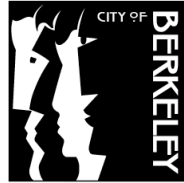


REVISED AGENDA
(ADDED CONTINUED ITEMS FROM DECEMBER 8, 2020)



BERKELEY CITY COUNCIL MEETING

Tuesday, December 15, 2020
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 Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81127849616>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 811 2784 9616. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

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.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

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

1. Swearing in of newly elected officials

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

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Consent Calendar

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

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

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

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

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

Consent Calendar – Continued Business

- A. Updates to the COVID-19 Emergency Response Ordinance; Amending Berkeley Municipal Code Chapter 13.110** *(Continued from December 8, 2020.)*
From: 4x4 Joint Task Force Committee on Housing
Recommendation: Adopt second reading of Ordinance No. 7,743-N.S. (effective February 1) amending Berkeley Municipal Code 13.110, Title 13, “The COVID-19 Emergency Response Ordinance,” to enhance emergency tenant protections consistent with recently adopted Alameda County laws, action in other jurisdictions, and consultation with community stakeholders representing marginalized groups.
First Reading Vote: Ayes – Taplin, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Wengraf, Droste.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- B. Adoption of the Adeline Corridor Specific Plan and associated General Plan and Municipal Code (Zoning) Amendments and Certification of the Final Environmental Impact Report; Adding Berkeley Municipal Code Chapter 23E.70** *(Continued from December 8, 2020.)*
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,744-N.S., as recommended by the Planning Commission, amending the Berkeley Municipal Code (BMC) to create the Commercial – Adeline Corridor District regulations and make conforming changes to other BMC sections, as well as adopt Zoning Map changes; adding Berkeley Municipal Code Chapter 23E.70.
First Reading Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Harrison.
Financial Implications: No direct fiscal impacts
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Consent Calendar

- 1. Amending Berkeley Municipal Code Chapter 11.28 – Food Establishments**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,739-N.S. amending Berkeley Municipal Code Chapter 11.28, Section 11.28.010 Statutory Provisions, Section 11.28.020 Definitions and adding Section 11.28.370 Microenterprise Home Kitchen Operation (MHKO).
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

- 2. Proposed Amendments to the Building Energy Saving Ordinance (BESO); Amending Berkeley Municipal Code Chapter 19.81**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,740-N.S. amending the Building Energy Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to align with building electrification goals, leverage upcoming rebates and incentives, improve transparency in real estate sales process, and develop mandatory energy requirements to be phased in.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 3. Lease Agreement: Berkeley Housing Authority at 1947 Center Street, Fifth Floor, Southwest Corner**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,741-N.S. authorizing the City Manager to execute a lease agreement with Berkeley Housing Authority to use and occupy the City property at 1947 Center Street, 5th floor Southwest Corner for a ten-year lease term with an option to extend for two additional ten-year terms.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 4. 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 and November 17, 2020.
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 5. 1444 Fifth Street, LLC v. City of Berkeley, Case No. RG19032434**
From: City Manager
Recommendation: Adopt a Resolution approving the settlement of the action entitled 1444 Fifth Street, LLC v. City of Berkeley, Case No. RG19032434.
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950

Consent Calendar

6. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the council meetings of November 2, 2020 (closed), November 10, 2020 (closed and regular), November 16, 2020 (closed) and November 17, 2020 (closed and regular).

Financial Implications: None

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

7. Contract: National Institute for Criminal Justice Reform to Manage and Lead a Community Engagement Process to Develop a New Paradigm of Public Safety in Berkeley

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the National Institute for Criminal Justice Reform in an amount not-to-exceed \$270,000 for the period beginning January 1, 2021 and ending June 30, 2022.

Financial Implications: See report

Contact: Dave White, City Manager's Office, (510) 981-7000

8. Contract No. 31900009 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for McKinley House (2111 McKinley Avenue, Berkeley, CA 94703)

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900009 with Building Opportunities for Self-Sufficiency (BOSS) through November 1, 2021, adding \$120,000 for a total contract Not to Exceed (NTE) of \$370,000, to fund Mental Health clients living at 2111 McKinley Avenue in Berkeley. This will extend the contract by one year.

Financial Implications: See report

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

9. Contract No. 32000232 Amendment: Worldwide Travel Staffing for Nurse Registry Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000232 with Worldwide Travel Staffing for nurse registry services. The total not to exceed limit will be \$1,272,580 and the contract end date will be extended to June 30, 2025. The contract will serve the needs of the Health, Housing and Community Services Department, providing fill-in nursing services as necessary at the Mental Health Clinic, Berkeley High School Health Center, COVID-19 Disease Containment Unit, the Public Health Emergency Preparedness' COVID-19 vaccine readiness planning, and the Berkeley Respite Program's nursing services.

Financial Implications: See report

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

Consent Calendar

- 10. Revenue: Federal COVID-19 Funding from HHS CARES Act Provider Relief Fund**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to accept payments from the Health and Human Services (HHS) CARES Act Provider Relief Fund and to execute any resultant revenue agreements and amendments; which enables City Departments to conduct and implement mitigation strategies in response to COVID-19 in the estimated amount of \$181,962 for FY 2021.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400, David Brannigan, Fire, (510) 981-3473
- 11. Kovarus, LLC: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to increase spending authority with Kovarus LLC ("Kovarus") for the purchase of Varonis software licenses, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) for an amount not-to-exceed \$165,000, and the period beginning December 16, 2020 through June 30, 2021.
Financial Implications: Cost Allocation Fund - \$165,000
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 12. Donation: Friends of Berkeley Tuolumne Camp for Berkeley Tuolumne Camp Construction**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation from the Friends of Berkeley Tuolumne Camp up to the amount of \$700,000 for the Berkeley Tuolumne Camp construction.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 13. Joint Use Agreement Between the City of Berkeley and Berkeley Unified School District**
From: City Manager
Recommendation: Adopt a Resolution executing a Joint Use Agreement between the City of Berkeley and the Berkeley Unified School District (BUSD) for use of BUSD playgrounds, pools and buildings and City park facilities.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

- 14. Recommendations for Implementing Phase 2 of the Measure T1 Infrastructure Bond Program**
From: City Manager
Recommendation: Adopt a Resolution to implement the City Manager, Parks and Waterfront Commission, and Public Works Commission Final List of Projects for phase 2 of the Measure T1 infrastructure bond program.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700;
Liam Garland, Public Works, (510) 981-6300
- 15. FEMA Hazard Mitigation Grant Application for Seismic Retrofit of the South Berkeley Senior Center**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a grant application to the Federal Emergency Management Agency for funds in the amount of \$1,875,000 for the seismic retrofit of the South Berkeley Senior Center; authorizing the City Manager to accept the grant; to execute any resultant revenue agreement and amendments; authorizing an amount of \$625,000 in local matching funds; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 16. Receipt of and Funding Agreement Authorization for the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept \$100,914 in grant funds from the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program (Project #19RFG23) and to enter into a Funding Agreement in order to support the electrification of the City's fleet vehicles.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 17. Grant Application: COVID-19 Rapid Response Bicycle and Pedestrian Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a grant application for up to \$52,000 to the Alameda County Transportation Commission COVID-19 Rapid Response Bicycle and Pedestrian Grant Program for the Berkeley Healthy Streets project, and accept the grant awarded, and execute any resultant agreements and amendments.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

18. Extending the Community Workforce Agreement with Building & Construction Trades Council, et al, for Construction Projects Over \$500,000

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment to the Community Workforce Agreement with the Alameda County Building & Construction Trades Council, and twenty-two labor organizations on City capital improvement projects with an estimated value in excess of \$500,000 to extend the agreement through June 30, 2023.

Financial Implications: See report

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

19. Sole Source Contract Negotiations – Community Conservation Center, Inc. and Ecology Center, Inc.

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to continue sole source negotiations with Ecology Center, Inc. and Community Conservation Centers, Inc.

Financial Implications: See report

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

20. Contract: Alameda-Contra Costa County Transit District (AC Transit) for EasyPass Program 2021 to 2025

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Alameda-Contra Costa County Transit District (AC Transit) for the EasyPass bus transit pass program for City of Berkeley employees in an amount not to exceed \$774,453 for the five-year period commencing January 1, 2021 through December 31, 2025.

Financial Implications: Payroll Deduction Trust Fund - \$774,453

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

21. Contract: Benefit Resource, Inc. for Third-Party Administrator of the Employee Commute Benefit Program; Contract No. 8746A Amendment: Edenred USA

From: City Manager

Recommendation: Adopt two Resolutions authorizing the City Manager to:

1. Execute a contract and any amendments with Benefit Resource, Inc., (BRI) to provide third-party administrator services for the City of Berkeley's Employee Commute Benefit Program for an amount not to exceed \$28,974 for the period of March 1, 2021 through February 28, 2023; and
2. Amend Contract No. 8746A with the City's current third-party administrator, Edenred Commuter Benefit Solutions, a subsidiary of Edenred USA, increasing the contract amount by \$6,000 for a total amount not to exceed \$276,000, and extending the contract period three months through March 31, 2021 to ensure a seamless transition to BRI, the new third-party administrator.

Financial Implications: See report

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

Consent Calendar

- 22. Purchase Order: TYMCO, Inc. for three Model 600X Regenerative Air Sweeper**
From: City Manager
Recommendation: Adopt a Resolution satisfying City Charter Article XI Section 67.2 requirements allowing the City to participate in Houston-Galveston Area Council contact bid procedures, and authorizing the City Manager to execute a purchase order with TYMCO, Inc. for three Model 600X Regenerative Air Sweeper in an amount not to exceed \$962,000.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 23. Purchase Order: Arata Equipment Company for Eleven Side Loader Collection Trucks**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell (previously NJPA) contract bid procedures, and authorizing the City Manager to execute a purchase order for eleven (11) Side Loader Collection Trucks with Arata Equipment Company in an amount not to exceed \$4,554,575.
Financial Implications: Equipment Replacement Fund - \$4,554,575
Contact: Liam Garland, Public Works, (510) 981-6300
- 24. Purchase Order: Owen Equipment Sales for One Vactor Combination Sewer Cleaner Truck**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell (formerly NJPA) contract # 122017-FSC and authorizing the City Manager to execute a purchase order for one Vactor Combination Sewer Cleaner with Owen Equipment Sales in an amount not to exceed \$327,000.
Financial Implications: Various Funds - \$327,000
Contact: Liam Garland, Public Works, (510) 981-6300
- 25. Prohibition on the Resale of Used Combustion Vehicles in 2040** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Community Environmental Advisory Commission
Recommendation: Review and refer to the City Attorney for finalization the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040.
(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to refer to the City Manager for review of the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040, to the extent legally possible.)
Financial Implications: See report
Contact: Viviana Garcia, Commission Secretary, (510) 981-7460

Consent Calendar

26. Allocation of \$3 Million Over Two Years, FY22 and FY23, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs) From: Sugar Sweetened Beverage Product Panel of Experts

Recommendation: Adopt a Resolution allocating \$3 million from the General Fund in FY22 (July 1, 2021 through June 30, 2022) and FY23 (July 1, 2022 through June 30, 2023) that shall be invested in a grant program administered and coordinated by the Berkeley Public Health Division consistent with the SSBPPE's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the effects of SSB consumption. The total of \$3 million will be distributed in two installments of \$1.5 million per year for FY22 and FY23. In each of these years, the funds will be distributed as follows: a. Direct the City Manager to award up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding (Attachment 2 to the report). b. Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants (Attachment 3 to the report). c. Direct the City Manager to utilize 15% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data from the epidemiologist resulting from the SSBPPE funding program.

Financial Implications: See report

Contact: Dechen Tsering, Commission Secretary, (510) 981-5300

27. Rocky Road: Berkeley Streets at Risk and Significantly Underfunded From: Auditor

Recommendation: We recommend City Council request that the City Manager report back by June 15, 2021, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Public Works Department.

Financial Implications: None

Contact: Jenny Wong, Auditor, (510) 981-6750

Council Consent Items

28. Tenth 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 Bartlett (Author), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor)
Recommendation:

1. Adopt a Resolution co-sponsoring the 10th Annual Martin Luther King Jr. Celebration on January 18, 2021.
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 10th 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

29. Appoint Alexandria Thomas-Rodriguez to the Berkeley Housing Authority Board

From: Mayor Arreguin (Author)

Recommendation: Adopt a Resolution appointing Alexandria Thomas-Rodriguez to serve as a tenant Commissioner on the Berkeley Housing Authority Board of Commissioners for a two-year term.

Financial Implications: None

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

30. Establishment of Reimagining Public Safety Task Force

From: Mayor Arreguin (Author), Councilmember Hahn (Author), Councilmember Bartlett (Author), Councilmember Harrison (Author)

Recommendation:

1. Establish a Reimagining Public Safety Task Force, comprised of: one representative appointed by each member of the City Council and Mayor, one representative appointed by the Mental Health, Police Review and Youth Commissions, one representative appointed by the Associated Students of the University of California (ASUC), one representative appointed by the Berkeley Community Safety Coalition (BCSC), and three additional members to be appointed "At Large" by the Task Force. The Task Force will be guided by a professional consultant, and will include the participation of City Staff from the City Manager's Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 1.
2. Appointments to the Task Force should be made by January 31, 2021, and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council's July 14, 2020, commitment to centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria: a. Active

Council Consent Items

Members of Berkeley Community (Required of All)*, b. Representation from Impacted Communities - Formerly incarcerated individuals, - Victims/family members of violent crime - Immigrant community, - Communities impacted by high crime, over-policing and police violence, - Individuals experiencing homelessness, - Historically marginalized populations, c. Faith-Based Community Leaders, d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice, e. Health/ Public Health Expertise, f. City of Berkeley labor/union representation, g. Law Enforcement Operation Knowledge, h. City Budget Operations/Knowledge, i. Committed to the Goals and Success of The Taskforce (Required of All)

3. The charge of the Task Force is as outlined in the July 14, 2020, City Council Omnibus Action, and should include but is not limited to: I. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety. II. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley. III. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of Reduce, Improve and Reinvest as proposed by the National Institute for Criminal Justice Reform considering, among other things: A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety. B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force. C. Limiting militarized weaponry and equipment. D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration. E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems. F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

4. Direct the City Manager to ensure that the working group of City Staff as outlined in her October 28th Off-Agenda Memo is coordinating with the Task Force. The Task Force's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY 2024-2025 budget processes to ensure that recommended changes will be achieved. The Task Force shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY 2022-23 Budget Process.

Financial Implications: See report

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

Council Consent Items

- 31. Adopt a Resolution Advocating for More Effective Methods of Traffic Enforcement**
From: Mayor Arreguin (Author), Councilmember Droste (Author), Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor)
Recommendation: Adopt a Resolution supporting the California State Legislature to enact legislation that would give municipalities greater flexibility to enforce speeding and vehicle code enforcement laws and send copies of the resolution to Governor Gavin Newsom, Senator Nancy Skinner and Assemblymember Buffy Wicks
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 32. Deferral of Remaining Permit Fees for 2009 Addison Street**
From: Mayor Arreguin (Author), Councilmember Wengraf (Co-Sponsor),
Recommendation: Approve the deferral of \$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater's housing project at 2009 Addison Street for a period of ten years, after which point the fees will be repaid to the City of Berkeley. Authorize the City Manager to execute a written agreement to memorialize this deferral and repayment requirements.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 33. Support the Installation of a Plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2**
From: Councilmember Davila (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution supporting the installation of a plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2, and refer to the City Manager to start the process.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 34. Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities**
From: Councilmember Davila (Author), Councilmember Harrison (Co-Sponsor)
Recommendation: Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Council Consent Items

- 35. Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Harrison (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)
Recommendation: Refer to the to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee (FITES) to continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, create a paving master plan, and consider the Public Works Commission Paving Policy, once complete. *(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council requesting that the item be referred back to the Facilities committee for further consideration and to request that Council refer the Paving Plan from the Public Works Commission to the committee when the item comes before Council in January.)*
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 36. Reserving \$2.5M in Housing Trust Funds for the Small Sites Program**
From: Councilmember Hahn (Author), Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor)
Recommendation: Adopt a Resolution reserving \$2.5 million in Housing Trust Funds for the Small Sites Program.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- 37. The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**
From: Councilmember Wengraf (Author), 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 5 years of monthly delivery costs.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Council Consent Items

- 38. Resolution: Support of S. 4571 - 2020 Census Deadline Extensions Act**
From: Councilmember Robinson (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution supporting S. 4571, the 2020 Census Deadline Extensions Act, which would extend the Census Bureau's statutory deadlines for delivering apportionment and redistricting data to April and July 2021, respectively.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 39. Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Droste (Author), Mayor Arreguin (Author), Councilmember Robinson (Author), Councilmember Harrison (Co-Sponsor)
Recommendation: Refer to the City Manager to develop a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. Consider criteria for transitioning spaces for public vs. private outdoor use: - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors. - Consider merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the city might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider fees and potential fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers. - Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)
(On November 2, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council with the recommendation language as amended by the committee. The revised recommendation language includes: Refer to the City Manager to develop a program and, if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. - Consider criteria for transitioning spaces for Public vs. Private outdoor use. - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces. - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer

Council Consent Items

access, parking availability, parking revenues, and all other factors. - Consider Merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the City might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider Fees and potential Fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider Protocols for transfer of private use parklets if businesses change, turn over, etc. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers.)

Financial Implications: See report

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

Action Calendar

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

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

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

Action Calendar – Public Hearings

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

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

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

Action Calendar – Public Hearings

- 40. Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23** *(Continued from December 1, 2020. Item contains revised material.)*
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion select among proposed ordinance language options and take the following action:
Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 14 and Title 23 which would:
1. Modify Minimum Residential Off-street Parking Requirements
 2. Impose Residential Parking Maximums in Transit-rich Areas
 3. Amend the Residential Preferential Parking (RPP) Permit Program
 4. Institute Transportation Demand Management (TDM) Requirements
- Financial Implications:** See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 41. Referral Response: Amendments to the Home Occupations Ordinance; Amending BMC Sub-Titles 23C, 23D, 23E, and 23F**
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending the Zoning Ordinance to streamline the permitting process for Home Occupations and amending Berkeley Municipal Code Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions, Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar

- 42. FY 2020 Year-End Results and FY 2021 First Quarter Budget Update** *(Continued from November 17, 2020. Item contains revised material.)*
From: City Manager
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000
- 43. Amendment: FY 2021 Annual Appropriations Ordinance** *(Continued from November 17, 2020. Item contains revised material.)*
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending FY 2021 Annual Appropriations Ordinance No. 7,724 - N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments since July 1, 2020 in the amount of \$184,267,388 (gross) and \$179,848,051 (net).
Financial Implications: See report
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

Action Calendar

44. Support Loan Forgiveness to Berkeley Youth Alternatives

From: Councilmember Davila (Author)

Recommendation: Adopt a Resolution supporting the forgiveness of the City's \$100,000 loan to Berkeley Youth Alternatives (BYA), and direct the City Manager or her designee to process the loan forgiveness to BYA and release the deed of trust.

Financial Implications: \$100,000

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

45. Amendments to Berkeley Police Department Policy 300, Use of Force

From: City Manager

Recommendation:

A) Adopt the proposed amendments to Policy 300 as proposed by the City Manager, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Department's recommendation for section 300.1.2;

-OR-

B) Adopt the proposed amendments to Policy 300 as proposed by the Police Review Commission, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Police Review Commission's recommendation for Sections 300.1.2 and 300.1.3.

Financial Implications: See report

Contact: Andrew Greenwood, Police, (510) 981-5900

Action Calendar – Continued Business

C. Urgency Item: Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order

(Continued from December 8, 2020.)

