to its success in serving ELI tenants in BMR units, the City currently requires that at least 20% of units in all projects funded with the Housing Trust Fund be affordable to ELI tenants.

Requiring that all VLI units first be offered to voucher holders would slightly increase the share of ELI tenants housed going forward while also removing an element of complexity from the program and simplifying otherwise complex rounding issues.

5. Adjust the residual fee for mixed compliance projects

Proposed Change:

- 5.1. Encourage more mixed compliance projects by changing the calculation of the remaining fee due when projects provide less than 20% affordable units on-site. Restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units.

Alternative:

- 5.2. Continue the current practice of providing the same reduction in fee for any units, whether they serve VLI tenants or LI tenants.

Background and Analysis:

Currently rental projects that provide 20% affordable units on-site are exempt from the Affordable Housing Mitigation Fee (AHMF). Half of these units must be for Very Low Income (VLI) residents earning less than 50% of AMI and half must be for Low Income (LI) residents earning less than 80% of AMI. When a developer provides a portion of the required units on-site, the City has a formula that is used to determine the remaining fee. For example, if a project provides half of the required on-site units, they also owe half of the fee that would have been due. In order to access the benefits of the State Density Bonus, the majority of recent projects have selected this mixed compliance option.

Under the current rules, providing any on-site affordable housing unit reduces the fee that is due by the same amount regardless of whether the unit provided is a LI or a VLI unit. But because the VLI units rent for much less, they are much more costly to provide on-site. When a developer agrees to provide any permanently affordable unit, they will receive less rental income from that unit throughout the life of the project than they would from a market-rate unit. As a result, each affordable unit in a project decreases the value of a building - the amount that a building could be sold for. Street Level Advisors estimated the cost of providing these units on-site for a hypothetical six story project and found that a VLI unit reduces the value by \$483,000 while a LI unit reduces value by \$340,000.

One way to encourage more projects to provide some units on-site would be to restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units. Based on the relative affordable rents, providing 10% VLI units could relieve the developer of \$30 of the \$45 per square-foot remainder fee, while providing 10% LI units could relieve them of only \$15 of the \$45 per square-foot fee. Projects providing fewer than the 10% of units required in either category would pay a fee adjusted proportionally.⁷

Figure 7: Examples to illustrate partial compliance - 100 unit project

Example	VLI units	LI Units	Fee
On-site Only	10	10	\$0
Fee Only	0	0	\$45
Only VLI	10	0	\$15
Only LI	0	10	\$30
Half Each	5	5	\$22.50
11% VLI	11	0	\$12
15% VLI	15	0	\$0

This change would increase the feasibility of the mixed compliance options and should result in on-site units from some projects that would have otherwise selected to pay the fee. However it is important to note that this mixed compliance option is already the most popular option and appears to be financially feasible without this change.

6. Standardize ownership fees

Proposed Change:

- 6.1. Apply the same per square-foot fee for both rental and ownership units. Continue to require different income targeting for ownership units.

⁷ The formula for calculating the reduction in fee could be $(\text{Full Fee} * 1.33 / 20) * (\text{actual \% of VLI units}) + (\text{Full Fee} * .67 / 20) * (\text{actual \% of LI units})$. If the full fee is \$45 per square-foot, then each 1% of VLI units would reduce the fee due by \$3 per square-foot and each 1% of LI units would reduce the fee by \$1.50 per square-foot.

Alternative:

- 6.2. Charge any project that chooses to record a Condominium Map a higher fee of \$55 per square-foot.

Background and Analysis:

Many local stakeholders are under the impression that Berkeley’s current Inclusionary In-Lieu Fee for ownership projects is higher than the Affordable Housing Mitigation Fee for rental projects. Berkeley has seen very few ownership projects in recent years, so it is difficult to directly compare, but our analysis suggests that this is true, both on a per unit and per square-foot basis.

In lieu of each affordable unit, the current Inclusionary Housing Ordinance allows payment of a fee equal to 62.5% of the difference between the market price and the “affordable” price. To estimate the equivalent per square-foot fee that this rate yields, we used proprietary data from Property Radar to calculate average square footages and market values for Berkeley condos, shown in Figure 8.

Figure 8: Condo pricing estimates

Berkeley Condo Sales 2021			Prototype (New Building)
Unit Size	Avg Sqft	Avg Value	Projected Value
Studio	646	\$620,752	
1-BR	814	\$703,556	\$725,000
2-BR	1117	\$853,125	\$925,000
3-BR	1571	\$995,797	\$1,100,000

It is likely that newly built condos would sell for higher than average prices but there have not been enough Berkeley condo projects in recent years to calculate appropriate projections for new buildings only. We have assumed sale prices for newly built condo units would be roughly 5 to 10% higher than the citywide average condo sales prices.

The IHO defines the affordable price for the purpose of calculating the fee as three times (3x) the Area Median Income (AMI) adjusted for household size. We used those prices to estimate in lieu fees. We then multiplied those numbers by 20% to yield the equivalent per unit fee, which range from \$48,000 to \$85,000. This suggests that the fees required for ownership projects in the IHO are indeed higher than the \$39,746 per unit currently required for rental

projects under the AHMF. Our estimates for the equivalent per square-foot fees for ownership projects range from \$54 to \$75, which is higher than the typical equivalent per square-foot fees that we found for rental projects. Projects with very high cost condo units would face even higher fees.

Figure 9: Estimated BMR Ownership Fees 2021

Unit Size	Sq Ft	Market Price	Affordable Price	In Lieu Fee	In Lieu Fee Per Unit	In Lieu Fee per Sq Ft
Studio	646	\$620,752	\$234,960	\$241,120	\$48,224	\$75
1BR	814	\$703,556	\$250,650	\$283,066	\$56,613	\$70
2BR	1117	\$853,125	\$282,000	\$356,953	\$71,391	\$64
3BR	1571	\$995,797	\$313,200	\$426,623	\$85,325	\$54

Note that the median condo value in Berkeley has risen dramatically in recent years, from a low of \$364,000 in 2012 to \$900,000 in January 2021.⁸ Because prices have risen much faster than income, the in lieu fee has risen too.

We analyzed the financial feasibility of the current fees for hypothetical affordable ownership projects (Appendix A) and found that the current fees resulted in profits that fall below commonly used benchmarks for necessary profit. High cost condos might be able to pay the fee and earn the minimum required profit but projects with sales prices closer to Berkeley's average condo prices were not. However, under current conditions, more typically priced condos were able to pay the proposed rental fee of \$45 per square-foot and remain financially feasible. While there have not been enough condo projects in Berkeley recently to draw strong conclusions, this exercise lends support to the assertion that the relatively high level of Berkeley's fee for ownership projects is contributing to developer's choice to build rental rather than ownership housing.

The current policy appears to discourage homeownership development. Some local stakeholders have expressed an interest in adjusting the policy to give developers, and ultimately Berkeley residents, more choice between rental and homeownership housing. Setting the fee at \$45 per square-foot for both types of project would level the playing field considerably. The typical ownership unit would still pay more because ownership units tend to be larger. As an alternative, many cities charge homeownership units slightly more. Setting

⁸ Zillow Home Value Index for Condos/Co-ops, <https://www.zillow.com/berkeley-ca/home-values>

Berkeley's fee at, for example, \$55 per square-foot for ownership projects would slightly disincentivize ownership but by less than the current fee approach.

Addressing rental projects that record condo maps

Another reason to consider standardizing the fee between rental and ownership projects stems from the fact that a growing number of new multi-family buildings are recording condominium maps but opening initially as rental housing projects. This gives project owners the flexibility to later sell the rental units as condos if housing market conditions change. The added flexibility makes it easier for developers to access project financing or to access financing on better terms.

For projects that provide on-site affordable rental units, the City records restrictions which require that the BMR units remain affordable rentals for the life of the project. But the potential for projects that are initially rental and pay the AHMF but later convert to ownership is not addressed in Berkeley's current code. Projects that paid the AHMF as rental projects and later sold condo units would owe an additional fee, but monitoring and collecting this fee is administratively and legally challenging.