From: Councilmember Harrison (Author)

Recommendation: State Health officials have recently issued two vaguely worded Stay At Home Orders that closely resemble curfews. The State's Orders lack critical specificity regarding enforcement procedures and mechanisms. The Orders, if enforced vigorously, could disproportionately impact low-income people, unhoused people, and people of color, and have the potential to increase the frequency of interactions between law enforcement and marginalized and vulnerable communities.

The December 3, 2020 order was issued after the deadline for Council items and has the potential to immediately impact community members. In addition, the November 19, 2020 Order is currently in effect and warrants immediate Council action.

Data analyses suggest that the June 2020 curfew correlated with significant increases law enforcement racial disparities within Berkeley. Across the Bay Area, certain law enforcement leaders, including police chiefs and sheriffs, have stated they do not intend to indiscriminately and unconstitutionally stop people encountered away from home merely on suspicion of violating the State's curfew orders. It is in the public interest for the Council and City to adopt a similar policy.

Financial Implications: See report

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

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

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

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service 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 posted on the City's website at <http://www.cityofberkeley.info>.

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

COMMUNICATION ACCESS INFORMATION:

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



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

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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 December 10, 2020.*

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

Mark Numainville, City Clerk

## Communications

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

**Item #27: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded**

1. Steve Kromer

**Item #34: Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities**

2. Sabrina Ashjian, on behalf of the California Humane Society

**Item #37: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

3. Seena Hawley, on behalf of The Berkeley Baby Book Project

**Berkeley Firefighters Staffing**

4. Colin Arnold, on behalf of the Berkeley Firefighters Association

**COVID-19 Concerns**

5. Vivian Warkentin
6. Steven Schuyler
7. Nathan Francis

**Needle Disposal Boxes**

8. Maxina Ventura
9. 11 form-letters

**Pickleball Courts**

10. Elaine
11. Matt Ruby
12. Neil Collier
13. Christy Shepard
14. Fran Wickner
15. Lisa Vogel
16. Mike Hines
17. Gillie Tillson
18. Carmen Figueras
19. Kirk McCarthy
20. Carol Maga
21. Sean O'Doherty
22. Nancy Kaspar
23. Pat Kaspar
24. Nancy Ellis
25. Tess Eisley
26. Soleil Taylor
27. Frank Gilbert
28. Duston Richards
29. David Johnson
30. Holly Coates-Bash
31. Phyllis Mace
32. Chip Wasson
33. R'Sue Caron
34. Paul Kramer
35. Mary Reed Johnson
36. Gina Rieger
37. Naomi Torres
38. Shasta Phillips
39. Gregory Becker
40. Rosie Cohan
41. Jan Stafford
42. Monica Rohrer
43. Catherine Cassel
44. Nancy Cosentino
45. Dana Tillson

**Gun Violence**

46. Moni Law

### **Racial Disparities and Curfews**

- 47. Racial and Criminal Justice Reform Group (2)
- 48. Sheila Jordan
- 49. Moni Law
- 50. Mansour Id-Dean
- 51. Janice Schroeder
- 52. Jane Martin

### **Pool Problems**

- 53. Cris Barrere

### **Berkeley's Financial Status per State Auditor**

- 54. Barbara Gilbert

### **African American Holistic Resource Center**

- 55. Dr. M. Angelica Garcia, President, Berkeley City College

### **Kayla Moore**

- 56. Gemma Medlam-Cooke

### **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. 7,743-N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,  
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110  
COVID-19 EMERGENCY RESPONSE ORDINANCE**

**Sections:**

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

**13.110.010 Findings and Purposes**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, and November 17, 2020, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On

March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable



small businesses, nonprofits, and artists who form a Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

**13.110.020 Prohibited Conduct**

A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a Resident of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental

agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic

### **13.110.030 Definitions**

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B. "Covered Reason for Delayed Payment" means:

(1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

C. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

E. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

F. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

### **13.110.040 Collection of Back Rent and Late Fees**

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the Covered Period, whichever is later. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement. In the case of nonpayment of rent, the failure of a Tenant to notify the

landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

### **13.110.050 Application**

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period. It does not apply to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation), a landlord may seek rent accrued during the Covered Period as set forth in Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the Covered Period. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time during the Covered Period, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on non-payment of rent during the Covered Period as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of

rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

**13.110.060 Implementing Regulations**

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

**13.110.070 Waiver.**

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

**13.110.080 Remedies**

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.

B. The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

C. A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

### **13.110.090 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

### **13.110.100 Liberal Construction**

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

#### **Section 2. Effective Date**

This ordinance shall go into effect thirty days from the time of its final passage or on February 1, 2021, whichever is later.

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

At a special meeting of the Council of the City of Berkeley held on December 8, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Harrison, Robinson, Taplin, and Arreguin.

Noes: None.

Abstain: Kesarwani, Wengraf and Droste.

Absent: None.





## ORDINANCE NO. 7,744 -N.S.

ORDINANCE TO AMEND THE BERKELEY MUNICIPAL CODE TO CREATE THE CADELIN CORRIDOR DISTRICT COMMERCIAL ZONE REGULATIONS AND MAKING CONFORMING CHANGES TO OTHER CODE SECTIONS; ADDING BERKELEY MUNICIPAL CODE CHAPTER 23E.70

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

Section 1. That Berkeley Municipal Code Chapter 23E.70 is hereby added to read as follows:

**Chapter 23E.70**  
**C-AC Adeline Corridor Commercial District Provisions**

**Sections:**

- 23E.70.010 Applicability of Regulations**
- 23E.70.020 Purposes**
- 23E.70.030 Uses Permitted**
- 23E.70.040 Special Provisions: Adeline Corridor Specific Plan Subareas**
- 23E.70.045 Special Provisions: Special Provisions: Ground Floor Uses**
- 23E.70.050 Construction of New Floor Area -- Requirements for Use Permits**
- 23E.70.060 Use Limitations**
- 23E.70.070 Development Standards**
- 23E.70.080 Parking -- Number of Spaces**
- 23E.70.085 Design Standards**
- 23E.70.090 Findings**

**Section 23E.70.010 Applicability of Regulations**

The regulations in this Chapter shall apply in all C-AC Districts. In addition, the general provisions in Sub-title 23C shall apply.

**Section 23E.70.020 Purposes**

The purposes of the Adeline Corridor Commercial (C-AC) District are to:

- A. Implement the General Plan's designation for Adeline Corridor Mixed Use area, as well as the policies of the Adeline Corridor Specific Plan.
- B. Preserve the unique character and cultural legacy of the Adeline Corridor, sustaining the community as a place where all people can live, work, play, learn, worship, dine, shop and thrive.
- C. Promote equitable access to housing by preserving existing affordable housing, preventing displacement, and producing a substantial number of new affordable housing units.
- D. Foster economic opportunity for South Berkeley residents and businesses by facilitating job training and workforce development, active community spaces, and a thriving environment for commerce along the Adeline Street/South Shattuck Corridor.
- E. Provide safe, equitable transportation options that meet the mobility needs of all residents, regardless of age, means and abilities, and that further the attainment of

greenhouse gas emission reduction goals.

- F. Provide safe, sustainable, beautiful, healthy, and inclusive public spaces that encourage social interaction, provide opportunities for recreation and environmental health, and support active community life in South Berkeley.
- G. Encourage development and amenities that support pedestrian-oriented uses.
- H. Maintain and encourage a wide range of community and commercial services, including basic goods and services. Provide locations for both community-serving and regional-serving: businesses, cultural and religious institutions, and non-profit organizations.

**Section 23E.70.030 Uses Permitted**

- A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

| <b>Table 23E.70.030</b>                                                 |                       |                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                         |                       |                                                                                                                                                                                                                        |
| <b>Use</b>                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                   |
| <b>Retail Sales</b>                                                     |                       |                                                                                                                                                                                                                        |
| All Retail Sales Uses, except those listed below                        | ZC                    | As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)                                                                                                                              |
| Alcoholic Beverage Retail Sales, including liquor stores and wine shops | UP(PH)                | Includes sale for off-site consumption at restaurants<br><br>No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue<br><br>Subject to the requirements of Chapter 23E.16.040 |
| Department Stores<br>Over 3,000 s.f.                                    | ZC<br>UP(PH)          |                                                                                                                                                                                                                        |
| Firearm/Munitions Businesses                                            | UP(PH)                | Prohibited on any property devoted to residential use                                                                                                                                                                  |

| <b>Table 23E.70.030</b>                                              |                       |                                                                                                                                                                    |
|----------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                      |                       |                                                                                                                                                                    |
| <b>Use</b>                                                           | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                               |
| Pawn Shops                                                           | Prohibited            | Including Auction Houses                                                                                                                                           |
| Pet Stores                                                           | UP(PH)                | Including Sales and Grooming of Animals (but not Boarding)                                                                                                         |
| Smoke Shops                                                          | UP(PH)                | Prohibited if within 1,400 feet of a school or public park                                                                                                         |
| Cannabis Storefront Retailer                                         | ZC                    | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22 |
| <b>Personal and Household Services</b>                               |                       |                                                                                                                                                                    |
| All Personal and Household Services, except those listed below       | ZC                    | As defined in Sub-title F, except those otherwise listed (does not include Massage)                                                                                |
| Laundromats                                                          | AUP                   |                                                                                                                                                                    |
| Veterinary Clinics                                                   | UP(PH)                | Including Pet Hospitals                                                                                                                                            |
| <b>Offices</b>                                                       |                       |                                                                                                                                                                    |
| Financial Services, Retail (Banks)                                   | ZC                    |                                                                                                                                                                    |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents | ZC                    | Uses over 2,500 sf or 50' wide limited on ground floor in some areas. See Section 23E.70.045.                                                                      |

| <b>Table 23E.70.030</b>                                                                                                                                                                                                                                     |                         |                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                                                                                                                                                                             |                         |                                                                                                                                                                                                                                                                               |
| <b>Use</b>                                                                                                                                                                                                                                                  | <b>Classification</b>   | <b>Special Requirements (if any)</b>                                                                                                                                                                                                                                          |
| Medical Practitioners, including Holistic Health and Mental Health Practitioners                                                                                                                                                                            | ZC                      | Uses over 2,500 sf or 50' wide limited on ground floor in some areas. See Section 23E.70.045.                                                                                                                                                                                 |
| Non-Chartered Financial Institutions                                                                                                                                                                                                                        | UP(PH)                  | Prohibited on ground floor in some areas. See Section 23E.70.045.<br><br>Subject to additional requirements; see Section 23E.16.080                                                                                                                                           |
| Other Professionals and Government, Institutions, Utilities                                                                                                                                                                                                 | ZC                      | Uses over 2,500 sf or 50' wide limited on ground floor in some areas. See Section 23E.70.045.                                                                                                                                                                                 |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                                                                                                                                                                                  |                         |                                                                                                                                                                                                                                                                               |
| Adult-oriented Businesses                                                                                                                                                                                                                                   | Prohibited              |                                                                                                                                                                                                                                                                               |
| Alcoholic Beverage Service <ul style="list-style-type: none"> <li>• Beer and wine incidental to seated food service</li> <li>• Distilled spirits incidental to food service</li> <li>• Alcoholic Beverage Service not incidental to food service</li> </ul> | ZC<br><br>AUP<br><br>UP | All Alcoholic Beverage Service is for on-site consumption only and subject to additional requirements; see Section 23E.16.040<br><br>No service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby, except as incidental to seated food service. |
| Commercial Recreation Center<br><br>3,000 s.f. or less                                                                                                                                                                                                      | AUP                     | Outdoor use requires UP(PH)<br>Uses which include six or                                                                                                                                                                                                                      |

| <b>Table 23E.70.030</b>                                                                                                                                                                                                                                    |                                    |                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|----------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                                                                                                                                                                            |                                    |                                                                                                                |
| <b>Use</b>                                                                                                                                                                                                                                                 | <b>Classification</b>              | <b>Special Requirements (if any)</b>                                                                           |
| Over 3,000 s.f.                                                                                                                                                                                                                                            | UP(PH)                             | more Amusement Devices (Amusement Device Arcade) are subject to location requirements; see Section 23E.16.050. |
| Dance, Exercise, Martial Arts and Music Studios                                                                                                                                                                                                            | ZC                                 |                                                                                                                |
| Entertainment Establishments                                                                                                                                                                                                                               | UP(PH)                             | Including Nightclubs                                                                                           |
| Food Service Establishments <ul style="list-style-type: none"> <li>• South Shattuck and North Adeline subareas<br/>3,000 s.f. or less</li> <li>Over 3,000 s.f.</li> <li>• South Adeline subarea<br/>1,500 s.f. or less</li> <li>Over 1,500 s.f.</li> </ul> | ZC<br><br>AUP<br><br>ZC<br><br>AUP |                                                                                                                |
| Group Class Instruction for Business, Vocational or Other Purposes                                                                                                                                                                                         | ZC                                 |                                                                                                                |
| Gyms and Health Clubs                                                                                                                                                                                                                                      | ZC                                 |                                                                                                                |
| Hotels, Tourist                                                                                                                                                                                                                                            | UP(PH)                             | Including Inns, Bed and Breakfasts and Hostels                                                                 |
| Motels, Tourist                                                                                                                                                                                                                                            | Prohibited                         |                                                                                                                |
| Theaters                                                                                                                                                                                                                                                   | UP(PH)                             | Including Motion Pictures and Stage Performance                                                                |
| <b>Automobile and Other Vehicle Oriented Uses</b>                                                                                                                                                                                                          |                                    |                                                                                                                |
| Automobile Parts Stores                                                                                                                                                                                                                                    | ZC                                 | Excluding service of auto parts                                                                                |
| Automobile and Motorcycle Sales                                                                                                                                                                                                                            | Prohibited                         |                                                                                                                |

| <b>Table 23E.70.030</b>                                               |                       |                                                                                   |
|-----------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                       |                       |                                                                                   |
| <b>Use</b>                                                            | <b>Classification</b> | <b>Special Requirements (if any)</b>                                              |
| Automobile and Motorcycle Repair and Service, including Parts Service | Prohibited            |                                                                                   |
| Automobile and Motorcycle Rentals                                     | Prohibited            |                                                                                   |
| Automobile Washes, Mechanical or Self-Service                         | Prohibited            |                                                                                   |
| Automobile Wrecking Establishments                                    | Prohibited            |                                                                                   |
| Gasoline/Automobile Fuel Stations                                     | UP(PH)                |                                                                                   |
| Recreational Vehicle and Trailers Sales and Rental                    | Prohibited            | Including Boats                                                                   |
| Tire Sales/Service Stores                                             | Prohibited            |                                                                                   |
| <b>Parking, Outdoor and Exterior Service Window Uses</b>              |                       |                                                                                   |
| Activities or Storage Outside of a building                           |                       |                                                                                   |
| Not abutting R-District                                               | AUP                   |                                                                                   |
| When abutting R-District                                              | UP(PH)                |                                                                                   |
| Automatic Teller Machines                                             | AUP                   | Exterior and when part of a Retail Financial Service                              |
| Drive-in Uses                                                         | UP(PH)                | Which provide service to customers in their cars; see definition in Sub-title 23F |
| Parking Lots, Parking Structures                                      | UP(PH)                |                                                                                   |
| Recycling Redemption Centers                                          | AUP                   |                                                                                   |
| Outdoor Cafe Seating                                                  |                       |                                                                                   |
| When seating not abutting R-District                                  | ZC                    |                                                                                   |
| When seating abutting R-District                                      | AUP                   |                                                                                   |

| <b>Table 23E.70.030</b>                         |                       |                                                                                                                                                                                                                          |
|-------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                 |                       |                                                                                                                                                                                                                          |
| <b>Use</b>                                      | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                                     |
| <b>Combination Commercial/Residential Uses</b>  |                       |                                                                                                                                                                                                                          |
| Live/Work Units                                 | AUP                   | Subject to the standards of Chapter 23E.20, except that clients, customers and employees are permitted at the site without a Use Permit.<br>Prohibited or limited on ground floor in some areas. See Section 23E.70.045. |
| Mixed Use Developments                          | UP(PH)                |                                                                                                                                                                                                                          |
| <b>Uses Incidental to a Permitted Use</b>       |                       |                                                                                                                                                                                                                          |
| Amusement Devices (up to three)                 | UP(PH)                |                                                                                                                                                                                                                          |
| Art/Craft Studio                                | ZC                    |                                                                                                                                                                                                                          |
| Food or Beverage for Immediate Consumption      | ZC                    |                                                                                                                                                                                                                          |
| Live Entertainment<br>Unamplified               | ZC                    |                                                                                                                                                                                                                          |
| Amplified                                       | AUP                   |                                                                                                                                                                                                                          |
| Manufacturing Uses                              | AUP                   |                                                                                                                                                                                                                          |
| Storage of Goods (over 25% of gross floor area) | AUP                   |                                                                                                                                                                                                                          |
| Wholesale Activities                            | AUP                   |                                                                                                                                                                                                                          |
| <b>Uses Permitted in Residential Districts</b>  |                       |                                                                                                                                                                                                                          |
| Accessory Dwelling Unit                         | ZC                    |                                                                                                                                                                                                                          |
| Accessory Uses and Structures                   | Per R-3 District      | See Table 23D.40.030                                                                                                                                                                                                     |

| <b>Table 23E.70.030</b>                                           |                       |                                                                                                                                 |
|-------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                   |                       |                                                                                                                                 |
| <b>Use</b>                                                        | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                            |
| Accessory Buildings and Structures with Urban Agriculture         | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060                                                                      |
| Short-Term Rental                                                 | ZC                    | Subject to requirements of Chapter 23C.22                                                                                       |
| Child Care Centers                                                | UP(PH)                |                                                                                                                                 |
| Clubs, Lodges                                                     | UP(PH)                |                                                                                                                                 |
| Community Centers                                                 | UP(PH)                |                                                                                                                                 |
| Dwelling Units                                                    | UP(PH)                | Subject to the standards under Section 23E.70.070 Prohibited or limited on ground floor in some areas. See Section 23E.70.045.  |
| Group Living Accommodations subject to R-3 density standards      | UP(PH)                | Subject to the standards under Section 23E.70.070. Prohibited or limited on ground floor in some areas. See Section 23E.70.045. |
| Hospitals                                                         | Prohibited            |                                                                                                                                 |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)                |                                                                                                                                 |
| Libraries                                                         | UP(PH)                |                                                                                                                                 |
| Nursing Homes                                                     | UP(PH)                | Prohibited on ground floor in some areas. See Section 23E.70.045.                                                               |
| Parks and Playgrounds                                             | ZC                    |                                                                                                                                 |
| Public Safety and Emergency Services                              | UP(PH)                |                                                                                                                                 |
| Religious Assembly Uses                                           | UP(PH)                |                                                                                                                                 |
| Schools, Public or Private                                        | UP(PH)                |                                                                                                                                 |



| Table 23E.70.030                                                                             |                     |                                                                                                                                                                                 |
|----------------------------------------------------------------------------------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                     |                     |                                                                                                                                                                                 |
| Use                                                                                          | Classification      | Special Requirements (if any)                                                                                                                                                   |
| Senior Congregate Housing<br>Six or fewer people<br>Seven or more people<br>New construction | ZC<br>AUP<br>UP(PH) | Change of use from an existing dwelling unit<br>Prohibited on ground floor in some areas. See Section 23E.70.045.                                                               |
| <b>Miscellaneous Uses</b>                                                                    |                     |                                                                                                                                                                                 |
| Art/Craft Studio                                                                             | ZC                  | Limited on ground floor in some areas. See Section 23E.70.045.                                                                                                                  |
| Automatic Teller Machines                                                                    | UP(PH)              | When not a part of a Retail Financial Service                                                                                                                                   |
| Cafeteria, Employee or Residential                                                           | UP(PH)              |                                                                                                                                                                                 |
| Cemeteries, Crematories, Mausoleums                                                          | Prohibited          |                                                                                                                                                                                 |
| Columbaria                                                                                   | AUP                 | Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building |
| Circus or Carnival                                                                           | UP(PH)              |                                                                                                                                                                                 |
| Commercial Excavation                                                                        | UP(PH)              | Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas                                                        |
| Dry Cleaning and Laundry Plants                                                              | Prohibited          |                                                                                                                                                                                 |
| Emergency Shelter<br>Up to 25 beds<br>More than 25 beds                                      | ZC<br>UP(PH)        | See Chapter 23C.10.                                                                                                                                                             |
| Kennels or Pet Boarding                                                                      | Prohibited          |                                                                                                                                                                                 |

| Table 23E.70.030                                                                                                                                                                                                                   |                       |                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                                                                                                                                                           |                       |                                                                                                                                      |
| Use                                                                                                                                                                                                                                | Classification        | Special Requirements (if any)                                                                                                        |
| Laboratories, Testing                                                                                                                                                                                                              | Prohibited            |                                                                                                                                      |
| Mortuaries                                                                                                                                                                                                                         | Prohibited            |                                                                                                                                      |
| Public Utility Substations, Tanks                                                                                                                                                                                                  | UP(PH)                |                                                                                                                                      |
| Radio, Television or Audio/Sound Recording and/or Broadcast Studios                                                                                                                                                                | UP(PH)                |                                                                                                                                      |
| Warehouses or Storage, including Mini-storage Warehouses                                                                                                                                                                           | Prohibited            |                                                                                                                                      |
| Wireless Telecommunications Facilities<br>Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District<br>All Other Telecommunication Facilities | AUP<br><br>UP(PH)     | Subject to the requirements and findings of Section 23C.17.100<br><br>Subject to the requirements and findings of Section 23C.17.100 |
| Urban Agriculture<br><br>Low-Impact Urban Agriculture (LIUA)<br>High-Impact Urban Agriculture (HIUA)                                                                                                                               | <br><br>ZC<br><br>AUP | Subject to the requirements and findings of Chapter 23C.26                                                                           |
| <b>Legend:</b>                                                                                                                                                                                                                     |                       |                                                                                                                                      |

| Table 23E.70.030                                                                                                                             |                |                               |
|----------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------------|
| Use and Required Permits                                                                                                                     |                |                               |
| Use                                                                                                                                          | Classification | Special Requirements (if any) |
| ZC – Zoning Certificate<br>AUP – Administrative Use Permit<br>UP(PH) – Use Permit, public hearing required<br>Prohibited – Use not permitted |                |                               |

- B. Any use not listed that is compatible with the purposes of the C-AC District shall be permitted subject to securing an Administrative Use Permit. Any use not listed that is not compatible with the purposes of the C-AC District shall be prohibited.
- C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table 23E.70.030.