Some cities have responded to this trend by requiring projects that record a condo map when they are first built to pay a higher affordable housing fees that would be due for ownership projects even if the building is initially operated as rental housing. This would not be practical under Berkeley's current approach because the ownership in lieu fee is set based on the actual sale price of units but those may not be determined for many years (if ever). Setting a single in lieu fee that would be applied to both rental and ownership projects at the time of development would eliminate this complexity. Alternatively, setting a higher fee per square-foot for projects with a Condo Map would also provide a practical alternative, though it might increase costs on rental projects that are not likely to ever actually convert to ownership but need the Condo Map in order to access certain financing sources.

7. Standardizing Live Work and GLA requirements

Proposed Change:

- 7.1. Remove the exemption for Live / Work projects from IHO/AHMF ordinances; apply the same requirements to Live / Work projects as any other project except for the "affirmative marketing" provision
- 7.2. Remove the exemption for units with Group Living Accommodations (GLA) tenancy (and consider retaining an exemption for University-recognized GLAs)

Background and Analysis:

A 2018 Council Referral (2018-09-12, Item 17) called for the elimination of the affordable housing requirements in the Live Work Ordinance and removal of the live/work exemptions

from both the IHR and AHMF ordinances. This action would simply apply the Inclusionary Housing or AHMF ordinances to Live Work exactly as they are applied to other projects.

Live/Work units are currently exempt from both the Inclusionary zoning ordinance and the Affordable Housing Mitigation fee. Instead, Berkeley's Live Work Ordinance (Berkeley Municipal Code 23E.20) requires projects that create 5 or more Live/Work units to include 1 inclusionary unit affordable to 80% of AMI for every 5 Live/Work units created. The inclusionary requirements in the Live/Work ordinance differ from the requirements applied to other projects. Affordable units under the Live/Work ordinance are all targeted to 80% of AMI. In addition, the Live Work Ordinance specifically allows inclusionary Live/Work units to be smaller, have lesser finishes and be located anywhere in a project while both the IHR and AMHF ordinances require units to be the same size, have comparable finishes and be distributed throughout a project.

There is one provision of the Live/Work ordinance which is specific to Live/work affordable units which it would make sense to retain or move to the new ordinance. Inclusionary live/work units must be affirmatively marketed to "income-eligible persons performing a work activity permitted in the District where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units." The ordinance currently provides no standards for documenting tenants' need for live/work space or rules for waiving this requirement in the event that a tenant with this need cannot be found within a reasonable period.

The ordinance currently exempts Group Living Accommodations (GLA) units, but because this classification represents a type of tenancy rather than a specific type of unit, it would make sense to subject GLA units to the Affordable Housing Requirements like any other unit. Fraternities, sororities, and other specially designated units managed by the University would retain their exemption. Further study could be necessary to assess the impact of this change on project feasibility.

8. Add a land dedication option

Proposed Change:

- 8.1. Add a land dedication option which authorizes the City Manager to approve donation of land to the City or an approved nonprofit housing developer. Donated land must be appraised for a value of at least 75% of the in lieu fee which would otherwise be due, be sufficiently sized and zoned to support multifamily housing development and otherwise be suitable for affordable housing development.

Alternative:

- 8.2. Don't add a land dedication option - continue with two compliance options; on-site units or in lieu fee, though this would leave projects newly excluded from the on-site option with only one compliance option.

Background and Analysis:

Some stakeholders have suggested that the program would be stronger if Berkeley allowed developers to comply by providing off-site affordable projects, preserving existing ‘naturally occurring affordable housing’ or dedicating land for affordable housing development. We evaluated the feasibility of adding off-site and preservation options and concluded that Berkeley currently lacks the staff capacity necessary to effectively implement these complex options. However, it is worth noting that the City can and does use in lieu fee revenue collected to finance both off-site projects and preservation/rehabilitation projects. By collecting fees and then going through the existing procedures for the HTF and Small Sites programs, the City avoids the need to develop new detailed rules and closely monitor developer implementation of these alternatives.

The third option, land dedication, however, provides an outcome which the City cannot achieve on its own through the use of fee revenue. While this option also would require detailed rules to avoid abuse, it may be less challenging than off-site or preservation options and is likely to be used in far fewer cases.

Access to sites is one of the key barriers facing affordable housing developers. Market rate developers sometimes end up with control over sites which could be better used for affordable housing. Sometimes market rate projects are large enough to set aside a portion for affordable housing. In these, somewhat rare, cases, it is sometimes more affordable for the developer to donate land for affordable housing than to build on-site units or pay an in lieu fee. If the donated site is appropriate for affordable housing, it can save significant time and make new projects possible. Of course, if sites are not appropriate, land donation can result in a significant burden on City resources. If the policy were to include a land dedication option, the City would need to develop detailed guidelines which outlined site requirements and retain the option to only accept sites when there is a high probability that they will be developable for affordable housing including, for example, expressions of interest from local affordable housing developers.

9. Provide a family sized units option

Proposed Change:

- 9.1. In lieu of providing 20% of units at affordable prices, allow projects to provide affordable units comprising 20% of the Gross Residential Floor Area in the project provided that at least 50% of those units are in 2 or 3 bedroom units.

Background and Analysis:

Berkeley’s IHR and AHMF ordinances currently require that on-site BMR affordable units be of the same type and size as market rate units in the property. As the cost of construction has risen, there has been a trend for market rate projects to include smaller and smaller

apartments and this has meant that the BMR units have been shrinking as well. Some stakeholders have asked the City to consider ways to incentivize more ‘family sized’ units even in buildings where the market rate units are quite small. This request has been made at the same time that other stakeholders have called for the City to actively discourage units with high bedroom counts (i.e., co-living units).

It seems that in the current context the City should be encouraging 2 and 3-bedroom units but not larger ones. One way to achieve this is to require that projects set aside a given percentage of floor area for affordable housing instead of a percentage of units if the majority of those units are 2 and 3-bedroom units.

When New York City adopted their Mandatory Inclusionary policy for the first time in 2016, rather than requiring a percentage of units be affordable, they required that the affordable units make up a percentage of net residential floor area.⁹ This allows developers to include larger or smaller affordable units. Projects offering smaller BMR units may need to provide more units and projects offering larger units would provide fewer units. Cambridge, MA, a city with size and demographic similarities to Berkeley, also switched to this method in 2017, but with the additional condition that large developments (30,000 square feet or more) are required to include 3-bedroom affordable units.¹⁰ Both of these approaches would add considerable complexity to already complex rules in Berkeley. The proposed change would continue to require 20% of units for most Berkeley projects, but would add an alternative for projects that chose to offer mostly 2 and 3 bedroom BMR units.

10. Simplify the requirements for condominium conversions

Proposed Changes:

- 10.1. Calculate the Condo conversion fee at 8% of the market value of converted units.
- 10.2. Reduce the conversion fee to 4% for any unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date that the fee is paid, including as a tenant in that unit immediately prior to ownership.
- 10.3. Also reduce the conversion fee to 4% for any co-housing unit, any unit that is part of a housing cooperative, or conversion undertaken by a nonprofit developer.
- 10.4. Continue to allow a further 25% discount in the fee if it is paid at the time of conversion rather than at the time of sale of condo units.
- 10.5. Add flexibility in the use of conversion fees. Allow up to 10% of conversion revenue to be used for Condominium Conversion program delivery and/or Housing Trust

⁹ New York City Mandatory Inclusionary Housing Program, <https://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page>

¹⁰ City of Cambridge Inclusionary Housing, <https://www.cambridgema.gov/CDD/housing/inclusionaryhousing>

Fund program and project monitoring and enforcement or related program administrative costs with the remaining 80% placed into the Housing Trust Fund.

Background and Analysis:

Berkeley's Condominium conversion ordinance (CCO) (Berkeley Municipal Code [BMC] Chapter 21.28 et seq.) requires payment of an Affordable Housing Mitigation Fee at the time that rental properties are converted to condominium ownership. Between 1992 and 2009 this mitigation fee recaptured essentially the entire difference in affordability that resulted from conversion. This had the effect of discouraging conversions. In 2005, the state Court of Appeal held that cities could not prohibit conversion of rental units to Tenants in Common ownership (TIC). Since then, the City has sought to encourage conversion of rental units to condominiums rather than TICs because of difficulties that can arise for people who invest in TIC properties. It has done so by imposing a de facto cap on the affordable housing mitigation fee charged for conversion to condominiums since 2009.