**Section 23E.70.040 Special Provisions: Adeline Corridor Specific Plan Subareas**

The Adeline Corridor Specific Plan identifies four distinct subareas which have different physical characteristics and contexts. Different use limitations and development standards may apply to these subareas. See the Adeline Corridor Specific Plan for more specific information about each subarea.

- A. South Shattuck: Parcels that have a frontage abutting Shattuck Avenue.
- B. North Adeline:
  - 1. West of Adeline: Parcels located between Derby Street and Ashby Avenue, which do not front Shattuck Avenue
  - 2. East of Adeline: Parcels located entirely between Russell Street and the point 110 feet south of Essex Street.
- C. Ashby BART:
  - 1. West of Adeline: Parcels bounded by Ashby, MLK Jr. Way and Adeline
  - 2. East of Adeline: Parcels located entirely between Tremont, Woolsey and Adeline, and at least 110 feet south of Essex.
- D. South Adeline: Parcels located south of Woolsey Street.

**Section 23E.70.045 Special Provisions: Ground Floor Uses**

- A. In addition to other requirements of the District, the first 30 feet of depth of the ground floor, as measured from the frontage which abuts the portions of Adeline Street, Shattuck Avenue, MLK, Jr. Way or Ashby Avenue identified below shall be reserved for either Active Commercial Uses, as defined in Sub-Title 23F.04 or for commercial uses. Ground floor tenant spaces with frontages on streets not identified below can be used for any use permitted in the district.

**Table 23E.70.045**

**Ground Floor Uses**

| Area                                          | Permitted ground floor uses |
|-----------------------------------------------|-----------------------------|
| Shattuck between Dwight and Derby             | Commercial uses             |
| Shattuck between Ward and Russell             | Active Commercial uses      |
| Adeline between Russell and the City boundary | Active Commercial uses      |
| Ashby east of Adeline                         | Active Commercial uses      |
| North side of Ashby, west of Adeline          | Active Commercial uses      |

- B. Active Commercial uses are commercial uses which generate regular and frequent foot traffic. Uses include businesses in the following use categories: Retail Sales; Personal and Household Services; Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses; and the following uses: Banks, and Automobile Parts Stores.
- C. The following uses are permitted on the ground floor in areas designated Active Commercial subject to a Zoning Certificate:

1. Office uses in tenant space 2,500 sf or less in area and 50 feet or less in width;
  2. Residential amenities (2,500 sf or less in area and 50 feet or less in width), associated with a residential use.
- D. The following use can be permitted on the ground floor in areas designated Active Commercial subject to an Administrative Use Permit:
1. Office uses over 2,500 square feet in area or 50 feet in width.
  2. Art/Craft Studio
- E. The following use can be permitted on the ground floor in areas designated commercial subject to an Administrative Use Permit:
1. Residential uses where at least 50% of the units are affordable.
- F. The following commercial use is not permitted on the ground floor in areas designated Active Commercial or commercial:
1. Live/Work units

**Section 23E.70.050 Construction of New Floor Area -- Requirements for Use Permits**

A Use Permit shall be obtained for construction of new floor area which results in either:

- A new Main Building;
- A new dwelling unit (except ADUs); or
- A gross floor area addition of 5,000 sf or more.

**Section 23E.70.060 Use Limitations**

- A. No commercial use shall operate except between the following hours of the specified days: 7:00 a.m. to 12:00 midnight weekdays (Sunday through Thursday); 7:00 a.m. to 2:00 a.m. weekend days (Friday and Saturday); and in accordance with Section 23E.16.010, provided, however, that the hours may be extended to other times subject to obtaining a Use Permit.
- B. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.70.030.
- C. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.70.030.

**Section 23E.70.070 Development Standards**

A. All Buildings

1. 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.
2. Designated historic resources, potential historic resources, or projects that incorporate either type of historic resource will not be required to provide new parking or open space to convert to a new residential or commercial use.

3. Setbacks: No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:
  - a. When the subject lot abuts a residentially-zoned lot, the setback shall be 10 feet.
  - b. When the subject lot abuts a residentially-zoned lot, any portion of new construction that exceeds 35 feet in height shall be setback 20 feet from the shared lot line.
  - c. When the subject lot confronts a residentially-zoned lot, any portion of new construction that exceeds 45 feet in height shall be setback 10 feet from the front property line.
  - d. The setback requirements above supersede the requirements in Sections 23E.04.050 and .060.

B. Residential and Mixed Use Buildings. The height, Floor Area Ratio (FAR), density, lot coverage and useable open space are based on the percentage of affordable units and shall not exceed the following requirements in each subarea:

1. South Shattuck Subarea

| Minimum On-Site Affordable Housing Requirement* | Max height |      | Max FAR | Max density (du/acre)** | Max lot coverage |            | Useable open space (sf/unit) |
|-------------------------------------------------|------------|------|---------|-------------------------|------------------|------------|------------------------------|
|                                                 | Stories    | Feet |         |                         | Interior lot     | Corner lot |                              |
| 0% (Tier 1)                                     | 4          | 45'  | 2.5     | 120                     | 60%              | 70%        | 40                           |
| 14% (Tier 2)                                    | 6          | 65'  | 4.0     | 210                     | 90%              | 90%        | 40                           |
| 21% (Tier 3)                                    | 7          | 75'  | 5.0     | 250                     | 90%              | 90%        | 40                           |
| 25% (Tier 4)                                    | 8          | 85'  | 5.5     | 300                     | 90%              | 95%        | 40                           |

2. North and South Adeline Subareas

| Minimum On-Site Affordable Housing Requirement* | Max height |      | Max FAR | Max density (du/acre)** | Max lot coverage |            | Useable open space (sf/unit) |
|-------------------------------------------------|------------|------|---------|-------------------------|------------------|------------|------------------------------|
|                                                 | Stories    | Feet |         |                         | Interior lot     | Corner lot |                              |
| 0% (Tier 1)                                     | 3          | 35'  | 2.0     | 100                     | 60%              | 70%        | 40                           |
| 14% (Tier 2)                                    | 5          | 55'  | 3.5     | 150                     | 90%              | 90%        | 40                           |
| 21% (Tier 3)                                    | 6          | 65'  | 4.0     | 210                     | 90%              | 90%        | 40                           |
| 25% (Tier 4)                                    | 7          | 75'  | 5.0     | 250                     | 90%              | 95%        | 40                           |

3. Ashby BART Subarea

| Minimum On-Site Affordable Housing Requirement | Height  |      | FAR | Density (du/acre) | Lot coverage |            | Useable open space (sf/unit) |
|------------------------------------------------|---------|------|-----|-------------------|--------------|------------|------------------------------|
|                                                | Stories | Feet |     |                   | Interior lot | Corner lot |                              |

Any future development in the Ashby BART area would be subject to process outlined

in the MOU with BART and AB 2923.

\* Percentage of total project units.

\*\*Group Living Accommodations (GLAs) are subject to Tier 1 height, FAR, lot coverage and open space requirements of the subarea in which they are located. GLAs shall be subject to R-3 density standards. Higher density is possible with a State Density Bonus.

4. For the purpose State Density Bonus calculation, the Tier 1 density is the maximum allowable gross residential density. Tier 2, 3, and 4 density is authorized as a local density bonus under Government Code section 65915(n).
5. Projects that consist of 100% deed-restricted affordable housing units, which can include up to 20% as affordable to moderate income households (i.e., 80% to 120% of Area Median Income) and the remaining 80% of the units as affordable to lower income households (i.e., lower than 80% median income), can add four stories or 45 feet to the maximum height allowed under Tier 1.
6. Minimum on-site affordable housing requirement applies to all residential and mixed use projects and must be provided as a mix of (50) fifty percent at Low Income and (50) fifty percent Very Low Area Median Income (AMI) levels.
7. An AUP may be granted to reduce useable open space requirements if demonstrated to be necessary to build an all-electric building.
8. Publicly Accessible Open Space: Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.
9. In mixed use buildings in all subareas and tier levels, all floors above the second story shall be used for residential uses.

C. Non-residential Buildings.

1. Non-residential buildings are subject to the Tier 1 height and FAR requirements in the relevant subarea as shown in Section 23E.70.070.B.
2. Non-residential buildings are not subject to lot coverage standards, except to accommodate setbacks required in Section 23E.70.070.A.3.
3. The height and Floor Area Ratio (FAR) shall not exceed the following requirements in each subarea:

| Subarea                 | Max height<br>Stories                                                                     | Feet | Max<br>FAR | Max lot coverage* |
|-------------------------|-------------------------------------------------------------------------------------------|------|------------|-------------------|
| South Shattuck          | 4                                                                                         | 45'  | 2.5        | 100%              |
| North and South Adeline | 3                                                                                         | 45'  | 2.8        | 100%              |
| Ashby BART              | Any future development in the Ashby BART area would be subject to negotiations with BART. |      |            |                   |

\*Except when setbacks are required per Section 23E.70.070.A.

**Section 23E.70.080 Parking -- Number of Spaces**

- A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.
- B. Uses listed in Table 23E.70.080 shall meet the requirements listed for newly constructed floor area.

**Table 23E.70.080  
Parking Required**

| Use                              | Number of spaces |                               |
|----------------------------------|------------------|-------------------------------|
|                                  | Minimum          | Maximum                       |
| Residential                      | No minimum       | 1 per unit                    |
| Non-Residential New Construction |                  |                               |
| • under 10,000 gsf               | No minimum       | 1.5 per 1,000 sf              |
| • 10,000 gsf and greater         | 1/1,000 sf       | 1.5 per 1,000 sf              |
| Live/Work Units                  | No minimum       | 1.5 per 1,000 sf of work area |

- C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.
- D. Any new construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32.

**Section 23E.70.085 Design Standards**

- A. New buildings and additions shall be reviewed for conformance to the design guidelines described in the Adeline Corridor Specific Plan.
- B. Except as set forth below, ground floor frontages of all new buildings are subject to the following design standards:
  1. Blank walls along the ground floor shall be less than 30 feet in length along sidewalks, pedestrian paths or open space.
  2. Ground floors shall have a minimum floor to floor height of 12 feet.
  3. Facades shall provide at least 30% transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between the sidewalk areas and building interiors. Dark or mirrored glass will not satisfy this requirement.
  4. Window glazing shall provide a high degree of light transmittance and be non-reflective.
- C. Ground floor frontages in areas identified as active commercial in Section 23E.70.045 shall meet the requirements of Section 23E.70.085.B except:
  1. Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.
  2. Facades shall provide at least 75% transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction



between sidewalk areas and the interior. Dark or mirrored glass will not satisfy this requirement.

- D. Ground floor frontage in areas identified as commercial in Section 23E.70.045 shall meet the requirements of Section 23E.70.085.B except:
  - 1. Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.
  - 2. Facades shall provide at least 65% transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between sidewalk areas and the interior of office spaces. Dark or mirrored glass will not satisfy this requirement.
- E. Parking provided shall meet the following standards:
  - 1. Parking and loading areas shall be located behind, within or underneath buildings.
  - 2. When the depth of a lot is less than 100 feet, surface parking or above-grade structured parking may be located next to the building, but shall not take up more of the primary frontage than the building.
- F. The Design Review Committee or design review staff may grant exceptions to the blank wall and transparency requirements.

**Section 23E.70.090 Findings**

- A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable and consistent with State and federal law:
- B. A proposed use or structure must:
  - 1. Be compatible with the purposes of the District;
  - 2. Be compatible in design and character with the District and the adjacent residential neighborhoods; and
  - 3. Encourage utilization of public transit and off-street parking facilities in the area of the proposed building.
- C. In addition to the findings above, the Board shall find, for each Use Permit for new residential development, that the proposed use or structure facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines.
- D. In order to approve an Administrative Use Permit for an office use over 2,500 sf or over 50 feet wide on the ground floor of an Active Commercial area, the Zoning Officer must find that the use supports the development of a strong retail commercial, pedestrian-oriented environment. Factors the Zoning Officer should consider shall include, but are not limited to, pedestrian activity that is expected to be generated at the site, the placement of store entrances relative to the street and the parking lots, and the size and prominence of display windows and areas facing the sidewalk.
- E. In order to approve an AUP under Section 23E.70.070.B.7, the Zoning Officer must find that:
  - 1. No other placement of the features to support construction of an all-electric building, including solar photovoltaic (PV) energy systems and water tanks for heat pump water heating, on the property is possible; and

2. Placement of the features to support construction of an all-electric building elsewhere on the property is not financially feasible.
  - F. To approve a Permit, the Zoning Officer or Board must find that the project complies with the Adeline Corridor Specific Plan's adopted Mitigation Monitoring and Reporting Program (MMRP).

Section 2. That the City of Berkeley Zoning Map is hereby amended to map the new commercial zone, the C – Adeline Corridor District as indicated in Exhibit A and attached hereto and incorporated herein by reference.

Section 3. This Ordinance shall be effective 30 days from the date of final passage by the City Council but shall not apply to (a) building/construction related permits already issued and not yet expired; (b) to zoning applications approved by the City and not yet expired; or to (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under the provisions of these Berkeley Municipal Code amendments if the applicant chooses to do so.

Section 4. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or State law

Section 5. The provisions of this Ordinance are severable. If a court of competent jurisdiction determines that in a word, phrase, clause, sentence, paragraph, subsection, section, Chapter or other provision is invalid, or that the application of any part of the provision to any person or circumstance is invalid, the remaining provisions of this Resolution that can be given effect without the invalid provision or application and the application of those provisions to other persons or circumstances are not affected by that decision. The City Council declares that the City Council would have adopted this Ordinance irrespective of the invalidity of any particular portion of this Ordinance.

Section 6. 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.

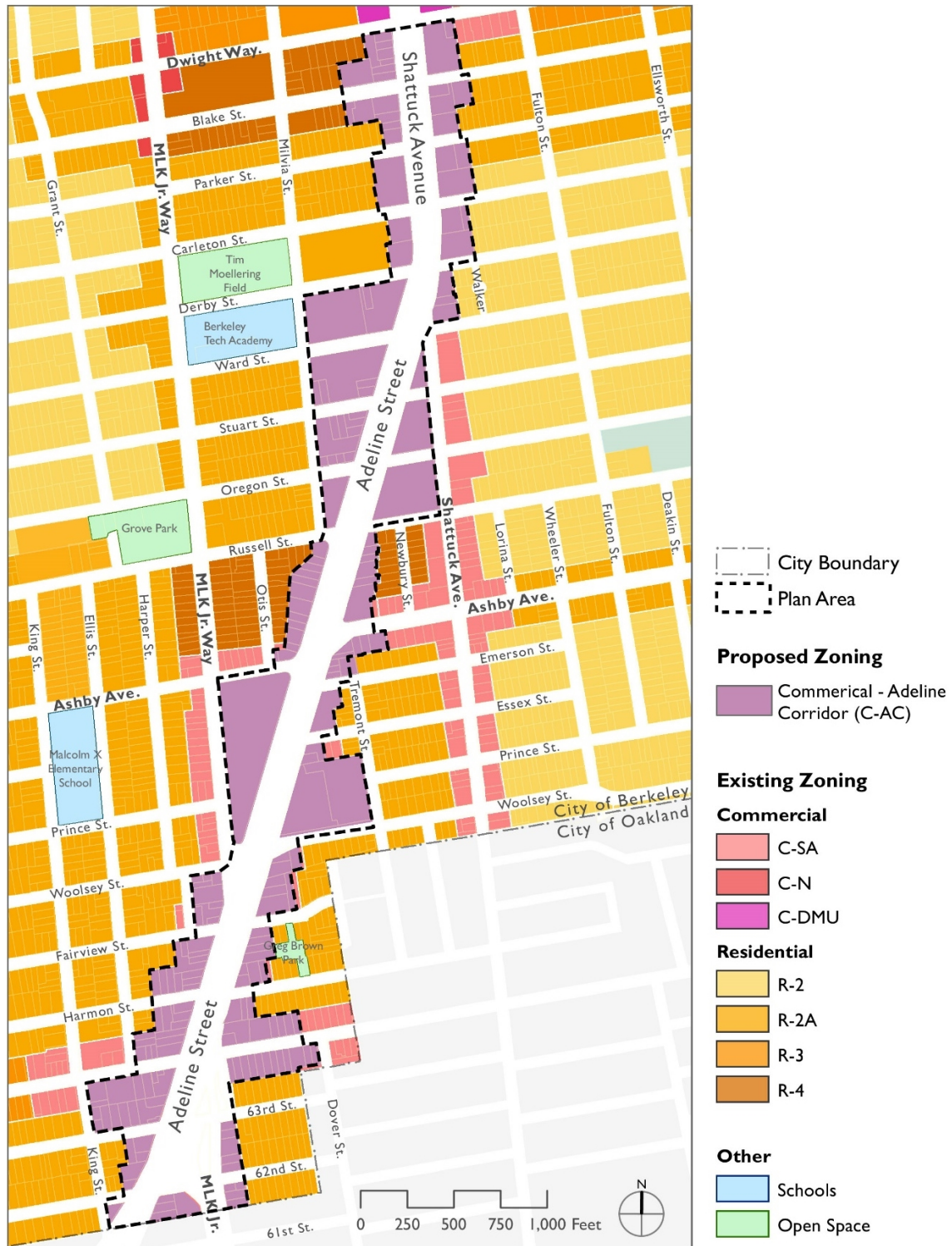
At a special meeting of the Council of the City of Berkeley held on December 8, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

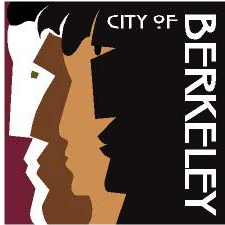
Ayes: Bartlett, Droste, Hahn, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: Harrison.

Absent: None.

Exhibit A: Zoning Map for Commercial – Adeline Corridor District





Kate Harrison  
Councilmember District 4

## LATE AGENDA MATERIAL

### Pursuant to Government Code Section 54954.2(b)

**Meeting Date:** December 8, 2020

**Item Description:** Resolution Establishing Local Law Enforcement Policy Pursuant to the November 19, 2020 California Department of Public Health Limited Stay At Home Order and the December 3, 2020 Regional Stay At Home Order

**Submitted by:** Councilmember Harrison

*Pursuant to California Government Code Section 54954.2(b) (2), Councilmember Harrison submits the attached item to the City Council for placement on the December 8, 2020 special meeting agenda. Gov. Code Section 54954.2(b) (2) states that "Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a)."*

This item meets the criteria for "immediate action" as follows:

The City of Berkeley is currently in a declared state of emergency regarding the outbreak of a novel coronavirus, causing the respiratory disease COVID-19.

State Health officials have recently issued two vaguely worded Stay At Home Orders that closely resemble curfews. The State's Orders lack critical specificity regarding enforcement procedures and mechanisms. The Orders, if enforced vigorously, could disproportionately impact low-income people, unhoused people, and people of color, and have the potential to increase the frequency of interactions between law enforcement and marginalized and vulnerable communities.

The December 3, 2020 order was issued after the deadline for Council items and has the potential to immediately impact community members. In addition, the November 19, 2020 Order is currently in effect and warrants immediate Council action.

Data analyses suggest that the June 2020 curfew correlated with significant increases law enforcement racial disparities within Berkeley. Across the Bay Area, certain law enforcement leaders, including police chiefs and sheriffs, have stated they do not intend to indiscriminately and unconstitutionally stop people encountered

away from home merely on suspicion of violating the State's curfew orders. It is in the public interest for the Council and City to adopt a similar policy.

**Consideration of late agenda items is subject to approval by a two-thirds vote of the City Council. (California Government Code Section 54954.2(b)(2))**

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

ESTABLISHING LOCAL LAW ENFORCEMENT POLICY PURSUANT TO THE NOVEMBER 19, 2020 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH LIMITED STAY AT HOME ORDER AND THE DECEMBER 3, 2020 REGIONAL STAY AT HOME ORDER

WHEREAS, in response to increasing infections and in anticipation of possible shortages in hospital capacity during the 2020-2021 winter season, on November 19, 2020 Acting State Public Health Officer Erica S. Pan issued a “Limited Stay At Home Order”<sup>1</sup> effective in counties under Tier One (Purple) of California's Blueprint for a Safer Economy; and

WHEREAS, the Order requires “that all gatherings with members of other households and all activities conducted outside the residence, lodging, or temporary accommodation with members of other households cease between 10:00pm PST and 5:00am PST, except for those activities associated with the operation, maintenance, or usage of critical infrastructure or required by law”; and

WHEREAS, the Order “does not apply to persons experiencing homelessness”; and

WHEREAS, the Order, which resembles a curfew, lacks clarity as to explicit enforcement mechanisms, and has reportedly generated considerable confusion amongst California and Bay Area residents; and

WHEREAS, on December 3, 2020, Dr. Pan issued a follow-up Regional Stay at Home Order<sup>2</sup> requiring that “All individuals living in the Region [for which adult ICU capacity is less than 15%] shall stay home or at their place of residence” with specified limited exceptions; and

WHEREAS, reasonably crafted and tailored health and safety restrictions and orders are necessary in these times, but they must be implemented and enforced without bias and with due consideration and sensitivity to systemic disparities resulting from law enforcement; and

WHEREAS, curfews and emergency health and safety orders inherently pose sweeping restrictions on the public assembly, free expression, movement, commerce, and disproportionately affect marginalized and vulnerable communities; and

WHEREAS, ongoing analyses of Berkeley policing stop data from multiple organizations suggest that Black and Latinx people were significantly more likely to be stopped by

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<sup>1</sup> California Department of Public Health Limited Stay At Home Order, November 19, 2020, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/limited-stay-at-home-order.aspx>.

<sup>2</sup> California Department of Public Health Regional Stay At Home Order, December 3, 2020, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Regional-Stay-at-Home-Order.aspx>.

police or be subject to police use of force within Berkeley before the pandemic; and

WHEREAS, the June 2020 First Amendment curfew imposed by the Alameda County Sheriff and the Berkeley City Manager, and ratified by the Berkeley City Council, in response to an overwhelmingly peaceful Black Lives Matter protest movement and concerns about alleged criminal activity, correlated with significant increases law enforcement racial disparities within Berkeley; and

WHEREAS, on June 3, 2020 the American Civil Liberties Union of Northern California submitted a letter to the Alameda County Sheriff and Board of Supervisors, stating that the Order was “neither authorized by state statutory law nor consistent with the freedoms guaranteed by the United States and California Constitutions” and disparately impacted working people and other groups; and

WHEREAS, following the June curfew and anticipation of the possibility of prospective curfews, the Berkeley City Council passed legislation directing the City Manager and City Attorney to provide Council with possible amendments to the Berkeley Municipal Code and/or policies to clarify and codify policies, procedures, scope etc. with respect to declaring Local Emergencies, including pandemics, to protect civil liberties, protect vulnerable populations and to provide adequate civilian oversight; and

WHEREAS, the State’s Orders, if enforced vigorously, could disproportionately impact low-income people, unhoused people, and people of color, and have the potential to increase the frequency of interactions between law enforcement and marginalized and vulnerable communities; and

WHEREAS, across the Bay Area, certain law enforcement leaders, including police chiefs and sheriffs, have stated they do not intend to indiscriminately and unconstitutionally stop people encountered away from home merely on suspicion of violating curfew orders, with Santa Rosa Police Chief Ray Navarro stating, “We’re not going to use the curfew as probable cause to stop anybody. We’re busy enough as it is;”<sup>3</sup> and

WHEREAS, the Berkeley City Manager and Police Chief have expressed their intention during past orders and curfew to implement the orders on a voluntary basis to the greatest extent possible.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City law enforcement personnel will not pull over drivers, or bicyclists, or stop pedestrians solely for suspicion of violating curfew under terms of the State’s November 19, 2020 Limited Stay At Home Order, or the State’s December 3, 2020 Regional Stay at Home Order, and the City will not dispatch officers for these purposes unless there is suspected criminal behavior or impact to public safety.

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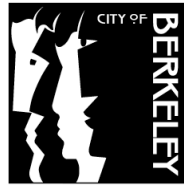
<sup>3</sup> Will Schmitt, “Sonoma County law enforcement not patrolling for COVID-19 curfew breakers,” The Press Democrat, November 20, 2020, <https://www.pressdemocrat.com/article/news/sonoma-county-law-enforcement-not-patrolling-for-covid-19-curfew-breakers/>.



BE IT FURTHER RESOLVED callers observing alleged violations of the State's November 19, 2020 Limited Stay At Home Order or the State's December 3, 2020 Regional Stay at Home Order will be advised to call 3-1-1 and be routed to the Public Health Division.



# AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, December 15, 2020  
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 Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.*

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

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81127849616>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 811 2784 9616. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*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.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

### Roll Call:

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

1. Swearing in of newly elected officials

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

**Public Comment on Non-Agenda Matters:** *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## Consent Calendar

*The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".*

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

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

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

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

## Consent Calendar

- 1. Amending Berkeley Municipal Code Chapter 11.28 – Food Establishments**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,739-N.S. amending Berkeley Municipal Code Chapter 11.28, Section 11.28.010 Statutory Provisions, Section 11.28.020 Definitions and adding Section 11.28.370 Microenterprise Home Kitchen Operation (MHKO).  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 2. Proposed Amendments to the Building Energy Saving Ordinance (BESO); Amending Berkeley Municipal Code Chapter 19.81**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,740-N.S. amending the Building Energy Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to align with building electrification goals, leverage upcoming rebates and incentives, improve transparency in real estate sales process, and develop mandatory energy requirements to be phased in.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 3. Lease Agreement: Berkeley Housing Authority at 1947 Center Street, Fifth Floor, Southwest Corner**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,741-N.S. authorizing the City Manager to execute a lease agreement with Berkeley Housing Authority to use and occupy the City property at 1947 Center Street, 5th floor Southwest Corner for a ten-year lease term with an option to extend for two additional ten-year terms.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 4. 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 and November 17, 2020.  
**Financial Implications:** See report  
Contact: Farimah Brown, City Attorney, (510) 981-6950

## Consent Calendar

- 5. 1444 Fifth Street, LLC v. City of Berkeley, Case No. RG19032434**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the settlement of the action entitled 1444 Fifth Street, LLC v. City of Berkeley, Case No. RG19032434.  
**Financial Implications:** See report  
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 6. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the council meetings of November 2, 2020 (closed), November 10, 2020 (closed and regular), November 16, 2020 (closed) and November 17, 2020 (closed and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 7. Contract: National Institute for Criminal Justice Reform to Manage and Lead a Community Engagement Process to Develop a New Paradigm of Public Safety in Berkeley**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the National Institute for Criminal Justice Reform in an amount not-to-exceed \$270,000 for the period beginning January 1, 2021 and ending June 30, 2022.  
**Financial Implications:** See report  
Contact: Dave White, City Manager's Office, (510) 981-7000
- 8. Contract No. 31900009 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for McKinley House (2111 McKinley Avenue, Berkeley, CA 94703)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900009 with Building Opportunities for Self-Sufficiency (BOSS) through November 1, 2021, adding \$120,000 for a total contract Not to Exceed (NTE) of \$370,000, to fund Mental Health clients living at 2111 McKinley Avenue in Berkeley. This will extend the contract by one year.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

**9. Contract No. 32000232 Amendment: Worldwide Travel Staffing for Nurse Registry Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000232 with Worldwide Travel Staffing for nurse registry services. The total not to exceed limit will be \$1,272,580 and the contract end date will be extended to June 30, 2025. The contract will serve the needs of the Health, Housing and Community Services Department, providing fill-in nursing services as necessary at the Mental Health Clinic, Berkeley High School Health Center, COVID-19 Disease Containment Unit, the Public Health Emergency Preparedness' COVID-19 vaccine readiness planning, and the Berkeley Respite Program's nursing services.

**Financial Implications:** See report

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

**10. Revenue: Federal COVID-19 Funding from HHS CARES Act Provider Relief Fund**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to accept payments from the Health and Human Services (HHS) CARES Act Provider Relief Fund and to execute any resultant revenue agreements and amendments; which enables City Departments to conduct and implement mitigation strategies in response to COVID-19 in the estimated amount of \$181,962 for FY 2021.

**Financial Implications:** See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400, David Brannigan, Fire, (510) 981-3473

**11. Kovarus, LLC: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to increase spending authority with Kovarus LLC ("Kovarus") for the purchase of Varonis software licenses, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) for an amount not-to-exceed \$165,000, and the period beginning December 16, 2020 through June 30, 2021.

**Financial Implications:** Cost Allocation Fund - \$165,000

Contact: Savita Chaudhary, Information Technology, (510) 981-6500

## Consent Calendar

- 12. Donation: Friends of Berkeley Tuolumne Camp for Berkeley Tuolumne Camp Construction**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation from the Friends of Berkeley Tuolumne Camp up to the amount of \$700,000 for the Berkeley Tuolumne Camp construction.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 13. Joint Use Agreement Between the City of Berkeley and Berkeley Unified School District**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution executing a Joint Use Agreement between the City of Berkeley and the Berkeley Unified School District (BUSD) for use of BUSD playgrounds, pools and buildings and City park facilities.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 14. Recommendations for Implementing Phase 2 of the Measure T1 Infrastructure Bond Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution to implement the City Manager, Parks and Waterfront Commission, and Public Works Commission Final List of Projects for phase 2 of the Measure T1 infrastructure bond program.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700;  
Liam Garland, Public Works, (510) 981-6300
- 15. FEMA Hazard Mitigation Grant Application for Seismic Retrofit of the South Berkeley Senior Center**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application to the Federal Emergency Management Agency for funds in the amount of \$1,875,000 for the seismic retrofit of the South Berkeley Senior Center; authorizing the City Manager to accept the grant; to execute any resultant revenue agreement and amendments; authorizing an amount of \$625,000 in local matching funds; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300



## Consent Calendar

- 16. Receipt of and Funding Agreement Authorization for the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to accept \$100,914 in grant funds from the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program (Project #19RFG23) and to enter into a Funding Agreement in order to support the electrification of the City's fleet vehicles.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 17. Grant Application: COVID-19 Rapid Response Bicycle and Pedestrian Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application for up to \$52,000 to the Alameda County Transportation Commission COVID-19 Rapid Response Bicycle and Pedestrian Grant Program for the Berkeley Healthy Streets project, and accept the grant awarded, and execute any resultant agreements and amendments.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 18. Extending the Community Workforce Agreement with Building & Construction Trades Council, et al, for Construction Projects Over \$500,000**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment to the Community Workforce Agreement with the Alameda County Building & Construction Trades Council, and twenty-two labor organizations on City capital improvement projects with an estimated value in excess of \$500,000 to extend the agreement through June 30, 2023.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 19. Sole Source Contract Negotiations – Community Conservation Center, Inc. and Ecology Center, Inc.**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to continue sole source negotiations with Ecology Center, Inc. and Community Conservation Centers, Inc.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

**20. Contract: Alameda-Contra Costa County Transit District (AC Transit) for EasyPass Program 2021 to 2025**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Alameda-Contra Costa County Transit District (AC Transit) for the EasyPass bus transit pass program for City of Berkeley employees in an amount not to exceed \$774,453 for the five-year period commencing January 1, 2021 through December 31, 2025.

**Financial Implications:** Payroll Deduction Trust Fund - \$774,453

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

**21. Contract: Benefit Resource, Inc. for Third-Party Administrator of the Employee Commute Benefit Program; Contract No. 8746A Amendment: Edenred USA**

**From: City Manager**

**Recommendation:** Adopt two Resolutions authorizing the City Manager to:

1. Execute a contract and any amendments with Benefit Resource, Inc., (BRI) to provide third-party administrator services for the City of Berkeley's Employee Commute Benefit Program for an amount not to exceed \$28,974 for the period of March 1, 2021 through February 28, 2023; and

2. Amend Contract No. 8746A with the City's current third-party administrator, Edenred Commuter Benefit Solutions, a subsidiary of Edenred USA, increasing the contract amount by \$6,000 for a total amount not to exceed \$276,000, and extending the contract period three months through March 31, 2021 to ensure a seamless transition to BRI, the new third-party administrator.

**Financial Implications:** See report

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

**22. Purchase Order: TYMCO, Inc. for three Model 600X Regenerative Air Sweeper**

**From: City Manager**

**Recommendation:** Adopt a Resolution satisfying City Charter Article XI Section 67.2 requirements allowing the City to participate in Houston-Galveston Area Council contact bid procedures, and authorizing the City Manager to execute a purchase order with TYMCO, Inc. for three Model 600X Regenerative Air Sweeper in an amount not to exceed \$962,000.

**Financial Implications:** See report

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

## Consent Calendar

**23. Purchase Order: Arata Equipment Company for Eleven Side Loader Collection Trucks**

**From: City Manager**

**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell (previously NJPA) contract bid procedures, and authorizing the City Manager to execute a purchase order for eleven (11) Side Loader Collection Trucks with Arata Equipment Company in an amount not to exceed \$4,554,575.

**Financial Implications:** Equipment Replacement Fund - \$4,554,575

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

**24. Purchase Order: Owen Equipment Sales for One Vactor Combination Sewer Cleaner Truck**

**From: City Manager**

**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell (formerly NJPA) contract # 122017-FSC and authorizing the City Manager to execute a purchase order for one Vactor Combination Sewer Cleaner with Owen Equipment Sales in an amount not to exceed \$327,000.

**Financial Implications:** Various Funds - \$327,000

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

**25. Prohibition on the Resale of Used Combustion Vehicles in 2040** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

**From: Community Environmental Advisory Commission**

**Recommendation:** Review and refer to the City Attorney for finalization the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040.

*(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to refer to the City Manager for review of the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040, to the extent legally possible.)*

**Financial Implications:** See report

Contact: Viviana Garcia, Commission Secretary, (510) 981-7460

## Consent Calendar

- 26. Allocation of \$3 Million Over Two Years, FY22 and FY23, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs) From: Sugar Sweetened Beverage Product Panel of Experts**  
**Recommendation:** Adopt a Resolution allocating \$3 million from the General Fund in FY22 (July 1, 2021 through June 30, 2022) and FY23 (July 1, 2022 through June 30, 2023) that shall be invested in a grant program administered and coordinated by the Berkeley Public Health Division consistent with the SSBPPE's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the effects of SSB consumption. The total of \$3 million will be distributed in two installments of \$1.5 million per year for FY22 and FY23. In each of these years, the funds will be distributed as follows: a. Direct the City Manager to award up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding (Attachment 2 to the report). b. Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants (Attachment 3 to the report). c. Direct the City Manager to utilize 15% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data from the epidemiologist resulting from the SSBPPE funding program.  
**Financial Implications:** See report  
Contact: Dechen Tsering, Commission Secretary, (510) 981-5300
- 27. Rocky Road: Berkeley Streets at Risk and Significantly Underfunded From: Auditor**  
**Recommendation:** We recommend City Council request that the City Manager report back by June 15, 2021, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Public Works Department.  
**Financial Implications:** None  
Contact: Jenny Wong, Auditor, (510) 981-6750

## Council Consent Items

- 28. Tenth 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 Bartlett (Author), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**  
**Recommendation:**
1. Adopt a Resolution co-sponsoring the 10th Annual Martin Luther King Jr. Celebration on January 18, 2021.
  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 10th 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
- 29. Appoint Alexandria Thomas-Rodriguez to the Berkeley Housing Authority Board**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution appointing Alexandria Thomas-Rodriguez to serve as a tenant Commissioner on the Berkeley Housing Authority Board of Commissioners for a two-year term.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 30. Establishment of Reimagining Public Safety Task Force**  
**From: Mayor Arreguin (Author), Councilmember Hahn (Author), Councilmember Bartlett (Author), Councilmember Harrison (Author)**  
**Recommendation:**
1. Establish a Reimagining Public Safety Task Force, comprised of: one representative appointed by each member of the City Council and Mayor, one representative appointed by the Mental Health, Police Review and Youth Commissions, one representative appointed by the Associated Students of the University of California (ASUC), one representative appointed by the Berkeley Community Safety Coalition (BCSC), and three additional members to be appointed "At Large" by the Task Force. The Task Force will be guided by a professional consultant, and will include the participation of City Staff from the City Manager's Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 1.
  2. Appointments to the Task Force should be made by January 31, 2021, and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council's July 14, 2020, commitment to centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria: a. Active

## Council Consent Items

Members of Berkeley Community (Required of All)\*, b. Representation from Impacted Communities - Formerly incarcerated individuals, - Victims/family members of violent crime - Immigrant community, - Communities impacted by high crime, over-policing and police violence, - Individuals experiencing homelessness, - Historically marginalized populations, c. Faith-Based Community Leaders, d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice, e. Health/ Public Health Expertise, f. City of Berkeley labor/union representation, g. Law Enforcement Operation Knowledge, h. City Budget Operations/Knowledge, i. Committed to the Goals and Success of The Taskforce (Required of All)

3. The charge of the Task Force is as outlined in the July 14, 2020, City Council Omnibus Action, and should include but is not limited to: I. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety. II. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley. III. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of Reduce, Improve and Reinvest as proposed by the National Institute for Criminal Justice Reform considering, among other things: A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety. B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force. C. Limiting militarized weaponry and equipment. D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration. E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems. F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

4. Direct the City Manager to ensure that the working group of City Staff as outlined in her October 28th Off-Agenda Memo is coordinating with the Task Force. The Task Force's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY 2024-2025 budget processes to ensure that recommended changes will be achieved. The Task Force shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY 2022-23 Budget Process.