Nexus Fee Calculation: Under the current ordinance the AHMF for condo conversions is calculated through a complex 'nexus formula' that considers costs of ownership, rental and mortgage rates. Alternatively, owners can choose to pay 8% of the sales price (or 4% for 2-unit buildings) instead of the Nexus Fee if they agree to limit rent increases for any existing tenants. This alternative calculation generally results in much lower fees. As a result, the nexus-based fee method has been used very rarely. We recommend that all condominium conversions be subject to the 8%/4% fee, and that all sitting tenants be provided protections and an opportunity to purchase.

Examples:

Nexus Formula: Rental Costs = \$1,500 per month x 12 months/year = \$18,000 annually
Ownership Cost (including principal, interest, taxes, insurance, and homeowners' association dues) = \$2,700 per month x 12 = \$32,400 Assume a mortgage rate of 6.5 percent. Increased housing cost due to ownership conversion of the unit = \$32,400 - \$18,000 = \$14,400 Mitigation Fee = \$14,400/0.065 = \$221,538

Alternative Formula: Sale price for converted unit = \$400,000. If owner agrees to limit rents to existing or future tenants. Mitigation fee = 8% x \$400,000 = \$32,000.

Discount for Owner Occupants/Tenant Conversion: Currently, the condo conversion ordinance provides a 50% reduction in the fee to owners who have lived in their units for the 5 prior years. However, only owners who resided in their units on June 30, 2010 are currently eligible.

If the property contains three or more units, the affordable housing mitigation fee for a unit that is occupied by an owner as their principal place of residence for at least 5 consecutive years immediately prior to the date of sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent, but only if the owner owned and resided in the unit as of June 30, 2010.

A Council referral had proposed to extend the 50% reduction to tenants in addition to owners who have lived in a unit for at least 5 years prior to conversion so long as the building was 4 or fewer units.

If the property contains 4 units or fewer, the affordable housing mitigation fee for a unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of conversion or sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent.

It is not clear why this tenant conversion benefit should be limited based on building size. The current ordinance is limited to properties with 3 or more units while the referral was limited to 4 or fewer units. The proposed change would apply to owner occupied or tenant purchased units in buildings of any size.

Although instances of condominium conversion by nonprofits, in co-housing projects, or in housing cooperatives are quite rare, it makes sense to extend the fee reduction to these cases as well.

Use of Fee Revenue: The current condo conversion ordinance does not allow any of the Mitigation Fee revenue to be used for program administration, but the program can be staff-intensive to implement. The AMHF and IHR Ordinances allow a portion of fee revenue to be used for program administrative staffing.

11. Prohibit on-site units for Group Living Accommodation (GLA)

Proposed Change:

- 11.1. Prohibit projects with an average of more than 3 bedrooms per unit from selecting the on-site option in order to reduce administrative burdens.
- 11.2. Adopt a local density bonus that enables these projects to access the benefits of the State Density Bonus in exchange for an increased in lieu fee instead of on-site units.

Background and Analysis:

Group Living Projects: It is challenging to regulate and monitor BMR units in co-living and group living projects where individuals generally lease bedrooms not apartments. It is difficult to find eligible households who can both qualify for and afford 4-bedroom or larger BMR units and the households that would most benefit from large BMR units might be less interested in living in a building that was primarily targeting students and young adults. Additionally, it is typical for groups of unrelated adults renting larger units together to change composition frequently, which makes maintaining current documentation of eligibility more complicated for owners and therefore compliance more difficult for the City to monitor.

Local Density Bonus: Berkeley cannot prevent developers from providing on-site affordable units in order to qualify for the benefits of the State Density Bonus (SDB). It would be possible for the City to simply require some projects to pay the full fee even if they provide on-site units for the purpose of accessing the density bonus but this would impact the feasibility of small projects and projects that provide large bedroom count units. An alternative would be for the City to adopt a limited local density bonus program for these projects that are not allowed to provide on-site units under the City's ordinance. This local bonus could provide access to all of the benefits of the State Density Bonus (including additional density and other planning concessions) in exchange for a fee rather than on site units. We calculated that, for a typical rental project, providing 11% (of base units) on-site increases the cost of compliance relative to paying the fee only by \$10 per square-foot. If a local density bonus offered the benefits of 35% increased density and other concessions to projects that paid \$55 per square-foot (instead of \$45) this option would be no more or less attractive to developers than the current State Density Bonus option. In other words, if a co-living project could access the density bonus in exchange for a fee of \$55 per square-foot they would generally choose that option rather than provide on-site units.

12. Change requirements for small projects/missing middle projects

Proposed Changes:

- 12.1. Eliminate exemption for 1-4 unit projects and replace it with a tiered fee that steps up gradually for projects with less than 12,000 gross residential square feet, by reducing the fee by \$2 per square-foot for each 1000 square foot increment less than 12,000.
- 12.2. Offer a local density bonus, equal to the State Density Bonus, to projects providing <5 BMR units that choose the in lieu fee.

Alternative:

- 12.3. Eliminate exemption for 1-4 unit projects and expect even very small projects to contribute the full fee.

Background and Analysis:

Currently both the AHMF and the Inclusionary housing ordinance exempt buildings with 1-4 units. Presumably this exemption was motivated by a sense that very small projects would have a harder time absorbing the cost of including affordable housing into their budgets. While this is often, but not always true, there is no reason to think that suddenly at 5 units a project budget can easily afford to comply. There is a much wider range of "missing middle"-type projects that may be feasible in Berkeley at a small scale which may also struggle to meet the City's requirements. Many of these projects may be larger than 5 units.

At the same time there has been significant concern in Berkeley about the potential that developers may segment larger projects into several smaller 4-unit projects in order to circumvent the inclusionary housing or AHMF ordinance. By exempting very small projects but

then suddenly imposing the full requirement at a certain point, the current ordinance creates an incentive to build projects in 4-unit increments.

One approach to this challenge would be to impose the fee (at some level) on every project (with the exception of Accessory Dwelling Units), but to reduce the fee for small projects. Many cities just impose a lower fee for smaller projects. San Jose just amended their program to set the fee at a level that is 50% lower for projects with fewer than 20 units. However, this approach still creates a big step up at 20 units. An alternative is to gradually phase in higher fees as the size of the project increases. Figure 10 shows the schedule that would result from a \$2 decrease in the fee for each increment of 1000 gross residential square feet below 12,000.

Figure 10: Proposed schedule for small project phase-in

Gross Residential Square Feet	Fee per square-foot
12,000+	\$45
11,000-11,999	\$43
10,000-10,000	\$41
9,000-9,999	\$39
8,000-8,999	\$37
7,000-7,999	\$35
6,000-6,999	\$33
5,000-5,999	\$31
4,000-4,999	\$29
3,000-3,999	\$27
2,000-2,999	\$25
1,000-1,999	\$23
<1,000	\$21

Reducing the fee for small projects would have an uncertain impact on Berkeley’s future fee revenue. The City would collect less revenue from small projects with at least 5 units, but would begin collecting fees from 1 to 4 unit projects. Offering a local density bonus to projects providing less than 5 BMR units that choose the in lieu fee would likely reduce the number of projects with a small number of on-site BMR units that need to be monitored while also increasing total fee revenue.

Small projects pose a special challenge for program administration and monitoring. Monitoring compliance for a building with one or two regulated units requires a similar investment of staff time as a project with 20 BMR units. Often the owners of smaller buildings have fewer resources and less outside professional property management support and as a result, they often find the burdens of compliance more challenging, and require relatively more intervention and training from City staff.

Many cities address this by encouraging developers of small properties to select the fee or other option rather than providing on-site BMR units which may prove difficult to monitor.

Redwood City prohibits the on-site units option for projects with fewer than 20 total units, effectively requiring these projects to pay the in lieu fee.

In Berkeley, however, because so many projects select mixed-compliance, there is a real risk that projects with more than 20 total units could end up including only a very small number of on-site BMR units. For example a 40 unit project selecting on-site compliance (20%) would provide 8 BMR units but if they chose to only provide 10% on-site and pay a fee for the remainder they would only provide 4 BMR units on-site. Removing the on-site option for projects that would result in fewer than 5 BMR units would force these projects to either pay the fee entirely or fully comply through the on-site option. Either option would simplify monitoring enormously.

13. Cap the annual rate of rent increases

Proposed Change:

13.1. Limit the annual increase in BMR affordable rents for occupied units to no more than the annual change in the Consumer Price Index. Allow rents to be marked up to the maximum 'affordable' rents based on HUD AMI calculations whenever units turn over.

Alternative:

13.2. Limit the annual rent increase to no more than 10% in any single year.

Background and Analysis:

Sudden increases in the Area Median Income can result in large changes in the allowable affordable rent which can negatively impact BMR tenants. Similarly, some property owners fail to annually adjust rents as allowed by the current ordinance. They are allowed to 'catch up' by raising the rents by a larger amount later but this too can cause sudden shocks in rent for vulnerable tenants.

Limiting the amount that rent can be increased for occupied BMR units would provide stability and predictability for tenants. This change, however, will have a real impact on the operating budgets of projects with on-site BMR units. The current rules tie rents to changes in the Area Median Income (AMI). Over the past several decades the AMI has risen quite a bit faster than the Consumer Price Index. While the AMI is generally a measure of what people in the area earn, the rapid increase in the AMI has been driven, in part, by the growth of high paying jobs and the influx of higher income residents throughout the Bay Area rather than a rise in the wages and other income that lower-income residents earn. As a result, 'affordable' rents have risen faster than what many low-income tenants can comfortably 'afford.'

Limiting the rate of rent increases will have a real impact on the operating budgets of buildings that include on-site units. As long as units remain occupied, the rents may rise

more slowly than building operating costs. It is likely that this change in policy will make the on-site option slightly less attractive to developers and increase the likelihood of projects selecting to pay the fee in lieu. However, a growing number of Berkeley projects are including on-site VLI units and then filling those units with residents who hold housing vouchers. The policy should continue to allow these properties to collect the full voucher payment standard which might increase faster than CPI without impacting affordability for the residents. This reliance on vouchers should mean that many density bonus projects would not be impacted by a rule tying rent increases to CPI.

14. Administrative changes

a. Require compliance plans

Proposed Change:

14.1. Require developers of new projects to submit a simple Affordable Housing Compliance Plan at the time of Building Permit application indicating their proposed strategy for complying with the requirements of the AHR ordinance. Allow revisions to this plan at any time prior to the Certificate of Occupancy.

Background and Analysis:

Currently developers can wait until their projects are built and applying for a Certificate of Occupancy to inform the City of their intended strategy for complying with the AHMF or Inclusionary Housing Ordinance, including whether they intend to pay the fee or provide some or all of the required on-site units. Requiring developers to indicate a proposed strategy earlier in the process a) allows city staff to make plans for monitoring units or project fee revenue so that it can be invested quickly and b) ensures that developers are fully understanding Berkeley's requirements early in the development. Many cities provide a simple fill in the blanks template for this purpose and allow projects to change their plans at a later date by simply submitting a revised plan.

b. Authorize administrative citations

Proposed Change:

14.2. Explicitly authorize the creation of a proposed schedule of fines for monitoring and compliance violations to be included in the program guidelines.

Background and Analysis:

Other jurisdictions have found that having the ability to impose monetary fines is an effective tool for encouraging developer and property manager compliance with

monitoring requirements. Explicitly authorizing citations in the ordinance might help clarify staff's authority to impose these penalties.

c. Authorize annual monitoring fee for ownership units

Proposed Change:

14.3. Explicitly authorize the City to charge a fee annually to BMR Homeowners to offset monitoring costs. The fee would be assessed only on new owners going forward. The fee would be included as a housing cost in calculation of the affordable sales prices so that buyers will pay less for their units in order to make the fee affordable.

Background and Analysis:

The City currently charges owners of rental properties an annual monitoring fee but no fee is charged to BMR homeowners.

d. Deduct required fees/costs from gross rent

Proposed Change:

14.4. Clarify this language in the ordinance to make it clear that mandatory fees or costs must be deducted from the maximum allowable rent for BMR rental units.

Background and Analysis:

Currently the AHMF ordinance calls for reduction in the maximum rent based on the anticipated cost of tenant paid utilities. Some properties impose other mandatory costs such as renter's insurance or administrative fees. Current practice is to deduct any cost which is mandatory for BMR tenants from the maximum gross rent to calculate the affordable rent but this requirement is not currently outlined in the ordinance.

Appendix A: Financial Feasibility Analysis

Overview:

The City of Berkeley retained Street Level Advisors to recommend changes to its existing affordable housing requirements. Our policy recommendations are intended to increase the construction of affordable units while maintaining the financial feasibility of market-rate development. We conducted a financial feasibility study in order to understand the current housing development environment and predict how our recommended policies might affect this environment. Our study relies on a static pro forma analysis to estimate the return on investment that can be generated by typical residential developments in Berkeley.

For the rental prototype, we used a common measure of return known as yield on cost (YOC), or a project's net operating income divided by the total development cost. Based on a review of current market conditions in Berkeley and the East Bay, we concluded that projects earning a yield of at least 5.0% would be "feasible" meaning that they would likely be able to secure investment. Projects earning slightly less (between 4.5% and 5%) would be considered "marginal" meaning that some projects in this category might be able to obtain financing while others might not. Projects earning less than a 4.5% yield we considered "infeasible."

For ownership projects, the Yield on Cost cannot be calculated so we used a different measure of profitability: Profit as a percent of development cost, also called Return on Cost. Because of the lack of recent condo projects in Berkeley, we were unable to objectively determine the minimum necessary profit as a percent of cost for local ownership projects. As a point of reference, a common rule of thumb used in other studies considers projects "feasible" when profit exceeds 10-15% of development cost.

Our rental prototype is a 6-story, 72-unit development with a small amount of commercial space on the ground floor and one parking space for every two housing units. We estimate that under current conditions, rental projects that choose to pay Berkeley's Affordable Housing Mitigation Fee (AHMF) earn a Yield on Cost of 5.08% - just barely above the feasibility threshold. Projects that provide on-site units earn a yield of 4.94% just under the threshold into the marginal category. However, economic conditions are in flux due to the COVID-19 pandemic, and new projects could become more feasible in the near future.

Our prototype, revenue, and cost assumptions are based on prior studies, comparable projects, and other market research. The remainder of this memo describes these assumptions and our methodology in more detail.

Prior Studies:

Over the past decade, the City of Berkeley has evaluated the financial feasibility of its affordable housing requirements several times. Our analysis builds on the feasibility studies conducted by these consultants.

The 2015 Bay Area Economics Nexus Study contains one section that addresses the financial feasibility of new rental housing. BAE estimated the Return on Cost for a four-story, mixed-use development in the C-W zoning district at two different fee levels. In their simplified model, all 81 units are 900 square foot two-bedrooms. BAE's analysis suggested that the fee could be increased to \$34,000 while maintaining the minimum necessary return on cost.

The 2016 Strategic Economics Feasibility Analysis tested a wider range of fee levels. Using a four-story model that is almost identical to the BAE model, they estimated the Yield on Cost at six fee levels between \$0 and \$84,391. Strategic Economics considered Yield on Cost because it is a more accurate measure of feasibility for rental housing than Return on Cost. The minimum Yield on Cost required for feasibility in their analysis was 6.5% reflecting the higher interest rate environment in 2016. They found that new developments would be marginally feasible if the fee was \$45,000 and infeasible if the fee was any higher.