**Financial Implications:** See report

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

## Council Consent Items

- 31. Adopt a Resolution Advocating for More Effective Methods of Traffic Enforcement**  
**From: Mayor Arreguin (Author), Councilmember Droste (Author), Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution supporting the California State Legislature to enact legislation that would give municipalities greater flexibility to enforce speeding and vehicle code enforcement laws and send copies of the resolution to Governor Gavin Newsom, Senator Nancy Skinner and Assemblymember Buffy Wicks  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 32. Deferral of Remaining Permit Fees for 2009 Addison Street**  
**From: Mayor Arreguin (Author), Councilmember Wengraf (Co-Sponsor),**  
**Recommendation:** Approve the deferral of \$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater's housing project at 2009 Addison Street for a period of ten years, after which point the fees will be repaid to the City of Berkeley. Authorize the City Manager to execute a written agreement to memorialize this deferral and repayment requirements.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 33. Support the Installation of a Plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2**  
**From: Councilmember Davila (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution supporting the installation of a plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2, and refer to the City Manager to start the process.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 34. Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities**  
**From: Councilmember Davila (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

## Council Consent Items

- 35. Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*  
**From: Councilmember Harrison (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** Refer to the to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee (FITES) to continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, create a paving master plan, and consider the Public Works Commission Paving Policy, once complete. *(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council requesting that the item be referred back to the Facilities committee for further consideration and to request that Council refer the Paving Plan from the Public Works Commission to the committee when the item comes before Council in January.)*  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 36. Reserving \$2.5M in Housing Trust Funds for the Small Sites Program**  
**From: Councilmember Hahn (Author), Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution reserving \$2.5 million in Housing Trust Funds for the Small Sites Program.  
**Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- 37. The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**  
**From: Councilmember Wengraf (Author), 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 5 years of monthly delivery costs.  
**Financial Implications:** See report  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160



## Council Consent Items

- 38. Resolution: Support of S. 4571 - 2020 Census Deadline Extensions Act**  
**From: Councilmember Robinson (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution supporting S. 4571, the 2020 Census Deadline Extensions Act, which would extend the Census Bureau's statutory deadlines for delivering apportionment and redistricting data to April and July 2021, respectively.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 39. Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*  
**From: Councilmember Droste (Author), Mayor Arreguin (Author), Councilmember Robinson (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager to develop a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. Consider criteria for transitioning spaces for public vs. private outdoor use: - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors. - Consider merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the city might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider fees and potential fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers. - Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)  
*(On November 2, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council with the recommendation language as amended by the committee. The revised recommendation language includes: Refer to the City Manager to develop a program and, if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. - Consider criteria for transitioning spaces for Public vs. Private outdoor use. - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces. - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer*

## Council Consent Items

*access, parking availability, parking revenues, and all other factors. - Consider Merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the City might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider Fees and potential Fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider Protocols for transfer of private use parklets if businesses change, turn over, etc. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers.)*

**Financial Implications:** See report

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

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

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

## Action Calendar – Public Hearings

- 40. Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23** *(Continued from December 1, 2020. Item contains revised material.)*  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion select among proposed ordinance language options and take the following action:  
Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 14 and Title 23 which would:
1. Modify Minimum Residential Off-street Parking Requirements
  2. Impose Residential Parking Maximums in Transit-rich Areas
  3. Amend the Residential Preferential Parking (RPP) Permit Program
  4. Institute Transportation Demand Management (TDM) Requirements
- Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 41. Referral Response: Amendments to the Home Occupations Ordinance; Amending BMC Sub-Titles 23C, 23D, 23E, and 23F**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending the Zoning Ordinance to streamline the permitting process for Home Occupations and amending Berkeley Municipal Code Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions, Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Action Calendar

- 42. FY 2020 Year-End Results and FY 2021 First Quarter Budget Update** *(Continued from November 17, 2020. Item contains revised material.)*  
**From: City Manager**  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000
- 43. Amendment: FY 2021 Annual Appropriations Ordinance** *(Continued from November 17, 2020. Item contains revised material.)*  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending FY 2021 Annual Appropriations Ordinance No. 7,724 - N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments since July 1, 2020 in the amount of \$184,267,388 (gross) and \$179,848,051 (net).  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

## Action Calendar

- 44. Support Loan Forgiveness to Berkeley Youth Alternatives**  
**From: Councilmember Davila (Author)**  
**Recommendation:** Adopt a Resolution supporting the forgiveness of the City's \$100,000 loan to Berkeley Youth Alternatives (BYA), and direct the City Manager or her designee to process the loan forgiveness to BYA and release the deed of trust.  
**Financial Implications:** \$100,000  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 45. Amendments to Berkeley Police Department Policy 300, Use of Force**  
**From: City Manager**  
**Recommendation:**  
A) Adopt the proposed amendments to Policy 300 as proposed by the City Manager, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Department's recommendation for section 300.1.2;  
-OR-  
B) Adopt the proposed amendments to Policy 300 as proposed by the Police Review Commission, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Police Review Commission's recommendation for Sections 300.1.2 and 300.1.3.  
**Financial Implications:** See report  
Contact: Andrew Greenwood, Police, (510) 981-5900

## Public Comment – Items Not Listed on the Agenda

### Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply:*

1) *No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred.*

2) *In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

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

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

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service 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 posted on the City's website at <http://www.cityofberkeley.info>.