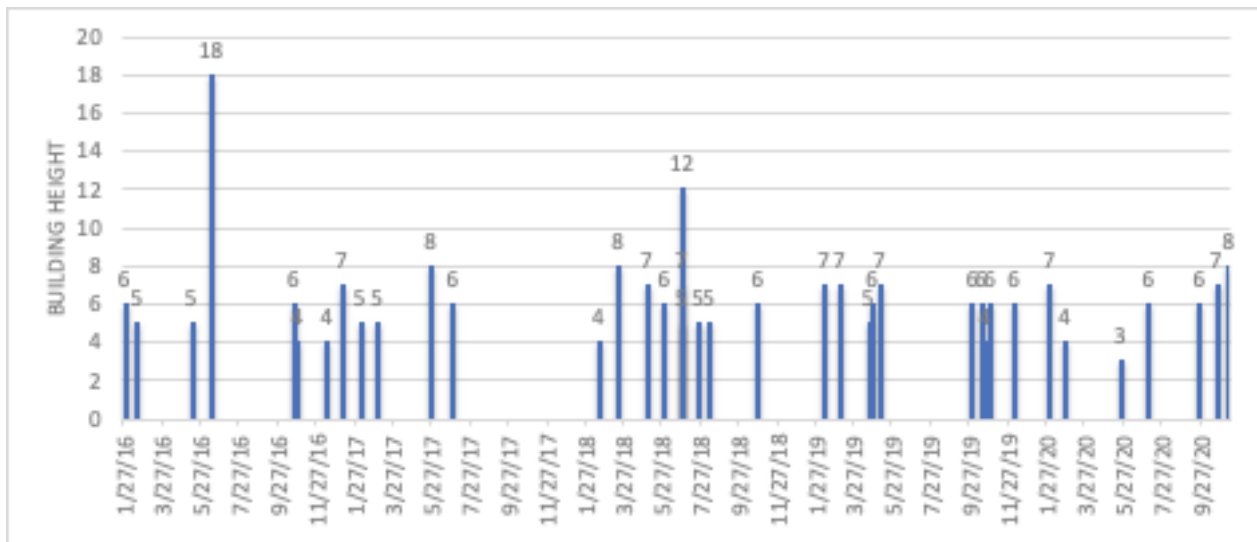
Together, the BAE and Strategic Economics analyses suggested that new rental development would be feasible at fee levels equivalent to and above the current level.

Prototypes Studied:

Rents and construction costs have escalated dramatically since the Strategic Economics analysis was published. Our recent data shows that rents are over 30% higher and the construction costs per square-foot in our model below are nearly double those in the Strategic Economics report. Our specific revenue and cost assumptions are described in the next section.

Because of these trends, the type of development project that both BAE and Strategic Economics used as their example would no longer be financially feasible in Berkeley. Driven by these same trends, the types of development projects being undertaken in Berkeley have shifted. Developers have responded to rising construction costs by building smaller units, fewer parking spaces and taller buildings on smaller lots. Figure 1 shows that developers of multi-family buildings in Berkeley have been primarily proposing 5-8 story buildings in recent years.

Figure 1: Permit applications for residential project with >20 units 2016 – 2020



Following these trends, we have used a slightly different prototype to test feasibility in today’s market. Our prototype is a 6-story building with wood frame residential over a concrete podium. Where BAE and Strategic Economics assumed a 1-acre lot, we have assumed a half-acre. Our prototype includes 72 housing units and 3,000 square feet of commercial space (see Figure 2). Our model is taller but contains fewer units and less commercial space than the 4-story, 81-unit Strategic Economics prototype. The units in our model are also smaller than the units in the Strategic Economics analysis. Based on a detailed study of recent projects in Berkeley we have assumed a mix of 450 square-foot studios, 725 square-foot one-bedrooms, and 925 square-foot two bedrooms where Strategic Economics had assumed that all units would be 900 square-foot two-bedrooms.

Recent data also suggests that the capitalization rate for residential development is 4.0-4.25%, significantly lower than the cap rate of 5.0% which Strategic Economics used in 2016. Additionally, the parking ratio of 1 space per unit in the Strategic Economics study reflects the minimum parking requirements in much of the city at the time their study was published. As parking minimums have recently been eliminated, we assume a more modest parking ratio of 0.5 spaces per unit, consistent with observed occupancy rates.

Figure 2: Rental Prototype Details

Prototype Feature	Value
Project	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	68,950
Residential Sq Ft	52,750
Common Area Sq Ft	13,200
Commercial Space Sq Ft	3,000
Residential Units	
Number of Units	72
Number of Studios	14
Number of 1BD Units	36
Number of 2BD Units	22
Studio Sq Ft	450
1BD Sq Ft	725
2BD Sq Ft	925
Parking	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	36

For the ownership prototype, we assumed larger average unit sizes. In order to facilitate comparison, we assumed a building of the same overall size (square feet) but with fewer units of larger size. We also assumed the same parking ratio (.5) as our rental prototype in order to facilitate comparison, though it is more likely that a condo project would provide 1 space per unit which would lower overall returns.

Figure 3: Ownership Prototype Details

Prototype Feature	Value
Project	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	61,490
Residential Sq Ft	52,290
Common Area Sq Ft	9,200
Commercial Space Sq Ft	0
Residential Units	
Number of Units	56
Number of 1BD Units	35
Number of 2BD Units	18
Number of 3BD Units	3
1BD Sq Ft	850
2BD Sq Ft	1,025
3BD Sq Ft	1,365
Parking	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	28

Revenue and Cost Assumptions:

The revenue and cost assumptions used in our pro forma analysis are shown in Figure 4. The main inputs that influence project revenue are the residential rents. Our analysis of data from CoStar, RealPage, and Berkeley's Rent Stabilization Board led us to estimate that typical rents for newly built apartments in Berkeley would be approximately \$3,100 for studios, \$4,000 for one-bedrooms, and \$4,500 for two-bedrooms. Other revenues include commercial rents of \$3 per square-foot and parking revenue of \$200 per space per month. These assumptions reflect rents that would have been assumed by projects prior to the pandemic. During the pandemic, rents throughout the region have fallen dramatically with some estimates showing rent in Berkeley down by 5 to 10% along with significant increases in apartment vacancy rates. The best available evidence suggests that these decreases are likely temporary. Developers in

Berkeley are moving forward on construction of new apartments which would not be financially feasible if the pandemic rents and vacancy rates were permanent.

The key input driving costs is the construction cost estimate of \$400 per gross square foot. This assumption is based on actual construction costs for comparable East Bay projects and studies that estimate the construction cost inflation rate. Other important development cost assumptions include land at \$8,000,000 per acre and parking construction costs at \$50,000 per space. We assume that soft costs - which include architecture, engineering, and inspection fees – equal 22% of hard costs. Our estimates for land, parking, and soft costs rely on data from several comparable Berkeley projects but, of course, these figures vary quite a bit between actual projects. Financing costs include the construction loan interest rate of 4.5% and the initial construction loan fee of 1.0%. Our financing cost assumptions are based on independent estimates of prevailing interest rates and data from comparable Berkeley projects.

The current inclusionary housing rules require that 80% of on-site VLI units be offered first to housing voucher holders. Berkeley allows developers to charge the full Housing Authority Payment Standard rent for these units even when it exceeds the rent that could be charged to a VLI tenant with no voucher. We have assumed these slightly higher rents for 80% of any VLI units on-site.

Note: The COVID-19 pandemic caused an uncommon economic crisis that the US is only beginning to recover from. It is unclear what persistent impacts the pandemic will have on the housing development environment and consequently on our model. We cannot be certain how inputs such as construction costs and rents will change or how investors that finance development will respond to this uncertainty. Over the past year construction costs have continued to rise while rents have fallen across the Bay Area. This combination has made it harder for real estate projects to achieve feasibility, but these trends do not appear to be lasting. Our model reflects conditions as they were at the beginning of 2020.