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

**COMMUNICATION ACCESS INFORMATION:**

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



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

~~~~~  
I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on December 3, 2020.

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 through [Records Online](#).

Item #27: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded

1. Steve Kromer

Item #34: Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities

2. Sabrina Ashjian, on behalf of the California Humane Society

Item #37: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

3. Seena Hawley, on behalf of The Berkeley Baby Book Project

Berkeley Firefighters Staffing

4. Colin Arnold, on behalf of the Berkeley Firefighters Association

COVID-19 Concerns

5. Vivian Warkentin
6. Steven Schuyler
7. Nathan Francis

Needle Disposal Boxes

8. Maxina Ventura
9. 11 form-letters

Pickleball Courts

10. Elaine
11. Matt Ruby
12. Neil Collier
13. Christy Shepard
14. Fran Wickner
15. Lisa Vogel
16. Mike Hines
17. Gillie Tillson
18. Carmen Figueras
19. Kirk McCarthy
20. Carol Maga
21. Sean O'Doherty
22. Nancy Kaspar
23. Pat Kaspar
24. Nancy Ellis
25. Tess Eisley
26. Soleil Taylor
27. Frank Gilbert
28. Duston Richards
29. David Johnson
30. Holly Coates-Bash
31. Phyllis Mace
32. Chip Wasson
33. R'Sue Caron
34. Paul Kramer
35. Mary Reed Johnson
36. Gina Rieger
37. Naomi Torres
38. Shasta Phillips
39. Gregory Becker
40. Rosie Cohan
41. Jan Stafford
42. Monica Rohrer
43. Catherine Cassel
44. Nancy Cosentino
45. Dana Tillson

Gun Violence

46. Moni Law

Racial Disparities and Curfews

- 47. Racial and Criminal Justice Reform Group (2)
- 48. Sheila Jordan
- 49. Moni Law
- 50. Mansour Id-Dean
- 51. Janice Schroeder
- 52. Jane Martin

Pool Problems

- 53. Cris Barrere

Berkeley's Financial Status per State Auditor

- 54. Barbara Gilbert

African American Holistic Resource Center

- 55. Dr. M. Angelica Garcia, President, Berkeley City College

Kayla Moore

- 56. Gemma Medlam-Cooke

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. 7,739-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 11.28 FOOD ESTABLISHMENTS TO UPDATE SECTION 11.28.010 STATUTORY PROVISIONS, SECTION 11.28.020 DEFINITIONS AND ADDING SECTION 11.28.370 MICROENTERPRISE HOME KITCHEN OPERATION (MHKO)

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

Section 1. That Section 11.28.010 of the Berkeley Municipal Code is amended to read as follows:

Section 11.28.010 Statutory provisions adopted.

The California Health and Safety Code, Division 104. Environmental Health, Part 7. California Retail Food Code as amended from time to time, is adopted as part of this title.

Section 2. That Section 11.28.020 of the Berkeley Municipal Code is amended to read as follows:

Section 11.28.020 Definitions.

A. "Boardinghouse" means any building or structure occupied or intended, arranged or designed for occupation by five or more guests where rooms and meals are provided for compensation. The term "boardinghouse" includes "fraternity," "sorority," "guesthouse," "residence club," "lodge," and any of its variants.

B. "Cottage Food Operation" means that as defined in the California Retail Food Code (CalCode)

C. "Employee" means any person working in an operation covered by this chapter who engages, with or without pay, in the dispensing, processing or other preparation or handling of food and beverages or in the cleaning of equipment and utensils used therein.

D. "Food establishment" means any restaurant, vehicle, itinerant restaurant, mobile food-preparation unit, vending machine, bakery, food processing establishment, delicatessen, grocery, confectionery, meat market or plant, meat jobber, food jobber, microenterprise home kitchen, cottage food operation, and any other establishment or place, or portion thereof, maintained, used or operated for the purpose of commercially storing, packaging, displaying, making, cooking, baking, mixing, processing, bottling, canning, slaughtering or otherwise preparing or handling food or beverage.

E. "Food or beverage" includes all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof for human consumption. The term "food or beverage" includes ice.

F. "Imminent health hazard" means any condition in a food establishment that can cause food infection, food intoxication, or disease transmission, including, but not limited to improper temperature controls, sewage contamination, and employees that are carriers of communicable diseases.

G. "Meat" means and shall be construed to include all sorts of meats or meat food products kept or exposed for sale for human food, such as the flesh of any cattle, hogs,

sheep, swine, goats, poultry or rabbits, or any other animal, poultry, fish or shellfish, except horsemeat.

H. "Mechanical refrigeration" means a unit which extracts heat from an area by means of liquification and evaporation of a fluid by means of compressor or flame, or by means of a thermoelectric device. Acceptable mechanical refrigeration shall also include cold plates.

I. "Microenterprise Home Kitchen Operation" means that as defined by the CalCode.

J. "Potentially hazardous food" means food or beverage which is capable of supporting rapid and progressive growth of pathogenic microorganisms which can cause food infections or intoxications, or which is otherwise subject to spoilage by reason of lack of refrigeration. "Potentially hazardous food" shall include but not be limited to custard- and cream-filled pastries; prepared salads with dressing; sandwiches using mayonnaise, salad or butter dressings; precooked meat, not hermetically sealed; fresh meats, dairy products; and all processed and packaged food and beverage labeled "frozen" or whose label indicates that the product must be kept under refrigeration.

K. "Process" means and includes the manufacture, preparation, storing, packaging, packing, making, cooking, mixing, processing, compounding, portioning, bottling, canning, slaughtering, or any similar activity related to the preparing or handling of food.

Section 3. That Section 11.28.370 is added to the Berkeley Municipal Code to read as follows:

Section 11.28.370 Microenterprise Home Kitchen Operation (MHKO)

A. Definitions: The definitions set forth in the California Health and Safety Code are incorporated by reference in this ordinance. The following terms are consistent with California Health and Safety Code Section 113825 and shall have the following meanings:

1. "Enforcement Agency" means the Environmental Health Division (EHD) of the Health, Housing, and Community Services Department (the Department).
2. "Microenterprise Home Kitchen Operator" means the Resident of a Private Home that is responsible for operation and permit.
3. "Resident of a Private Home" means an individual who primarily resides in that private home.

B. Restrictions and conditions:

1. Commercial retail food establishment equipment not intended for use in a residence must first be approved by the City of Berkeley Fire Marshall.
2. As specified in the California Retail Food Code regarding MHKOs, the number of meals served per day may be restricted based on the safe food storage and holding capacity of food ingredients that are to be prepared and served the same day.
3. EHD may request the assistance of a Berkeley Fire Department (BFD) Fire Inspector and conduct a re-inspection according to CalCode section 114367.3(3) should the enforcement officer suspect a fire hazard exists.

C. Nuisances: Nuisances shall be abated according to BMC 1.24 and 1.26. In addition to the procedures outlined in BMC 1.24 and 1.26, failure to abate a nuisance may result in the suspension and/or revocation of the MHKO Operating Permit. In addition to any nuisance defined elsewhere in City ordinances or State laws, it shall be deemed a nuisance for a MHKO to:

1. Directly, or through customers and/or third-party delivery services, cause blockage and/or congestion on City thruways such that the duties of City agencies are impeded, including but not limited to maintenance, solid waste, and street sweeping, or that which results in repeated neighbor complaints by multiple neighbors, including parking congestion.

2. Store greases in such a manner as to be considered a fire hazard whether indoors or outdoors, or that which attracts vermin.

3. Dispose of greases into the municipal sewer system through a residential drain or toilet.

4. Cause a visible build-up of greases inside residential ventilation hoods and shafts, on walls, ceilings, rooftops, and/or other surfaces such that it may constitute a fire hazard or attract vermin.

5. Create nuisance smoke, odors, or noises in common areas, e.g. hallways, shared gathering areas, etc. such that multiple neighbors file complaints.

6. Operating an outdoor wood-burning oven or BBQ in a manner that may constitute a hazard, or that which creates nuisance smoke or odors to a neighboring residence.

7. Storing of refuse in an unsanitary manner or that which attracts vermin. Any refuse generated beyond the capacity of residential waste pickup shall be taken to a waste transfer facility or landfill by the MHKO Operator.

D. Permit

1. No person shall operate MHKO without holding a valid operating permit issued by the Department. Application for a permit shall be made upon a form issued by the EHD and shall be accompanied by any fees established.

2. No person shall operate a MHKO without holding a valid business license per Berkeley Municipal Code 9.04.

E. Inspections

1. The EHD shall inspect a MHKO upon the initial application, on an annual basis, due to a consumer complaint, or if there is reason to suspect that unsafe food has been produced. An inspection form provided by the EHD shall be used for all inspections. An inspection will be conducted after advanced notice is given to the Resident of a Private Home and will include Permitted Areas and vehicles used for transporting food to or from a MHKO.

2. The EHD may seek cost recovery at the current EHD hourly rate with a minimum of two hours, if additional inspections or complaint investigations are required to ensure compliance with this ordinance and/or the California Retail Food Code.

The EHD may request the assistance of the BFD to assess any conditions suspected to be a fire hazard. Such inspections shall be considered an emergency inspection as defined in the California retail Food Code with regard to MHKO inspections. BFD may seek cost recovery for such inspections.

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 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 1, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

ORDINANCE NO. 7,740-N.S.

AMENDMENTS TO BERKELEY MUNICIPAL CODE CHAPTER 19.81 TO UPDATE
THE BUILDING ENERGY SAVING ORDINANCE (BESO)

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

Section 1. That Berkeley Municipal Code Chapter 19.81 is amended to read as follows:

Chapter 19.81
BUILDING EMISSIONS SAVING

Sections:

- 19.81.010 Purpose.
- 19.81.020 Applicability.
- 19.81.030 Definitions.
- 19.81.040 Large Buildings.
- 19.81.050 Medium and Small Buildings.
- 19.81.060 Single Family Buildings
- 19.81.070 Reserved.
- 19.81.080 Incentives.
- 19.81.090 Exceptions, Deferrals and Extensions.
- 19.81.100 Responsibilities.
- 19.81.110 Administration and Enforcement.
- 19.81.120 Fees.
- 19.81.130 Enforcement.
- 19.81.140 Violation--Penalty.
- 19.81.150 Reserved.
- 19.81.160 Severability.
- 19.81.170 Reserved.

19.81.010 Purpose.

The purpose of this chapter is to reduce energy use, water consumption, and greenhouse gas emissions in existing buildings. These efficiency and emission reduction improvements will lower energy and water costs, transition buildings away from the use of fossil fuels, and increase comfort, safety and health for building occupants. The provisions of the ordinance will inform decision makers about energy and emissions performance and improvement opportunities.

19.81.020 Applicability.

The requirements of this Chapter shall apply to all buildings that are located in whole or in part within the City. However, it shall not apply to agencies that are not subject to City authority.

19.81.030 Definitions.

A. "Administrator" means the Director of Planning and Development or their designee.

B. "Building Owner" means the owner of record of a building. In the case of a building held in cooperative or condominium form of ownership, the term "Building Owner" shall refer to the board of managers, board of directors, homeowners association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations.

C. "Building Energy Score" means a measurement of how efficiently a building uses energy and/or water based on modeled simulations or actual energy use of the building over time compared to similar buildings, which can be in the form of a performance score, asset score or other comparable metric that meets standards and formats established by the Administrator.

D. "Electrification" means the transition of building systems and appliances away from natural gas to electricity as the source of energy.

E. "Energy Report" means a report submitted by a Registered Service Provider that identifies existing conditions, opportunities for water and energy efficiency in a building, opportunities to transition off fossil fuels, greenhouse gas emissions reductions, and available incentives and financing, as well as any applicable Building Energy Score, in accordance with the standards and formats established by the Administrator.

F. "ENERGY STAR Performance Report" means an ENERGY STAR Portfolio Manager Benchmark report generated by the on-line tool developed by the U.S. Environmental Protection Agency that determines energy use intensity and an Energy Star Performance Score for a building based on utility usage data.

G. "Energy Upgrade" means the installation or completion of recommended measure(s) that improve the building's energy efficiency, increases the building's resilience, supports the transition off fossil fuels, or decreases the building's greenhouse gas emissions.

H. "Extensive Renovation" means any project that replaces all building space heating, cooling, and ventilation equipment and replaces at least half of the building envelope, in accordance to standards established by the Administrator.

I. "Green Building Rating" means an approved rating by a green building verification system consistent with standards identified by the Energy Efficiency Standardization Coordination Collaborative (EESCC) of the American National Standards Institute (ANSI), including, but not limited to the following: Build It Green (BIG) GreenPoint Rated Existing Building; US Green Building Council Leadership in Energy and Environmental Design Existing Building Operation and Maintenance (USGBC LEED-EBOM); Passive House Institute (PHI) Certified Passive House and EnerPHit; Passive House Institute US (PHIUS) PHIUS+ Certified Project; and the International Living Future Institute Zero Net Energy Building and Living Building Challenge Certification; or any other rating demonstrating approved levels of energy efficiency, as determined by the Administrator.

J. "Gross Floor Area" means the total size, as measured between the principal exterior surfaces of the enclosed fixed walls of the building(s). This includes all areas inside the building(s) such as: occupied tenant areas, common areas, meeting areas, break rooms, restrooms, elevator shafts, mechanical equipment areas, and storage rooms. Gross Floor Area should not include interstitial plenum space between floors, which may house pipes and ventilation.

K. "Large Building" means any building with 25,000 square feet or more of Gross Floor Area.

L. "Medium Building" means any building with between 15,000 and 24,999 square feet of Gross Floor Area, excluding Single Family Buildings.

M. "Real Estate Listing" means any listing of a building for sale in the City of Berkeley. "Real Estate Listings" include listing a building for sale by a property owner or by a licensed agent. "Real Estate Listings" include any listing for sale by any advertisement, internet posting, or publicly displayed sign.

N. "Registered Service Provider" means an entity that has been registered by the Administrator to provide an Energy Report and/or Building Energy Score as required by this ordinance.

O. "Sale" means the conveyance of title to real property as a result of the execution of a real property sales contract as defined in Section 2985 of the California Civil Code as well as any change of ownership described in subdivision (c) of Section 61 and subdivision (c) of Section 64 of the California Revenue and Taxation Code. "Sale" does not include transfer of title pursuant to inheritance, involuntary transfer of title resulting from default on an obligation secured by real property, change of title pursuant to marriage or divorce, condemnation, or any other involuntary change of title affected by operation of law.

P. "Single Family Building" means any building comprised solely of 1 to 4 residential units, regardless of size.

Q. "Small Building" means any building with less than 15,000 square feet of Gross Floor Area, excluding Single Family Buildings.

19.81.040 Large Buildings.

A. Annual ENERGY STAR Performance Report

Owners of Large Buildings shall submit to the Administrator an ENERGY STAR Performance Report on an annual basis in accordance with the phase-in schedule below and no later than July 1 each year thereafter.

B. Energy Report

Owners of Large Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report as specified in the phase-in schedule below and by July 1 every five years thereafter.

C. Disclosure

The most recent ENERGY STAR Performance Report and a summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and to prospective lessees and buyers prior to execution of a lease or contract for sale.

D. Phase-in and Reporting Cycle Schedule

Owners of Large Buildings shall be in compliance with the requirements of this section by the dates specified below.

1. July 1, 2018 for buildings with 50,000 or more square feet of Gross Floor Area, with an annual ENERGY STAR Performance Reporting cycle and a 5 year Energy Report reporting cycle thereafter.
2. July 1, 2019 for buildings with 25,000 or more square feet of Gross Floor Area with an annual ENERGY STAR Performance Reporting cycle and a 5 year Energy Report reporting cycle thereafter.

E. Evaluate and Recommend Energy Upgrades Requirements

The Administrator of this Chapter shall develop recommendations for Energy Upgrade requirements for Large Buildings based on building performance that are consistent with requirements of State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy Upgrade requirements. The Administrator shall then report the proposed Energy Upgrade requirements for Large Buildings to the City Council for consideration.

19.81.050 Medium and Small Buildings.

A. Annual ENERGY STAR Performance Report

Owners of Medium Buildings shall submit to the Administrator an ENERGY STAR Performance Report on an annual basis as of July, 1 2021, and no later than July 1 each year thereafter.

B. Energy Report

Owners of Medium and Small Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report:

1. Prior to the Real Estate Listing of the building for Sale; or
2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

The requirement at time of Real Estate Listing may be transferred to the buyer and deferred for 6 months under the provisions of Section 19.81.090.B of this Chapter.

C. Disclosure

All compliance documentation, including the most recent ENERGY STAR Performance Report, if applicable, a deferral or a summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and prospective lessees, to all licensed real estate agents working on the seller's behalf, and to prospective buyers who visit the building while it is listed publicly for sale.

D. Evaluate and Recommend Energy Upgrades Requirements

The Administrator of this Chapter shall develop recommendations for Energy Upgrade requirements for Small and Medium Buildings based on building performance that are consistent with State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy Upgrade requirements. The Administrator shall then report the proposed Energy Upgrade requirements for Small and Medium Buildings to the City Council for consideration.

19.81.060 Single Family Buildings

A. Energy Report

Owners of Single Family Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report:

1. Prior to the Real Estate Listing of the building for Sale; or
2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

The requirement at time of Real Estate Listing may be transferred to the buyer and deferred for 6 months under the provisions of Section 19.81.090.B of this Chapter.

B. Disclosure

All compliance documentation, including a deferral or a summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and prospective lessees, to all licensed real estate agents working on the seller's behalf, and to prospective buyers who visit the building while it is listed for sale.

C. Reporting Schedule

The requirements of this Section of the ordinance shall become effective December 1,

2015.

D. Evaluate and Recommend Energy Upgrades Requirements

The Administrator of this Chapter shall develop recommendations for Energy Upgrade requirements for Single Family Buildings based on building performance that are consistent with requirements of State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy Upgrade requirements. The Administrator shall then report the proposed Energy Upgrade requirements for Single Family Buildings to the City Council for consideration.

19.81.070 Reserved.

19.81.080 Incentives.

The Administrator may establish rules and regulations to encourage participation in local, regional and statewide incentive programs and to otherwise incent property owners to pursue early compliance and/or achieve a high performance exemption.

19.81.090 Exceptions, Deferrals and Extensions.

A. High Performance Exemption. Exemptions from the Energy Report requirements for current reporting periods may be granted for buildings that demonstrate effective and reasonably achievable level of efficiency, electrification of building systems and appliances, and/or emissions reduction, based on the specific building type, use, vintage, and condition, that supports Berkeley's commitment to become a Fossil Fuel Free City and the Berkeley Climate Action Plan (CAP) goal of 33% energy-related greenhouse gas reduction from 2000 levels by 2020 and 80% reduction by 2050. Qualified exemptions shall include, but are not limited to:

1. Any building that receives a Building Energy Score or Green Building Rating that demonstrates an effective and reasonable level of efficiency, as determined by the Administrator.
2. Any building that completes a multi-measure energy improvement project with a verified minimum improvement, as determined by Administrator.
3. Any whole building that has been served by an income-qualified Weatherization Assistance program for low-income households.
4. Any new building or Extensive Renovation with a construction completion date within ten years of the reporting deadline.
5. Any building that has electrified all building systems and appliances.

B. Deferral at Time of Real Estate Listing. The requirements for compliance prior to the Real Estate Listing of a building may be deferred from the seller to the buyer, and any subsequent buyers, for a period of 6 months after the original sale date. A request to defer

responsibility to the buyer must be submitted to the administrator prior to the listing of the building. The deferral shall include information on the fuel source for each end use in the building and any current or future electrification requirements and incentives.

C. Distressed Sale Extension. A 6-month extension may be granted to a buyer of a building purchased from a lender following default or transfer by deed in lieu of foreclosure.

D. Hardship Deferral. The requirement for an ENERGY STAR Performance Report and the requirement for an Energy Report may be deferred for up to one reporting cycle in cases of financial hardship where one of the following is provided by the Building Owner and approved by the Administrator:

1. Proof of participation in an energy assistance income qualified program, administered through the State of California or the local energy utility.
2. Proof of approved participation in Property Tax Postponement or Property Tax Assistance for Senior Citizens, Blind or Disabled, or equivalent program as determined by Administrator.
3. Proof that the property qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes, within two years prior to the due date of the Energy Report.
4. Proof that a court appointed receiver is in control of the asset due to financial distress.
5. Proof that the senior mortgage is subject to a notice of default.
6. Proof that the responsible party is otherwise not able to meet the obligations of this Chapter.

Deferrals under this Section are granted to the Building Owner and are not transferrable with a building Sale, at which time compliance with this Chapter shall be required.

E. Data Unavailable. An exemption from ENERGY STAR Performance Report requirement for any current reporting period may be granted if:

1. The Building Owner demonstrates to the Administrator that they have been unable to obtain tenant authorization to obtain tenant utility data, despite a good faith effort to obtain such consent, or
2. The building occupant demonstrates to the Administrator that such disclosure may result in the release of proprietary information which can be characterized as a trade secret.

3. Any person subject to the requirements of this Chapter demonstrates to the Administrator that submission of an ENERGY STAR Performance Report would conflict with the requirements of State or Federal law

F. Deferral for Planned Demolition or Extensive Renovation. The requirements of this Chapter may be deferred for 24 months if the owner or buyer has obtained a Building Permit, Demolition Permit, or Permit under the Zoning Ordinance that includes demolition or Extensive Renovation of the subject building.

Deferrals under this Section are granted to the Building Owner and are not transferrable with a building Sale, at which time compliance with this Chapter shall be required.

G. Exemption for Sale of a Condominium. The requirements to submit an Energy Report with an Energy Benchmark to the Administrator shall not apply to any sale of a residential or commercial condominium that is a unit within a building and not a detached structure.

H. Low Energy Use Deferral. Buildings with low energy use based on energy billing data comparing a building to similar efficient buildings or because of operations specific to their building use, such as institutions that operate less than three days a week, may be granted a Low Energy Use deferral for the current compliance cycle.

Deferrals under this Section are granted to the Building Owner and are not transferrable with a building Sale, at which time compliance with this Chapter shall be required.

I. Exemption for Long-Term Tenancy under Rent Control. The requirements of this Chapter for any building which is subject to rent control in which all of the units, excluding any owner-occupied units, have leases that date prior to January 1, 1999 may be deferred until the next reporting period.

J. Unconditioned Floor Area Reclassification. The size classification of a building may be reduced by the Administrator to exclude physically separated floor area that is not served by heating, ventilation or cooling equipment.

K. Exemption based on building size. Buildings 600 square feet or a higher size threshold, as determined by the Administrator, are exempt from the requirements of this Chapter.

19.81.100 Responsibilities.

A. It shall be the responsibility of sellers, buyers, owners, real estate agents and brokers, property managers, title companies, non-residential tenants, Registered Service Providers and energy service providers to comply with the requirements of this Chapter.

B. The seller of any real property and the licensed real estate agent or broker handling a sale of real property shall be jointly responsible for disclosing to the prospective buyer the compliance status of the real property in question. (Ord. 7397-NS § 5 (part), 2015)

19.81.110 Administration and Enforcement.

The Administrator may adopt reasonable rules and regulations implementing the provisions and intent of this Chapter before the operative date of this Chapter and may amend these rules and regulations as needed. All rules and regulations adopted by the Administrator shall be posted on the City of Berkeley website.

19.81.120 Fees.

The City Council may set fees, by resolution, for the administration of this Chapter.

19.81.130 Enforcement.

The Administrator may issue a written Notice of Violation to any building owner determined to be in violation of any provision of this Chapter. In the event a building owner fails to file an ENERGY STAR Performance Report within 30 days after the scheduled deadline or an Energy Report within 90 days after the scheduled deadline, the Administrator shall indicate the building's compliance status via the publicly accessible electronic reporting interface.

19.81.140 Violation--Penalty.

Violations of this Chapter, if charged pursuant to Chapter 1.20, shall be charged as infractions. Violations of this Chapter are also punishable pursuant to Chapter 1.28.

19.81.150 Reserved.

19.81.160 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

19.81.170 Reserved.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 1, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

ORDINANCE NO. 7,741-N.S.

LEASE AGREEMENT: BERKELEY HOUSING AUTHORITY FOR OFFICE AND PROGRAM SPACE TO ADMINISTER SUBSIDIZED HOUSING PROGRAMS LOCATED AT 1947 CENTER STREET, FIFTH FLOOR, SOUTHWEST CORNER

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

Section 1. FINDINGS:

Berkeley Housing Authority (BHA) desires to relocate to the southwest corner offices on the fifth floor of 1947 Center Street, also known as the Civic Center Annex Office Building. The building is owned by the City of Berkeley and houses the administrative and programmatic office of several City Departments. The southwest corner offices on the fifth floor have been unoccupied for approximately three years. BHA wishes to lease the Premises for the purpose of operating offices and program spaces needed to administer various HUD-subsidized rental housing programs including the Section 8 Housing Choice Voucher Program, the Project-based Section 8 Program, the Moderate Rehabilitation Program, Mainstream Vouchers, VASH Vouchers, and other housing programs. The Tenant shall also use the leased Premises in conducting business for its non-profit affiliate.

Revenue will be deposited into the Building Purchases and Management Fund 636.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 1947 CENTER STREET, FIFTH FLOOR, SOUTHWEST CORNER.

The City Manager is hereby authorized to enter into a ten (10)-year lease agreement with the option for a two additional ten (10)-year extension with Berkeley Housing Authority for real property located at 1947 Center Street, fifth floor. Such lease shall be on substantially the terms set forth in Exhibit A.

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

At a regular meeting of the Council of the City of Berkeley held on December 1, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

1947 CENTER STREET LEASE

This lease is made on January 1, 2021, between the CITY OF BERKELEY ("Landlord"), a Charter City organized and existing under the laws of the State of California and BERKELEY HOUSING AUTHORITY ("Tenant"), who agree as follows:

This lease is made with reference to the following facts and objectives:

A. Landlord is the owner of the real property consisting of 2,213 square feet of office space plus 1,414 square feet of common area for a total of 3,627 square feet on the fifth (5th) floor of the Civic Center Annex Building located at 1947 Center Street, Berkeley, California, 94704 ("**Premises**"). Office space includes 13 private offices, a medium sized conference room, reception/mailroom, and a storage room. Common area includes nonexclusive use of one extra-large conference room (room 545 is 570 square feet), kitchenette (room 503), restrooms, hallways and the elevator lobby as depicted in Exhibit "A", attached hereto and made a part hereof. Tenant agrees to accept space in "as is" condition.

B. Tenant is willing to lease the Premises from Landlord pursuant to the provisions stated in this lease.

C. Tenant wishes to lease the Premises for the purpose of operating offices and program spaces needed to administer various HUD-subsidized rental housing programs including the Section 8 Housing Choice Voucher Program, the Project-based Section 8 Program, the Moderate Rehabilitation Program, Mainstream Vouchers, VASH Vouchers, and other housing programs. The Tenant shall also use the leased Premises in conducting business for its non-profit affiliate.

D. Tenant has examined the Premises and is fully informed of the condition thereof.

1. DESCRIPTION OF PREMISES

Landlord leases to Tenant and Tenant leases from Landlord the Premises described above.

2. TERM

The term of this lease shall be ten (10) years, with two (2) ten (10) year options to extend. The effective commencement date shall be on January 1, 2021, and expire at the end of one hundred and twenty (120) months. Landlord will grant limited access to Tenant beginning November 1, 2020 to facilitate improvements and other preparation of space prior to December 15, 2020 move in date. Landlord and Tenant agree to sign and date Exhibit B, attached hereto and acknowledge the Lease Commencement Date, Rent Commencement Date, and Expiration Date of the lease.

3. RENT

Tenant shall pay to Landlord \$3.00 per square foot per month rental rate, without deduction, setoff, prior notice, or demand, for Year 1 and 2 in advance on the first day of each month, commencing on the date the term commences, and continuing during the term. Beginning Year 3, the per square foot rate will increase 2.0% annually. Rent payments for Years 1 through 10 are depicted in Exhibit "C" attached hereto and made a part hereof. Monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. All rent shall be paid to Landlord at the address to which notices to Landlord are given or other method as instructed by Landlord.

4. PERIODIC RENT INCREASES

The monthly rent shall be increased at the commencement of the third year of the term and each year thereafter ("the adjustment date") to the monthly rent in effect immediately preceding the adjustment date plus three percent (2%).

5. SECURITY DEPOSIT

a. 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 cash in an amount equal to two month's payment of rent representing first and last month's rent. Such security of \$21,762.00 shall be deposited on or before the effective date of the Ordinance authorizing this lease.

b. Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant, or to clean the Premises.

c. 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.

d. 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; however, if Landlord has evidence that the security deposit has been assigned to an assignee of the Tenant, Landlord shall return the security deposit to the assignee. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it.

Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord shall return the security deposit no later than thirty (30) days after the Landlord receives possession of the premises.

6. LATE CHARGES

Tenant acknowledges that late payment by Tenant to Landlord 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 to ascertain. Therefore, if any installment of rent or any other sum due from Tenant is not received by Landlord within ten (10) days after such amount is due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to it.

7. USE OF PREMISES; OPERATION

a. Tenant will use the Premises for the purpose of operating offices and program spaces needed to administer subsidized rental housing in the City of Berkeley. Tenant shall also use the Premises in conducting business for its non-profit affiliate. Tenant shall not use nor permit the use of the whole or any part of the Premises for any other purpose without the Landlord's prior written consent.

b. Business may be conducted with the public on the leased Premises at any time on any day, provided that, i) hours of operation are the same or within the same hours of operation of 1947 Center Street; ii) hours of operation have been approved by the Director of Public Work or his/her designee; and iii) Tenant shall have obtained any permit required by federal, state, County, or the City of Berkeley law in accordance with the Berkeley Municipal Code.

c. All Tenant employees must wear a company I.D. and be issued an access card approved by the Executive Director of Berkeley Housing Authority and by the City of Berkeley. The first badge for each employee is included in the cost of rent. Replacement badges may require a fee be paid by Berkeley Housing Authority.

d. Tenant agrees to abide by all "Rules and Regulations," the current version of which is attached hereto as Exhibit D, as they may be amended by the City from time to time.

8. TAXES AND ASSESSMENTS

a. Tenant recognizes and understands that this lease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will

be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.

b. Tenant shall pay all taxes on its personal property, fixtures and on its leasehold or possessory interest in the leased Premises and any other assessment that may be lawfully levied.

9. UTILITIES

a. Tenants located on floors basement, one (1), two (2), three (3) and four (4) agree to pay any and all charges for electricity, gas, heat, cooling, sewer use, water, refuse collection and other utilities and common area maintenance (CAM) charges used in the premises proportionate to occupants' space occupation and use of common areas. For utilities paid directly to the Landlord, Landlord shall adjust that rate to reflect the actual costs during the preceding year.

b. Costs associated with staff and/or business related telephone and computers administered by City of Berkeley IT Department are the sole responsibility of the Tenant.

c. Tenants located on floors five (5) and six (6), all utility charges (security, janitorial service, electricity, gas, heat, cooling, sewer use, water, refuse collection and common area maintenance (CAM) charges) are included in the per square foot lease rate.

d. The City continually monitors utility use and reserves the right to investigate unprecedented increases in use and/or cost and may require an additional payment from one or all tenants if necessary.

10. MAINTENANCE AND REPAIR

a. Tenant is responsible for ensuring that the Premises meet all applicable City of Berkeley codes prior to occupancy under this lease.

b. Tenant shall keep and maintain in good order, condition and repair (except for reasonable wear and tear) all portions of the Premises including without limitation, all fixtures, interior walls, floors, ceilings, plumbing, glass, roof, heating, ventilating and sewage facilities serving the leased Premises, landscaping, and the sidewalk adjacent to the Premises.

c. Tenant shall make all required repairs upon demand by Landlord. Failure to make such repairs within thirty (30) days of the Landlord's demand shall constitute a default by Tenant.

11. IMPROVEMENTS

a. Tenant shall not erect additions or structures nor make nor cause to be made

any alterations, improvements, additions, or fixtures that affect the exterior or interior of the Premises, nor shall Tenant mark, paint, drill or in any way deface any floors, walls, ceilings, or partitions of 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.

b. Tenant shall require all contractors to provide a labor and materials bond for the full amount of the contract. 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 leased Premises and which may be secured by any mechanic's, materialmen's or other lien against the Premises or Landlord's interest therein.

c. All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the property of Landlord and remain with the Premises 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 alterations, improvements or additions Tenant has made to the Premises.

12. INDEMNIFICATION

Tenant shall indemnify, defend and hold Landlord, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the Premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, Ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990. Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from the acts or omissions of Landlord or its authorized representatives.

13. INSURANCE

a. Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000, including glass insurance and property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

b. If the insurance referred to above is written on a Claims Made Form, then following termination of this lease, coverage shall survive for a period of not less than five years.

Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

c. Tenant at its cost shall maintain on all its personal property, tenant's improvements, and alterations, in on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of tenant's improvements or alterations.

d. 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.

e. Tenant shall forward all insurance documents to: Department of Public Works, Real Property Division, 1947 Center Street, Fifth Floor, Ste. 521, Berkeley, California, 94704.

14. COMPLIANCE WITH LAW AND SAFETY

a. Tenant shall observe and comply with all applicable laws, Ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, Ordinances, codes, and regulations.

b. If a death, serious personal injury, or substantial property damage occurs in, on, or about the Premises, Tenant shall immediately notify the Landlord's Risk Management Office by telephone. If any accident occurs on the Premises, Tenant shall promptly submit a written report to Landlord, in such form as 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 contractor, if any, (3) name and address of Tenant's liability insurance carrier, and (4) a detailed description of the accident.

c. Tenant shall report all existing hazardous materials handled at the site and any hazardous wastes generated at the site to the Toxics Management Division (TMD) on an annual basis and abide by all requirements of the TMD and other state and local environmental agencies. Upon release of hazardous materials or hazardous waste at the property or adjacent to the property, Tenant shall immediately notify the City of Berkeley Toxics Management Division. If the release is significant, the Tenant must report it to the 911 and the Office of Emergency

Services. Tenant shall not store hazardous materials or hazardous waste on the Premises without a proper permit from the City.

d. To Landlord's actual knowledge, neither the common area of the Building nor the Premises have undergone inspection by a Certified Access Specialist (CASp). The foregoing disclosure does not affect Landlord's or Tenant's respective responsibilities for compliance of construction-related accessibility standards as provided under this lease. A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

15. **NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

a. If Tenant provides any aid, service or benefit to others on the City'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 City.

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 Tenant's activities must be in accordance with these laws, Ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

16. **CITY NON-DISCRIMINATION ORDINANCE**

Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Tenant agrees as follows:

a. The 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.

b. The Tenant shall permit the Landlord access to records of employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the Landlord, are necessary to monitor compliance with this non-discrimination provision, and will, in addition, fill-out in a timely fashion, forms supplied by the Landlord to monitor these non-discrimination provisions.

17. NUCLEAR FREE BERKELEY

Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

18. 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 or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this lease, the Tibet Autonomous Region and the provinces of Abo, 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 28. In the event that the City terminates this lease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this lease is terminated.

19. BERKELEY LIVING WAGE ORDINANCE

a. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend 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 (LWO). 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 property, 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 sections 27 and 28 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 property.

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 28.

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 any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated 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.

20. BERKELEY EQUAL BENEFITS ORDINANCE

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 considered a default, subject to the provisions of Sections 27 and 28 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 28.

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.

21. SANCTUARY CITY CONTRACTING 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:
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;
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:
The City's computer-network health and performance tools;
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.

22. 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 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 reasonable 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 paragraph shall be governed by the definitions and provisions use 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.

23. PESTICIDES

All use of pesticides on the Premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

24. SIGNS

Tenant shall not install or letter any signs on the Premises without the prior written consent of the Director of Public Works or his/her designee. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04 when applicable.

25. DAMAGE OR DESTRUCTION

If the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, Landlord may elect to terminate this lease or continue this lease in effect by giving notice to Tenant within thirty (30) days of the date of destruction. If Landlord elects to continue this lease in full force and effect, then Landlord shall restore the Premises and the rent shall be abated, from the date of destruction until the date restoration is completed, in an amount proportionate to the extent to which the destruction interferes with Tenant's use of the Premises. If Landlord fails to give notice of its decision to terminate or continue this lease within the period stated, Tenant may elect to terminate this lease.

Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

26. EMINENT DOMAIN

If the whole or any portion of the Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If the Premises are totally taken by condemnation, this lease shall terminate on the date of taking. If any portion of the Premises is taken by condemnation, Tenant shall have the right to either terminate this lease or to continue in possession of the remainder of the Premises under the terms of this lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. If Tenant does not terminate this lease within the thirty (30) day period, this lease shall remain in full force and effect except that the fixed rent shall be reduced in the same proportion that the square footage of the Premises taken bears to the square footage of the Premises immediately before the taking. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of business and of business installations or improvements made by Tenant in accordance with this lease.

27. DEFAULT BY TENANT

a. The occurrence of any of the following shall constitute a default by Tenant:

1. Failure to pay rent when due, if the failure continues for 10 days after notice has been given to Tenant.
2. Abandonment and vacation of the Premises (failure to occupy and operate the Premises for 14 consecutive days shall be deemed an abandonment and vacation).
3. Failure to perform any other provision of this lease if the failure to perform is not cured within 30 days after notice has been given to Tenant. If the default cannot reasonably be cured within 30 days, Tenant shall not be in default of this lease if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

b. Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Landlord so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

28. LANDLORD'S REMEDIES

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

a. Tenant's Right to Possession Not Terminated. Landlord can continue this lease in full force and effect, and the lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due. During the period Tenant is in default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises. Reletting can be for a period shorter or longer than the remaining term of this lease. Tenant shall pay to Landlord the rent due under this lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this paragraph shall terminate this lease unless Landlord notifies Tenant that Landlord elects to terminate this lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, Tenant shall have the right to assign or sublet its interest in this lease if Tenant obtains Landlord's consent, but Tenant shall not be released from liability.

If Landlord elects to relet the Premises as provided in this paragraph, rent that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than rent due from Tenant; second, all costs, including for maintenance, incurred by Landlord in reletting; third, rent due and unpaid under this lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied in payment of future rent as rent becomes due under this lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this lease, the rent received from the reletting is less than the rent due on that date, Tenant shall pay to Landlord, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

b. Termination of Tenant's Right to Possession. Landlord can terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall terminate this lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

i. The worth, at the time of award, of the unpaid rent that had been earned at the time of termination of this lease;

ii. The worth, at the time of award, of the amount by which the unpaid rent that would have been earned after the date of termination of this lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably

avoided;

iii. The worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

iv. Any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth, at the time of award," as used in i and ii of this section, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of award," as referred to in iii of this section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%.

c. Appointment of Receiver. If Tenant is in default of this lease Landlord shall have the right to have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this lease.

d. Landlord's Right to Cure. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

29. ASSIGNMENT AND SUBLETTING

Provided Tenant is current in Rent payments and is not in default of this lease, Tenant shall not voluntarily assign or encumber its interest in this lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of the Premises, without first obtaining Landlord's consent. Any assignments, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

30. ENTRY

Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times, provided Landlord gives a 24-hour prior notice to Tenant, for any of the following purposes: to determine whether the Premises are in good condition and

whether Tenant is complying with its obligations under the lease; to do any acts that may be necessary to protect Landlord's interest in the Premises; or to perform Landlord's duties under this lease. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises as provided in this section, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

31. NOTICES

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this lease and either: i) deposits it with the U.S. Postal Service, registered mail, postage prepaid; or ii) emails it to the other party followed, no later than the next business day, by depositing it with the U.S. Postal Service for delivery by regular mail. For purposes of this lease, notices shall be addressed as follows, as appropriate:

To the Landlord: City of Berkeley
Department of Public Works,
2180 Milvia Street, Third Floor
Berkeley, CA 94704

With a copy to: City of Berkeley
Real Property Division
1947 Center Street, Fifth Floor, Suite 521
Berkeley, CA 94704
Email Address: real_property@cityofberkeley.info

To the Tenant: Berkeley Housing Authority
Executive Director: (Acting) Rachel Gonzales-Levine
1947 Center Street, 5th Floor
Berkeley, CA 94704
Telephone: 510-981-5485
Email Address: rgonzales-levine@cityofberkeley.info

32. WAIVER

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by

Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

33. EXCUSABLE DELAYS

If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for one hundred and eighty (180) days and if the performance of such act is further delayed, Landlord or Tenant may terminate this lease by giving a thirty (30) day written notice to the other party. Prior to the Lease Commencement Date, and during any delay in performance as described above, Tenant shall be excused from the payment of any rent due under this Lease.

34. OPTION TO RENEW

a. Option Period. So long as Tenant is not in default under this lease, either at the time of exercise or at the time the extended term commences, Tenant will have the option to extend the initial term of this lease for up to two (2) additional ten year options to extend (the "option period") on the same terms, covenants, and conditions of this lease, except that the initial monthly rent and yearly rent increases during the option period will be determined as described below. In order to exercise this option, Tenant must give written notice of its election to do so to Landlord at least 180 days, but not more than one year, prior to the expiration date of the initial lease term. Tenant shall have no other right to extend the term beyond the option period.

b. Option Period Monthly Rent. The Monthly Rent at the commencement of the first year of each of the Option Periods and each year thereafter will be the monthly rent in effect at the end of the initial Term of this Lease plus two percent (2%).

35. HOLDING OVER

If Tenant remains in possession of the Premises with Landlord's consent after the expiration of the term of this lease without having exercised any option to renew this lease, or after the termination of any such option period, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease, except those pertaining to term, shall apply to the month-to-month tenancy.

36. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY

At the termination of this lease, Tenant shall: 1) give up and surrender the Premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Tenant during the term of this lease.

37. ESTOPPEL CERTIFICATE

Upon not less than ten days prior written notice from Landlord, Tenant shall execute and deliver to Landlord, or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the modifications and certifying that this Lease as modified is in full force and effect); (b) the amount of the minimum monthly rent then in effect, the current Operating Expense which Tenant is paying, and the date to which rent and Operating Expense have been paid in advance; (c) the amount of any security deposited with Landlord; (d) the Commencement Date, the Expiration Date of the Term, and the number and duration of option periods, if any; (e) whether or not there are then existing any defenses against the enforcement of any of the obligations of Tenant under this Lease (and, if so, specifying same); (f) whether or not Landlord is in default hereunder (and, if so, specifying same); and (g) such other matters as may be reasonably requested by Landlord. Any prospective purchaser, ground lessor, lender, or other interested party shall be entitled to rely on the truth of all of the matters contained in Tenant's statement. Failure to comply with the Section shall be a material breach of this Lease by Tenant; and in addition to all of Landlord's other rights and remedies hereunder, Landlord shall have the right to collect from Tenant all damages caused by the loss of a loan, sale, or other transaction which may result from Tenant's failure to comply with this Section 37.

38. SALE OF PREMISES

In the event of any sale of the Site, Landlord shall be and hereby is entirely freed and relieved of all further liability under any and all of its covenants and obligations contained in or derived from this Lease and the purchaser, at such sale or any subsequent sale of the Site, shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this Lease. If any Security Deposit or prepaid Rent has been paid by Tenant, Landlord will transfer the Security Deposit and prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

39. SUBORDINATION, ATTORNMENT

This Lease is and shall be subordinate to any encumbrance now of record or recorded after the date of this Lease affecting the Building, Site, other improvements, and land of

which the Premises are a part. Such subordination is effective without any further act of Tenant. If any mortgagee, trustee, or ground lessor shall elect to have this Lease and any options granted hereby prior to the lien of its mortgage, deed of trust, or ground lease, and shall give written notice thereof to Tenant, this Lease and such options shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease or such options are dated prior or subsequent to the date of said mortgage, deed of trust, or ground lease, or the date of recording thereof. In the event any proceedings are brought for foreclosure, or in the event of a sale or exchange of the real property on which the Building is located, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure and sale and recognize such purchaser as the Landlord under this Lease.

Tenant agrees to execute any documents reasonably required to effectuate an attornment or to make this Lease or any options granted herein subordinate or prior to the lien of any mortgage, deed of trust, or ground lease, as the case may be, provided the rights of Tenant are not diminished or adversely affected as a result thereof.

Landlord agrees that Tenant's obligations to subordinate under this Section 39 to any existing and future ground lease, mortgage, or deed of trust shall be conditioned upon Tenant's receipt of a non-disturbance agreement from the party requiring such subordination (which party is referred to for the purposes of this Section 39 as the "**Superior Lienor**"). Such non-disturbance agreement shall provide that Tenant's possession of the Premises shall not be interfered with following a foreclosure, provided Tenant is not in default beyond any applicable cure periods. Landlord's obligation with respect to such a non-disturbance agreement shall be limited to making a good faith effort to obtain the non-disturbance agreement in such form as the Superior Lienor generally provides in connection with its standard commercial loans, however, Tenant shall have the right to negotiate, and Landlord shall use its good faith efforts and due diligence in assisting Tenant in the negotiation of, revisions to that non-disturbance directly with the Superior Lienor. Tenant agrees to use its good faith efforts to reach agreement with the Superior Lienor upon acceptable terms and conditions of a non-disturbance agreement.

40. AUTHORITY

If Tenant is a corporation, limited liability company, trust, or other entity, each person executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such entity, and that such person's execution of this Lease binds Tenant to its terms and conditions. If Tenant is a corporation, limited liability company, trust or other entity, Tenant shall, upon the execution of this Lease, deliver to Landlord evidence of such authority satisfactory to Landlord. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant. Landlord's authority to execute and deliver this Lease is subject to adoption by the Berkeley City Council of an enabling ordinance authorizing the City Manager to execute this Lease on the City's behalf.

41. TERMS BINDING ON SUCCESSORS

All the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the successors and assigns of the parties to this lease. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

42. TIME OF ESSENCE

Time shall be of the essence of each provision of this lease.

43. COVENANTS AND CONDITIONS

Each term and each provision of this lease performable by Tenant shall be construed to be both a covenant and condition.

44. GOVERNING LAW

The laws of the State of California shall govern this lease.

45. ENTIRE AGREEMENT, AMENDMENTS

This lease and all exhibits attached and any documents expressly incorporated by reference contain the entire agreement between the parties regarding the lease of the Premises described herein and shall supersede any and all prior agreements, oral or written, between the parties regarding the lease of these Premises. This lease cannot be altered or otherwise modified except by a written amendment.

46. CONSENT OF PARTIES

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

47. BUSINESS LICENSE

Tenant certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Tenant claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease as of the date written on the first paragraph of this lease.

LANDLORD
CITY OF BERKELEY

By:
City Manager

THIS LEASE HAS BEEN
APPROVED AS TO FORM
BY THE CITY ATTORNEY
OF THE CITY OF BERKELEY

Date: _____

REGISTERED BY:

City Auditor

ATTEST:

Deputy City Clerk

TENANT
Berkeley Housing Authority

Signature
Title: Berkeley Housing Authority, Exec. Dir

Signature
Title: Berkeley Housing Authority, Finance Mngr

City of Berkeley Business License No. _____

EXHIBIT A PREMISES



EXHIBIT B

AGREEMENT SPECIFYING TERM OF LEASE

Attached to and made part of the Lease dated the _____ day of _____, 20____, by and between the CITY OF BERKELEY, a municipal corporation, as Landlord, and BERKELEY HOUSING AUTHORITY, as Tenant ("**Lease**").

Landlord and Tenant do hereby confirm and acknowledge the following dates:

Lease Commencement Date is _____
Rent Commencement Date is _____
Expiration Date is _____, subject to extension as provided in the Lease.

This Agreement shall be binding on the parties hereto, their successor and assigns and all subtenants of Tenant and any other party claiming under or through Tenant. The Lease is in full force and effect as of the date hereof in accordance with its terms, and Tenant is in possession of the Premises. Landlord has fulfilled all of its obligations under the Lease that were required to be fulfilled by Landlord on or prior to the Rent Commencement Date and Tenant has no claim or right of set-off against any Rent (as defined in the Lease) under the Lease.

This Agreement was entered into as of the _____ day of _____, 20____.

ATTEST/WITNESS:

LANDLORD:

CITY OF BERKELEY, a municipal corporation

By: _____

Its: City Manager

By: _____

Its: City Attorney