Figure 4: Revenue and Cost Assumptions

Revenue/Cost	Assumption	Unit of Measure
Residential Revenue		
Studio Rent	\$3,100	per unit per month
1BD Rent	\$4,000	per unit per month
2BD Rent	\$4,500	per unit per month
Ownership Revenues		
1BD Price	\$725,000	per unit
2BD Price	\$925,000	per unit
3BD Price	\$1,100,000	per unit
Other Revenues		
Commercial Rent	\$3.00	per sq ft per month
Parking Revenue	\$200	per space per month
Development Costs		
Construction Costs	\$400-\$415	per gross sq ft
Land Costs	\$8,000,000	per acre
Parking Costs	\$50,000	per space
Soft Costs	20-22%	of hard costs
Financing Costs		
Construction Loan Interest Rate	4.5%	annual rate
Loan to Cost Ratio	70%	of total cost
Period of Initial Loan	24	months
Initial Construction Loan Fee	1.0%	of loan
Average Outstanding Balance	60%	of loan
Operating Costs		
Rental Vacancy Rate	4%	of units unoccupied
Rental Operating Cost	35%	of revenues

Policy Scenarios:

We built a financial model using the project prototypes described above in order to test the impact of potential changes to the City's affordable housing requirements on the feasibility of

residential development. We ran the model for the same hypothetical projects under a number of different policy assumptions. First, we established the returns that would be available under the current law depending on which performance option the project selected.

Current Program Scenarios

Rental

Current Fee: Under this alternative, we assume the hypothetical project elects to pay Berkeley's current Affordable Housing Mitigation Fee (AHMF) of \$39,746 for each unit in the building. A project paying the fee would not be eligible for the density bonus.

Current On-site Units: Under this alternative, we imagine the project selecting instead to provide on-site units as provided under the current AMHF ordinance. The project would provide 7 Very Low Income (VLI) units (10%) and 7 Low Income (LI) units (10%). For the sake of comparison, we have assumed that the project does not access the density bonus though it would likely qualify.

Current Mixed Compliance – 11% VLI: The most common approach in recent years has been for projects to provide enough units on-site in order to maximize the benefits of the State Density Bonus and pay a fee to cover the remainder of their obligation under Berkeley's AHMF. Prior to 2021, projects that provided 11% of base units as restricted Very Low Income units on-site would receive the maximum 35% density bonus. We have assumed that our hypothetical project could increase the total number of housing units by 35% (from 79 to 97) with no increase in land costs¹¹.

Current Mixed Compliance – 15% VLI: In 2020 the State Legislature approved an expansion of the State Density Bonus which allows greater increases in density in exchange for more affordable housing units on-site. Now a developer can request a 50% increase in residential density if they provide, for example, at least 15% Very Low Income units. We have analyzed the profitability of a hypothetical

¹¹ Our analysis does not attempt to capture the full financial value of the density bonus. In addition to the right to build more housing units on a given site, state law allows developers to request a number of planning concessions based on the amount of affordable housing that they provide. These concessions clearly provide real value which can increase the profitability of projects. However, because the dollar value of concessions is abstract and highly dependent on the particular project, we have not attempted to include this in our financial modeling. As a result, our conclusions are likely to slightly understate the difference between the returns from density bonus and other types of projects.

project assuming a 50% increase in units with 15% of base units (10% of total units) restricted to VLI residents under current rules.

Ownership

Current On-site Compliance: A for-sale project that elected to provide on-site affordable units would be required to provide 20% of units to be affordable to and occupied by Low Income households earning less than 80% of AMI.

Current In Lieu Fee (Based on Sales Prices): Alternatively, a developer may pay an in lieu fee calculated based on 62.5% of the difference between the market price and the affordable price. This approach results in a different level of fee for different projects depending on the market prices of units in the project. For the sake of illustration, we estimated a range of current market prices based on average condo sales prices listed on Zillow.com and calculated the fee which would be due.

Figure 5: Condo Pricing Assumptions

Estimated BMR Ownership Fees 2021						
Unit Size	Sq Ft	Estimated Market Price	Affordable Price	In Lieu Fee	In Lieu Fee Per Unit	In Lieu Fee per Sq Ft
1BR	814	\$703,556	\$250,650	\$283,066	\$56,613	\$70
2BR	1117	\$853,125	\$282,000	\$356,953	\$71,391	\$64
3BR	1571	\$995,797	\$313,200	\$426,623	\$85,325	\$54

Alternative Policy Options

In addition to evaluating the performance of the prototype under the current policy rules, we considered several alternative scenarios based on the proposed policy changes.

Rental

\$45 Per square-foot Fee: Under this alternative, we assumed that the City adopted a fee of \$45 per gross square foot (excluding parking and commercial space) and we evaluated the returns for a prototype project that elected to pay this fee in full with no on-site BMR units.

\$55 Per square-foot Fee: This alternative assumes full payment of a higher fee per square-foot.

Mixed Compliance (Weighted)– 11% VLI: In this alternative we have assumed a \$45 per square-foot fee is adopted along with an adjusted formula for determining the remainder fee for mixed compliance projects. We assumed that each 1% of VLI units provided would reduce the fee due by \$3 per square-foot and each 1% of LI units would reduce the fee by \$1.50 per square-foot. In this alternative, we assume a project that provides 11% of the base units (equivalent to 8% of total units) as VLI in order to receive a 35% density bonus.

Mixed Compliance (Weighted)– 15% VLI: In this alternative we assume a project that provides 15% of the base units (equivalent to 10% of total units) as VLI in order to receive a 50% density bonus under state law. As with the scenario above, this alternative assumes that the formula for calculating the remaining fee for mixed compliance provides greater reductions for projects that provide VLI units.

Ownership

\$45 Per Square-foot Fee: In this scenario, we have assumed that the City adopts a single per square-foot rate of \$45 which would be applied to all projects whether rental or ownership.

\$55 Per Square-Foot Fee: This alternative assumes that the City adopts a higher per square-foot fee for ownership projects (or any project that records a condominium map).

Findings:

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold which we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For this prototype, the proposed fee of \$45 per gross square foot results in a virtually identical return. A higher fee (\$55 per square-foot) would result in a marginal but very close to feasible

return. The proposed approach of providing more ‘credit’ for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

Figure 6: Comparison of Returns - Rental

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee \$	Yield on Cost	% of Base	% of Total
Current Policy								
\$39,746 Per Unit Fee	72	0	0	0	\$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	\$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	\$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	\$2,106,538	5.10%	15%	10%
Proposed Alternatives								
\$45 Per Foot Fee	72	0	0	0	\$2,967,750	5.07%	0%	0%
\$55 Per Foot Fee	72	0	0	0	\$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	\$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	\$2,184,925	5.12%	15%	10%

For ownership projects, we found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above the benchmark of 10%. The proposed switch to a \$45 per square-foot fee would result in profit just above 10% while a higher \$55 per square-foot fee would result in profit closer to 9%.

Figure 7: Comparison of Returns - Ownership

Scenario	Total Units	LI Units	Fee \$	Profit % of Cost
Current Policy				
Current Fee (based on sale prices)	56	0	\$3,810,847	8.00%
Onsite Units	56	11	\$0	1.13%
Proposed Alternatives				
\$45 Per Foot Fee	56	0	\$2,767,050	10.88%
\$55 Per Foot Fee	56	0	\$3,381,950	9.16%

Sensitivity Analysis:

Revenues and Costs: The feasibility projections above are highly sensitive to assumptions about rents and construction costs. These assumptions are different from one project to the next and change in somewhat unpredictable ways over time. The heat table in Figure 8 below shows the

yields on cost that our model predicts for a range of different scenarios in regard to construction costs and rents for our prototype. This table shows returns for a 6-story rental project that selects the proposed \$45 per square-foot fee option. The axes indicate how these scenarios compare with current construction cost and rent levels. The (0%, 0%) cell in the center of the table represents the estimated yield on cost for projects given today’s rents and construction costs. The (-10%, 10%) cell in the top right represents the yield for projects if rents decrease 10% and construction costs increase 10% relative to current levels. Green cells represent situations in which projects will be feasible, with expected yields on cost at or above 5%. The redder a cell is, the less feasible projects will be. A rise in construction costs will increase the total development cost of a project, making it less feasible. A drop in market rents will decrease the rental income a project can expect, also making it less feasible.

Figure 8: Yield on Cost Sensitivity to Rents and Construction Costs

		Construction Costs										
		-10%	-8%	-6%	-4%	-2%	0%	2%	4%	6%	8%	10%
Rents	-10%	5.07%	4.96%	4.85%	4.75%	4.65%	4.56%	4.47%	4.38%	4.30%	4.22%	4.14%
	-8%	5.18%	5.07%	4.96%	4.85%	4.76%	4.66%	4.57%	4.48%	4.40%	4.32%	4.24%
	-6%	5.29%	5.18%	5.07%	4.96%	4.86%	4.76%	4.67%	4.58%	4.49%	4.41%	4.33%
	-4%	5.40%	5.29%	5.17%	5.07%	4.96%	4.86%	4.77%	4.68%	4.59%	4.50%	4.42%
	-2%	5.52%	5.40%	5.28%	5.17%	5.07%	4.96%	4.87%	4.77%	4.68%	4.60%	4.51%
	0%	5.63%	5.51%	5.39%	5.28%	5.17%	5.07%	4.97%	4.87%	4.78%	4.69%	4.61%
	2%	5.74%	5.62%	5.50%	5.38%	5.27%	5.17%	5.07%	4.97%	4.87%	4.78%	4.70%
	4%	5.85%	5.73%	5.60%	5.49%	5.38%	5.27%	5.17%	5.07%	4.97%	4.88%	4.79%
	6%	5.97%	5.84%	5.71%	5.59%	5.48%	5.37%	5.26%	5.16%	5.07%	4.97%	4.88%
	8%	6.08%	5.95%	5.82%	5.70%	5.58%	5.47%	5.36%	5.26%	5.16%	5.07%	4.97%
	10%	6.19%	6.06%	5.93%	5.80%	5.69%	5.57%	5.46%	5.36%	5.26%	5.16%	5.07%

With current rents and construction costs, projects are just barely feasible with estimated yields of 5.07%. However, if rents rise by just 2% and construction costs remain flat, projects will become more feasible with expected yields of 5.17%. As expected, yields increase as rents rise and decrease as construction costs rise. Yield on cost is just slightly more sensitive to construction costs than rents. Construction costs falling by 10% will increase yields a bit more than rents rising by 10%.

Parking: The feasibility of new rental development in Berkeley is also highly sensitive to assumptions about the amount of parking provided. The parking ratio is the number of parking spaces divided by the number of residential units. Before 2021, Berkeley’s zoning regulations mandated projects in some districts to have parking ratios of at least 1. Berkeley recently eliminated minimum parking requirements, making parking ratios of 0 possible.

Figure 9 shows the yields on cost that our model predicts for a range of parking scenarios. In our model, parking ratios are used to describe the amount of parking provided by a project. Creating parking spaces is expensive and limits the area available for the project’s residential or amenity space. As a result, higher parking ratios reduce a project’s yield on cost and projected feasibility. Our model predicts that projects that provide no parking will be solidly financially feasible while projects that provide 1 space per unit are not currently feasible.

Figure 9: Yield on Cost Sensitivity to the Parking Ratio

Parking Ratio				
0.00	0.25	0.50	0.75	1.00
5.34%	5.20%	5.07%	4.94%	4.82%

Even with strong financial incentives and no City parking requirements, most projects are likely to include significant amounts of parking. Depending on the location of the project, tenants may see parking as a necessary building amenity. In other cases, project investors insist on some level of parking. When Seattle eliminated parking requirements in many parts of the city, [one study](#) found that most projects still included parking. In areas with no parking requirement, nearly 30% of new buildings provided no parking after the mandate was removed. But the remaining 70% provided parking even though it was not required by the city. Figure 10 shows that the average project provided .49 parking spaces per unit.

Figure 10: Seattle parking reform results

Minimum Number of Required Parking Spaces/Unit	Number of Development Projects	Average Parking Ratio	Buildings That Exactly Met Requirement	Buildings That Provide Parking Above Requirement		
				<0.5 Spaces/Unit	0.5-1.0 Spaces/Unit	>1.0 Spaces/Unit
0	570 (65.6%)	0.49	29.5%	24.2%	39.0%	7.4%

Attachment 4: Summary of Council Referrals Related to City Affordable Housing Requirements

Referral	Short Description
Conducting an Analysis of Increasing Inclusionary Housing over Affordable Housing Mitigation Fee (9/10/19)	A companion to 4/23/19 referral to analyze feasibility of ideas from Homeless Commission including: -Requiring on-site units instead of a fee -Requiring an increased number of inclusionary units -Providing an incentive to build on-site instead or pay the fee (similar to the Adeline Corridor Specific Plan) -Prohibit payment of fee in certain geographic areas -Ensure access for extremely low-income persons and persons experiencing homelessness.
Refer to the City Manager and the Housing Advisory Commission to Consider Reforming the Affordable Housing Mitigation Fee (4/23/19)	Evaluate the possibility of changing the City's affordable housing fee structure, including converting the current per-unit calculation to a per-square foot fee, per-bedroom fees and/or whether to apply a different fee methodology in different parts of the city.
Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation (2/19/19)	Close a loophole allowing avoidance of the affordable housing fees through lot line manipulation by requiring the fee from projects on contiguous lots under common ownership with the potential for 5 or more units across all lots. Modify the structure of the in lieu fee for ownership projects to a flat per unit fee similar to the rental fee. Evaluate the appropriateness of the fee level.
Encourage Long Term Tenant Stability (11/27/18)	Modify the Berkeley Municipal Code (BMC Section 21.28.080) to allow tenants buying their units (through Tenancy-In-Common) to pay only 50% of the Affordable Housing Mitigation Fee at the time of conversion. This is the same benefit offered to owners who convert rental buildings that they also live in to ownership.
Rectify Discrepancy Regarding Inclusionary Units in Live/Work Housing (9/13/2018)	Eliminate the affordable housing requirements in the Berkeley Municipal Code (BMC Sections 23C.12 and 23E.20.080) and instead apply the Inclusionary Housing or AHMF ordinances to Live Work exactly as they are applied to other projects.
Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals (5/30/17)	Create a new City Density Bonus policy for the Telegraph Avenue Commercial District to generate in-lieu fees instead of on-site affordable housing units.

To read the reports from which these referrals derived, please visit the City of Berkeley's Records Online page, at <https://records.cityofberkeley.info/PublicAccess/paFiles/cqFiles/index.html> . For Search Type select "Public – Staff Report Query," for Meeting Body select "City Council," and for Doc Date put the date of the referral formatted MM/DD/YYYY (e.g. 09/10/2019). Other fields may be left blank. Click "Search" and the requested document should come up as one of a handful of listed results.

For further assistance searching Records Online, please contact the City Clerk Department at clerk@cityofberkeley.info.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**AMENDMENTS TO BMC CHAPTER 23.328 UPDATING THE CITYWIDE
AFFORDABLE HOUSING REQUIREMENTS IN THE ZONING
ORDINANCE; REPEAL OF BMC SECTIONS 22.20.065, AND SECTION
23.312.040(A)(6); AND A RESOLUTION ADOPTING REGULATIONS
FOR VOUCHER PROGRAM AND ESTABLISHING AN IN-LIEU FEE
PURSUANT TO BMC SECTION 23.328.020(A)(2) AND RESCINDING
RESOLUTION NO. 65,074-N.S.**

The public may participate in this hearing by remote video or in-person.

The Department of Planning and Development and Planning Commission of the City of Berkeley is proposing amendments to BMC Chapter 23.328, updating the citywide affordable housing requirements in the Zoning Ordinance; repeal of BMC Sections 22.20.065, and Section 23.312.040(A)(6); and a Resolution Adopting Regulations for Voucher Program and Establishing an In-Lieu Fee Pursuant to BMC Section 23.328.020(A)(2) and Rescinding Resolution No. 65,074-N.S.

Pursuant to CEQA Guidelines Section 15378(a) and 15060(c)(2), environmental review is not required because the proposed amendments do not meet the definition of a Project under CEQA Guidelines Section 15378(a), nor does it constitute an activity covered by CEQA under CEQA Guidelines Section 15060(c)(2) because passage of amendments do not constitute a direct physical impact on the environment, nor would it result in an indirect, reasonably foreseeable physical impact on the environment. The proposed amendments do not include any provisions that would exempt or otherwise reduce environmental review required under CEQA for individual development projects.

The hearing will be held on, **Tuesday, January 17, 2023 at 6:00 p.m.** at the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at www.berkeleyca.gov as of **January 5, 2023**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact **Alisa Shen, Principal Planner** at (510) 981-7409.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: January 6 and January 13, 2023 – The Berkeley Voice
Per California Government Code Sections 65856(a) and 65090, and 6062(a).

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on January 5, 2023.

\_\_\_\_\_  
Mark Numainville, City Clerk

ACTION CALENDAR

January 17, 2023

*(Continued from December 13, 2022)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin and Councilmember Harrison

Subject: Resolution Supporting Trip Reduction Alternative for BUSD Berkeley High School Tennis and Parking Structure Project

RECOMMENDATION

Adopt a Resolution in support of a Trip Reduction Alternative to be included in the scope of the Environmental Impact Report for the Berkeley High School Tennis and Parking Structure Project at 2000 Bancroft Way, and send a copy of Resolution to the Berkeley Unified School District (BUSD) Board of Directors.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

On September 7, 2022, the Berkeley Unified School District (BUSD) Board of Directors voted to remove plans for a new operations facility at 2000 Bancroft Way, at the intersection of Milvia Street. This would leave only a new parking garage and tennis course in this project, with a proposed \$27 million expenditure of funds from Measure G, the 2020 BUSD facilities bond measure. Due to a number of CEQA challenges, while the operations facility “was originally the most economical option, it is the opinion of the [BUSD] staff and the District’s consultants that this is no longer the best course of action to take.”<sup>1</sup>

However, mitigation of community impacts from a new parking garage would still be substantial, for benefits that remain uncertain. For example, the new Center Street Garage offers 720 parking spaces, but has been unable to provide sufficient revenue to fully cover revenue bond debt servicing and operational costs without additional subsidy. In Fiscal Year 2021, the City of Berkeley allocated \$1,910,250 from the General Fund and \$1,915,050 from the Rate Stabilization Fund to balance the Off-Street Parking Fund. Daytime vacancy rates remain in the double digits for parking garages in downtown Berkeley. This suggests that parking is currently over-supplied in the downtown area at current prices.

Increasing the supply of parking risks increasing Vehicle Miles Traveled (VMT), undermining both the City and District’s stated goals on promoting emissions reductions to mitigate climate change. According to research by UCLA parking scholar Donald Shoup, motorists searching for underpriced or free parking can increase the average

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<sup>1</sup> BUSD Board of Directors Meeting. September 7, 2022.

VMT of a local trip by as much as 0.5 miles per trip, or 5 additional miles per day per curb space.<sup>2</sup>

The BUSD Sustainability Plan, approved in 2019, states: “Single family car trips shall be reduced to less than 20% by 2025, with 80% of students who live within a 2-mile radius getting to school via Active Transportation (walking and bicycling).”<sup>3</sup> The BUSD Climate Literacy Resolution No. 22-018, passed in 2021, states that “transportation is the number one source of climate emissions in the City of Berkeley.” Because the proposed parking garage site on Milvia Street would be at the intersection of two protected bike lanes—the completed Milvia Bikeway and planned lanes on Bancroft—while adjacent intersections at Durant and Shattuck are identified as high-risk intersections in Berkeley’s Vision Zero Action Plan.<sup>4</sup> The intersection of Bancroft and Shattuck was the site of a recent tragic fatality earlier this year.<sup>5</sup> Concentrating parking at this site could increase the risk of collisions for vulnerable road users, particularly cyclists and pedestrians, at a time when it is the stated policy of the City and District to encourage these modes of transportation.

In addition to the Build Alternative, the Environmental Impact Report could include a Trip Reduction Alternative, as outlined in a comment letter by the advocacy group Walk Bike Berkeley.<sup>6</sup>

Consistent with existing City and District policies aiming to reduce Vehicle Miles Traveled, a Trip Reduction Alternative may include three basic elements:

- Transportation Demand Management (TDM)
- Leasing of existing garage space
- Workforce housing

All of these policies can be used in tandem to mitigate transportation challenges for BUSD staff by shortening commutes with transit-oriented housing; filling up vacant parking spaces in adjacent garages; and providing commute allowances, pre-tax transit benefits, and other sustainable transportation incentives as part of a TDM program.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In its 2018 Progress Report, the California Air Resources Board stated: “Even if the share of new car sales that are [electric] grows nearly 10-fold from today, California

<sup>2</sup> Shoup, D. C. (2006). Cruising for parking. *Transport policy*, 13(6), 479-486.

<sup>3</sup> <https://www.berkeleyschools.net/wp-content/uploads/2019/10/BUSD-Sustainability-Plan.pdf>

<sup>4</sup> <https://berkeleyca.gov/sites/default/files/2022-02/Berkeley-Vision-Zero-Action-Plan.pdf>

<sup>5</sup> Raguso, E. (2022, Oct. 20). Man struck by dump truck driver dies after Berkeley crash. *The Berkeley Scanner*. Retrieved from <https://www.berkeleyscanner.com/2022/10/20/traffic-safety/truck-driver-strikes-person-wheelchair-berkeley/>

<sup>6</sup> [https://drive.google.com/file/d/18wp\\_g5Y6K-g2jnfSnvZqGFn\\_NO-i-Rfn/view](https://drive.google.com/file/d/18wp_g5Y6K-g2jnfSnvZqGFn_NO-i-Rfn/view)

would still need to reduce [Vehicle Miles Traveled] per capita [by] 25 percent to achieve the necessary [emissions] reductions for 2030.”<sup>7</sup>

Because of its proximity to jobs and public transit, climate scholars at UC Berkeley have identified infill housing as Berkeley’s most impactful local policy lever for reducing greenhouse gas emissions.<sup>8</sup> Workforce housing could thus reduce emissions while also reducing demand for parking at BUSD facilities.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

Attachments:

1: Resolution

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<sup>7</sup> California Air Resources Board. (2018). 2018 Progress Report: California’s Sustainable Communities and Climate Protection Act. CARB. Retrieved from [https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report\\_SB150\\_112618\\_02\\_Report.pdf](https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf)

<sup>8</sup> Wheeler, S. M., Jones, C. M., & Kammen, D. M. (2018). Carbon footprint planning: quantifying local and state mitigation opportunities for 700 California cities. *Urban Planning*, 3(2), 35-51.

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

RESOLUTION SUPPORTING TRIP REDUCTION ALTERNATIVE FOR BERKELEY  
HIGH SCHOOL PARKING GARAGE AND TENNIS COURT PROJECT

WHEREAS, transportation accounts for the majority of greenhouse gas emissions in the City of Berkeley; and

WHEREAS, the Berkeley Unified School District's Sustainability Plan calls for reducing the share of school commutes by single-occupancy motor vehicles to less than 20% by 2025; and

WHEREAS, the intersections of Bancroft, Durant, and Shattuck are identified as high-risk intersections for traffic collisions in the City of Berkeley's Vision Zero Action Plan; and

WHEREAS, the Center Street Garage still has substantial weekday vacancies, and has necessitated over \$3.8 million in City expenditures to cover debt servicing and operational costs, suggesting a glut of parking supply in the downtown area; and

WHEREAS, the City of Berkeley is committed to eliminating traffic fatalities and greenhouse gas emissions by enabling car-free and car-light commuting, reducing Vehicle Miles Traveled, promoting safe streets and walkable, transit-accessible urban design; and

WHEREAS, the City of Berkeley greatly values the essential public service of Berkeley Unified School District educators, staff, and administrators in educating the future leaders of Berkeley; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley supports the study of a Trip Reduction Alternative within the scope of the Environmental Impact Review for the Berkeley High School Parking Garage and Tennis Courts Project, including the study of a Transportation Demand Management (TDM) program, garage leasing, and workforce housing development;

BE IT FURTHER RESOLVED that the City of Berkeley welcomes a continued partnership with the Berkeley Unified School District in promoting environmental justice and providing the best possible working conditions for BUSD staff.





# Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

## **City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

## **Records Online**

<https://records.cityofberkeley.info/>

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1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
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