By: _____

Its: City Auditor

ATTEST/WITNESS:

TENANT:

BERKELEY HOUSING AUTHORITY

By: _____
Berkeley Housing Authority Exec Director

By: _____
Berkeley Housing Authority Finance Manager

Tenant: **BERKELEY HOUSING AUTHORITY**
 Premises: 1947 Center Street, 5th (partial)
 Lease Term: January 1, 2021 terminates after 120 months; Two 10 year options to extend.

1ST TEN YEAR TERM	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL
2021	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 130,572.96
2022	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 10,881.08	\$ 130,572.96
2023	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 11,098.70	\$ 133,184.40
2024	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 11,320.67	\$ 135,848.04
2025	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 11,547.09	\$ 138,565.08
2026	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 11,778.03	\$ 141,336.36
2027	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 12,013.59	\$ 144,163.08
2028	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 12,253.86	\$ 147,046.32
2029	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 12,498.94	\$ 149,987.28
2030	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 12,748.92	\$ 152,987.04
Ten Year TTL:													\$ 1,404,263.52

EXHIBIT C
PAYMENTS

EXHIBIT D

RULES, RESTRICTIONS AND PROHIBITED USES

Tenant shall not use or permit the use of the Premises for any other business or purpose, except as set forth in this Lease and in strict accordance with the Rules and Regulations and/or the *City of Berkeley Employee Handbook: 1947 Center Street*, either of which may be periodically updated at any time by the Landlord/City of Berkeley. No part of the exterior shall be used for an automatic teller machine. No part of the Premises shall be used for any use that would increase the demand or requirement for parking in the Garage in excess of that required by the Permitted Use. No part of the Premises shall be used in a way that endangers the health or safety of any user of the Garage. **THE FOLLOWING PROHIBITIONS AND RESTRICTIONS SHALL NOT BE DEEMED TO APPLY TO LANDLORD, BUT ONLY TO TENANT UNDER THIS LEASE.** Landlord shall have the right, in Landlord's sole and absolute discretion, to waive all or any of the prohibitions set forth herein upon such matters, terms and conditions as Landlord, in its sole discretion, may determine.

RULES AND REGULATIONS

1. The sidewalks, entrances, Building main lobby, elevators, stairways and public corridors shall be used only as a means of ingress and egress and shall remain unobstructed at all times. Loitering in any part of the Building or obstruction of any means of ingress or egress shall not be permitted. Doors and windows shall not be covered or obstructed.
2. Plumbing fixtures shall not be used for any purposes other than those for which they were constructed and no rubbish, newspapers, trash or other substances of any kind shall be deposited therein. The use of electrical current shall not exceed safety standards established in the applicable building code. Walls, floors, and ceilings shall not be defaced in any way and no tenant shall be permitted to mark, nail, screw or drill into, paint, or in any way mark any Building surface, except that pictures, certificates, licenses and similar items normally used in Tenant's business may be carefully attached to the walls by tenant in a manner to be prescribed by Landlord. Upon removal of such items by Tenant, any damage beyond normal wear and tear to the walls or other surfaces shall be repaired by the Tenant.
3. No awning, shade, sign, advertisement or notice shall be inscribed, painted or affixed on or to any part of the outside in the common areas or inside of the Building, without prior written approval by Landlord. All tenant identification on public corridor doors, or walls will be installed by Landlord for Tenant. No lettering or signs other than the name of the Tenant and approved subtenants will be permitted on public corridor doors, or walls, with the size and type of the letters to be prescribed by Landlord. The bulletin board or directory of the Building will be provided exclusively for the display of the name and location of tenants and approved subtenants thereof, and Landlord reserves the right to exclude all other names therefrom. Landlord reserves the right to approve all listing requests.

4. The weight, size, position and installation of all safes and other unusually heavy objects used or placed in the Building shall be prescribed by Landlord. All mechanical equipment and office machines that are placed in the Building shall be installed in fittings that, in the judgment of Landlord, shall be sufficient to prevent noise, vibration and annoyance. The repair of any damage done to the Building or property therein by putting or taking out or maintaining such safes or other unusually heavy objects shall be paid for by Tenant.

5. All freight, furniture, fixtures and other personal property shall only be moved into, within, and out of the Building at all reasonable times and with Landlord's approval. In no event will Landlord be responsible for any loss or damage to such freight, furniture, and fixtures or personal property, except when caused by Landlord or its agents.

6. The storage of goods, wares, or merchandise on the Premises will not be permitted except in areas specifically designated by Landlord for storage. No auction, public or private, will be permitted on the Premises.

7. All keys to the Premises and the Building shall be obtained from the Landlord and all keys shall be returned to Landlord upon the termination of this Lease. Tenant shall not change the locks or install other locks on the doors.

8. Tenant or any of Tenant's Parties using the Premises after regular business hours or on non-business days shall secure any entrance doors to the Building used by him/her immediately after entering or leaving the Building. Tenant shall furnish Landlord with names of all persons issued a card key for the entrance door security system. Tenant shall also notify Landlord immediately of terminated employees for elimination from the entry system. Landlord shall not be liable for any damage resulting from any error in regard to the entry security system or from the admission of any unauthorized person to the Building, except for deliberate action or negligence by Landlord.

9. Except for use of the microwave stovetop and refrigerator located in Premises, Tenant shall not permit any cooking to take place in the Premises, nor shall Tenant install therein any vending machines without Landlord's written consent.

10. Landlord reserves the reasonable right at any time to change or rescind any one or more of these Rules or Regulations or to make such other and further reasonable rules and regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Building, for the preservation of good order therein, and for the convenience of other occupants and tenants therein. Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of the Rules and Regulations by any other tenant or person.

11. Tenant will be charged by Landlord for any excessive number of false alarms caused by Tenant's personnel.

12. Except for service animals, no animals of any kind are allowed in the Building or on the Premises.

EXHIBIT E

ASBESTOS NOTIFICATION

October 9, 2020

To: Berkeley Housing Authority
From: City of Berkeley Department of Public Works

Subject: **EMPLOYEE NOTIFICATION LETTER - PRESENCE OF ASBESTOS CONTAINING BUILDING MATERIALS IN CITY OF BERKELEY BUILDINGS**

The purpose of this memorandum is to advise you of the presence of asbestos containing building materials (ACBM) in 1947 Center Street. For your information, previous surveys have detected ACBM in the original plaster ceilings, some hot water piping behind existing walls, and in some of the old floor tile throughout the building. An abatement project in the early 1990's removed the ACBM plaster ceilings and pipe insulation on the first, second, fifth, and sixth floors. The recent tenant improvement project continued this process by removing the remaining ACBM plaster ceilings on the basement, third, and fourth floors. In most cases, however, the original ACBM floor tile was contained and allowed to remain in place under the new carpeting. This is a fairly standard procedure because the carpeting effectively contains the floor tile and prevents disturbance.

Since some ACBM remains in the building SECTION 25915 of the Health and Safety Code requires that a written notification be provided to employees informing them of the presence of asbestos in buildings. To comply with this regulation, this letter is to inform you that an asbestos survey has been completed and the report confirms the presence of ACBM in this city building.

The presence of asbestos in a building does not mean that the health of building occupants is endangered. If ACBM remains in good condition and is not disturbed, exposures will be negligible. However, when ACBM is damaged or disturbed without proper controls, asbestos fibers are released into the air. These fibers may pose a threat to your health.

Airborne asbestos levels in buildings are much lower than those in industrial workplaces where serious health effects such as lung cancer and asbestosis have been observed. However, it is important for employees to follow proper work practices to minimize the potential for disturbing ACBM. Good general practice requires that employees avoid touching asbestos materials on walls, ceilings, pipes, or boilers, drilling holes, or hanging plants or other objects from walls/ceilings made of ACBM, disturbing ACBM when replacing light bulbs, and other such practices. If you find ACBM that has been damaged, report it to Public Works, at (510) 981-6620. Do not disturb damaged asbestos material or asbestos debris. Only persons authorized

and properly trained should perform any work that may disturb asbestos materials.

Any employee may review the asbestos survey reports, results of bulk sampling, or air monitoring conducted in city buildings. All asbestos data will be available between the hours of 8:00 a.m. and 5:00 p.m. Monday thru Friday.

If you have any questions please contact Human Resources at (510) 981-6800, TDD: (510)981-6830.



Office of the City Attorney

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Farimah Faiz Brown, City Attorney

Subject: 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)

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 and November 17, 2020.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. The Proclamation of Local Emergency empowers the Director of Emergency Services to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such local emergency. Pursuant to Government Code section 8630(b) and Berkeley Municipal Code section 2.88.040.A.1, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

Pursuant to Government Code section 8630(c), the City Council must review the need for continuing the local emergency at least once every sixty (60) days. The Council last reviewed and ratified the Proclamation of Local Emergency on November 17, 2020. The Council therefore must review the continuing need for the local emergency by January 16, 2021. The Council's December 15, 2020 meeting is the only regular meeting scheduled within this timeframe.

This item requests that the Council review the continued need for the local emergency and again ratify the Proclamation of Local Emergency issued on March 3, 2020, initially ratified by the Council on March 10, 2020, and subsequently review and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020 and November 17, 2020. If reviewed and ratified on December 15, 2020, the Council will need to again review and ratify the proclamation by February 13, 2021 in order to continue the local emergency.

If at any time the Council determines that the need for continuing the local emergency has ended, state law directs the Council to terminate the local emergency at the earliest possible date that conditions warrant. (Cal. Gov. Code section 8630(d).)

BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been hundreds of confirmed cases of COVID-19 and at least nine deaths in the City of Berkeley.

The City Council has subsequently reviewed and ratified the Proclamation of Local Emergency on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020 and November 17, 2020.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable the Director of Emergency Services to continue to efficiently allocate resources due to the ongoing and imminent threat to public safety.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dee Williams-Ridley, City Manager, City Manager's Office (510) 981-7000

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION REVIEWING AND RATIFYING THE PROCLAMATION OF LOCAL EMERGENCY

WHEREAS, the Emergency Services Act, Government Code sections 8558(c) and 8630 authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a city exist; and

WHEREAS, pursuant to Government Code section 8630, such an emergency may be proclaimed by the governing body or by an official designated by ordinance adopted by the governing body; and

WHEREAS, Berkeley Municipal Code section 2.88.040 provides that the City Manager, serving as the Director of Emergency Services, may request that the City Council proclaim the existence of a local emergency; and

WHEREAS, under provision of local law, if the City Council cannot be convened and, in the judgment of the Director of Emergency Services, the circumstances warrant it, a proclamation of local emergency may be issued which must be ratified or nullified by the City Council within seven days of issuance; and

WHEREAS, in accordance with authority granted under the above provisions of state and local law, the Director of Emergency Services beginning on March 3, 2020 did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, Government Code section 8630(c) requires that the City Council review the need for continuing the local emergency at least once every sixty (60) days; and

WHEREAS, the City Council subsequently reviewed the need for continuing the local emergency and again ratified the Proclamation of Local Emergency on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, and November 17, 2020; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include hundreds of confirmed cases of COVID-19 and at least nine deaths in the City of Berkeley, thereby warranting and necessitating the continuation of the local emergency; and

WHEREAS, the City Council will need to again review the need for continuing the local emergency and ratify the Proclamation of Local Emergency by February 13, 2021.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that it is hereby proclaimed and ordered that the Proclamation of Local Emergency, issued by the Director of Emergency Services in March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the City Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020 and November 17, 2020, has been reviewed and is hereby again ratified and confirmed.

BE IT FURTHER RESOLVED that during the existence of this local emergency the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law, and the Charter, ordinances, resolutions and approved plans of the City of Berkeley.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Farimah Brown, City Attorney
 Subject: *1444 Fifth Street, LLC v. City of Berkeley*, Case No. RG19032434

RECOMMENDATION

Adopt a Resolution approving the settlement of the action entitled *1444 Fifth Street, LLC v. City of Berkeley*, Case No. RG19032434.

FISCAL IMPACTS OF RECOMMENDATION

The settlement will require a payment of \$250,000 in attorneys' fees to the petitioners, who prevailed in the trial court, and is anticipated to result in payments into the City Housing Trust Fund in the amount of \$150,000.

BACKGROUND

This lawsuit arises from the City Council's approval of a housing development project located at 1444 Fifth Street. On May 28, 2019, the City Council approved a four-unit housing development located at 1444 Fifth Street following an appeal from the Zoning Adjustments Board's ("ZAB's") approval. In approving the development application, Council determined that the 1444 Fifth Street development and a previously approved, four-unit residential development on the adjacent parcel located at 1446 Fifth Street constituted a single "residential housing project" for purposes of applying the inclusionary housing requirements in Berkeley Municipal Code ("BMC") Chapter 23C.12, and that therefore all units were subject to the inclusionary housing fee under BMC section 23C.12.035.

On August 23, 2019, the applicants for the 1444 Fifth Street and 1446 Fifth Street permits filed a petition for writ of mandate seeking to vacate Council's May 28 disposition of the ZAB appeal. On September 23, 2020, the court granted the petition and issued a writ of mandate reversing the City Council's decision to require compliance with the inclusionary housing requirements, and finding that the City violated the Housing Accountability Act.

The settlement agreement resolves petitioners' claim for attorneys' fees under the Housing Accountability Act and includes a commitment to make a payment into the

Housing Trust Fund of \$15,000 per unit for anticipated future development on three adjacent parcels.

ENVIRONMENTAL SUSTAINABILITY

No significant environmental impacts are anticipated from approving the settlement agreement.

RATIONALE FOR RECOMMENDATION

Approval of the settlement agreement would limit the City's liability for additional attorneys' fees that may be occurred if litigation continues and would ensure payments into Housing Trust Fund for development on three parcels adjacent to the 1444 and 1446 Fifth Street parcels.

ALTERNATIVE ACTIONS CONSIDERED

Alternative actions considered include appealing the trial court's decision and challenging petitioners' eligibility for attorneys' fees under the Housing Accountability Act.

CONTACT PERSON

Farimah Brown, City Attorney, (510) 981-6998

Attachments:

1: Resolution

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

AUTHORIZING THE CITY ATTORNEY TO SETTLE 1444 FIFTH STREET, LLC V.
CITY OF BERKELEY (ALAMEDA COUNTY CASE NO. RG19032434)

WHEREAS, on August 23, 2019, Petitioners 1444 Fifth Street, LLC and 1446 Fifth Street, LLC (“Petitioners”) filed an action in Alameda County Superior Court entitled *1444 Fifth Street, LLC et al. v. City of Berkeley et al.*, Civil Case No. RG19032434 (“Action”), alleging causes of action for writ of mandate, declaratory judgment, and injunctive relief, and seeking an order or judgment that the City must rescind the inclusionary housing fee applied to petitioners’ housing development project; and

WHEREAS, on September 23, 2020, the court granted a petition for writ of mandate and found that the City violated the Housing Accountability Act by imposing an additional condition on the housing development project requiring compliance with the City’s Inclusionary Housing Ordinance, Berkeley Municipal Code Chapter 23C.12; and

WHEREAS, Petitioners and the City wish to resolve the dispute giving rise to the action.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council of the City of Berkeley authorizes the City Attorney to enter into the settlement agreement with the 1444 Fifth Street, LLC and 1446 Fifth Street, LLC enclosed herewith as Exhibit A.

Exhibits

A: Settlement Agreement and Release

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is made this 24th day of November, 2020, by and between Respondents and Defendants CITY OF BERKELEY and CITY OF BERKELEY CITY COUNCIL (collectively, “City”) and Petitioners and Plaintiffs 1444 FIFTH STREET, LLC and 1446 FIFTH STREET, LCC (“Petitioners”). The City and Petitioners are collectively referred to herein as the “Parties,” and are each individually referred to as a “Party.”

RECITALS

A. On January 10, 2019, the City of Berkeley Zoning Adjustments Board approved Administrative Use Permit #ZP2018-0172, which authorized the construction of a four-unit residential housing development at 1444 Fifth Street, Berkeley, California (the “Project”). The Zoning Adjustments Board’s decision was appealed to the Berkeley City Council.

B. On May 28, 2019, the Berkeley City Council held a public hearing, and following the hearing, affirmed the Zoning Adjustments Board’s approval of Administrative Use Permit #ZP2018-0172. In addition, the City Council imposed a new condition of approval requiring the Project to pay an inclusionary housing fee under Berkeley Municipal Code Chapter 23C.12 (the “Inclusionary Housing Ordinance”). The City Council imposed the condition of approval after determining that the Project and a previously approved, separately owned project on the adjacent property at 1446 Fifth Street constituted a single “residential housing project” under the Inclusionary Housing Ordinance. The condition required the Project to comply with the Inclusionary Housing Ordinance on behalf of both the Project and the previously approved project on the adjacent 1446 Fifth Street parcel.

C. On August 23, 2019, Petitioners filed an action in Alameda County Superior Court entitled *1444 Fifth Street et al. v. City of Berkeley et al.*, Civil Case No. RG19032434 (“Action”) alleging causes of action for writ of mandate, declaratory judgment, and injunctive relief, and seeking an order or judgment that the City must rescind the inclusionary housing fee applied to the construction of the Project.

D. On September 23, 2020, following a hearing on the petition for writ of mandate, the Court entered judgment in favor of Petitioners (“Judgment”), attached hereto as Exhibit 1. The Court ruled that (1) the Inclusionary Housing Ordinance applies to residential housing projects proposed on the same legal parcel, but cannot be lawfully applied to separate legal parcels where each individual parcel can accommodate no more than four dwelling units; and (2) the application of the Inclusionary Housing Ordinance to the Project violated Government Code section 65589.5(j)(2), which obligated the City to inform Petitioners within 30 days of the completeness of their respective applications of any “applicable plan, program, policy, ordinance, standard, requirement, or other similar provision” with which the Project was “inconsistent, not in compliance, or not in conformity.”

E. Further, the Court enjoined the City from applying the Inclusionary Housing Ordinance in a manner contrary to the Court’s order, from taking any action inconsistent with the Order to preclude the issuance of revised conditions of approval for Administrative Use Permit #ZP2018-0172, and from taking any further unlawful actions to preclude the development of the Project.

F. Petitioners and/or their principals, agents, and/or affiliates, have submitted or contemplate submitting applications for the construction of separate housing development projects on three separate legal parcels located adjacent to the Project site, located at 770 Page Street, 776 Page Street, and 1442 Fifth Street (collectively, “Undeveloped Parcels”).

G. The Parties wish to resolve their dispute regarding the subject matter of the Action, and regarding the application of the Inclusionary Housing Ordinance to development of the Undeveloped Parcels.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms contained in this Agreement, and good and valuable consideration, and in full and final settlement of the Action and to compromise on the disputed claims contained therein, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The above recitals are incorporated herein by reference.

2. Payment by the City. Within 15 days of the date of execution of this Settlement Agreement, the City shall pay to Petitioners attorneys’ fees and costs of suit incurred in the amount of \$250,000. Payment shall be made to 1444 Fifth Street, LLC.

3. Compliance with Judgment. The City shall not require compliance with the Inclusionary Housing Ordinance for construction of dwelling units on any legal parcel that can accommodate no more than four dwelling units under development standards in the Berkeley Zoning Ordinance. The City agrees that under the Judgment, the condition of approval applying the Inclusionary Housing Ordinance in Administrative Use Permit #ZP2018-0172 has been held to be unlawful and unenforceable, but that otherwise Administrative Use Permit #ZP2018-0172 remains valid and in full force and effect for the approved housing project now under construction on 1444 Fifth Street. The City further agrees that as currently configured and under the City’s Zoning Ordinance and current development standards, the City may not apply the Inclusionary Housing Ordinance or impose an inclusionary housing fee under that Ordinance on the construction of new dwelling units on any of the Undeveloped Parcels.

4. Review of Applications for Development of Undeveloped Parcels. The City will comply with applicable provisions of the Berkeley Zoning Ordinance and state law in reviewing any application to construct a housing development project on the Undeveloped Parcels. The City shall consider and process a housing development application on each separate legal lot independently of a housing development application on any other legal

lot under currently applicable provisions of the Berkeley Zoning Ordinance and state law. The City shall not apply the Berkeley Zoning Ordinance to consolidate an application for a housing development on an Undeveloped Legal Parcel with one or more applications on another Undeveloped Parcel, including but not limited to compliance with the Inclusionary Housing Ordinance or California Environmental Quality Act. The City will accordingly process each application for a housing development project on an Undeveloped Parcel as follows:

a. The City shall schedule a public hearing before the Zoning Adjustments Board and shall approve or disapprove each application to construct a housing development project on in a separate legal lot within 60 days of the date the application is determined to be complete, or within 60 days of the completion of any environmental review process required under the California Environmental Quality Act, whichever is later.

b. The City Council shall schedule a public hearing on any appeal of a determination made by the Zoning Adjustments Board under Paragraph 4.a within 60 days of the date of mailing of the Notice of Decision, and shall decide any appeal within 30 days of the date of the public hearing.

c. If a proposed housing development project on one or more of the Undeveloped Parcels complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, the City shall not conduct more than five public hearings in connection with the approval of the project.

d. Any deadline set forth in this Paragraph 4 may be extended by mutual agreement of the project applicant and the City.

5. Housing Trust Fund Contributions by Petitioners. Notwithstanding the Judgment or any other provision of this Agreement, Petitioners agree to make a payment into the City of Berkeley Housing Trust Fund for each unit of housing constructed on any of the Undeveloped Parcels. Petitioners agree to pay \$15,000 per unit of housing, payable within thirty (30) days of the issuance of Certificate of Occupancy.

6. Waiver of Right to Appeal. Each Party hereby waives its right to appeal any order or judgment entered in the Action.

7. Mutual Release. Except as otherwise expressly set forth in this Settlement Agreement, Petitioners and the City hereby release and forever discharge each other, together with their agents, representatives, trustees, employees, officers, directors, partners, stockholders, attorneys, successors, assigns, heirs, personal representatives and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, and each of them from any and all claims, debts, liabilities, demands, obligations, costs, expenses, and attorneys' fees relating to the Action or the claims or causes of action set forth therein.

It is understood and agreed that this is a full and final mutual release of the Action. The Parties agree, as further consideration and inducement for this Agreement, to waive the provisions of California Civil Code §1542 which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

This Release and Waiver only releases and waives claims arising from actions, failures to act, events and occurrences taking place on or before August 23, 2019, and does not release or waive any claims arising out of actions, failures to act, events or occurrences taking place after that date.

Notwithstanding any potentially inconsistent provisions in this Section, if the City does not comply fully with Sections 2 through 4 of this Agreement, Petitioners reserve the right to take any and all appropriate legal action to enforce the requirements of the Housing Accountability Act, Gov. Code § 65589.5, including but not limited to proceeding to litigate the claims brought in the Action and seeking an award of any and all attorney’s fees, costs of suits, and fines authorized under the Housing Accountability Act.

8. Cooperation on Additional Documents. Each of the Parties agrees to execute and deliver to each of the other Parties all additional documents, instruments, and agreements required to take such additional actions as are required to implement the terms and conditions of this Agreement.

9. Authorization to Execute. Each Party represents that the individual signing this Settlement Agreement is authorized to bind the Party on whose behalf he or she signs.

10. Entire Agreement. As to the matters set forth herein, this Settlement Agreement is the entire, integrated agreement and understanding of the Parties.

11. Waiver, Modification, and Amendment. No breach of this Settlement Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only be a writing duly executed by the Parties or their authorized representatives.

12. Notice. Any notice, demand, request, or other communication required or permitted to be given under this Agreement, (a) shall be made in writing; (b) shall be delivered by one of the following methods: (i) by personal delivery (with notice deemed given when delivered personally); (ii) by overnight courier (with notice deemed given upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt); and (c) shall be addressed as provided in this Section or such other address as such Party may request by notice in accordance with the terms of this Section.

Notice to Petitioners shall be provided as follows:

1444 5th Street, LLC and 1446 5th Street, LLC
c/o WADLUND+ Design Studio
805 Jones Street
Berkeley, CA 94710

With copy to: Jennifer Hernandez
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111
jennifer.hernandez@hklaw.com

Notice to the City shall be provided as follows:

City Attorney
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704
attorney@cityofberkeley.info

13. Attorneys' Fees. In any proceeding at law or in equity to enforce any of the provisions or rights under this Settlement Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses and reasonable attorneys' fees incurred in the enforcement proceeding by the prevailing Party (including, without limitation, such costs, expenses, and fees on any appeals) and if such prevailing Party shall recover judgment in any such action or proceeding, such costs, expenses, including those of expert witnesses, and attorneys' fees shall be included in and as part of the judgment.

14. Severability. If any part of this Settlement Agreement is found to be void, invalid or unenforceable, the remainder shall remain in full force and effect and shall be interpreted to carry out the Parties' intent with respect to their obligations and rights.

15. Drafting of Agreement. The Parties and/or their respective counsel have participated in the drafting and negotiation of this Settlement Agreement and, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by all Parties.

16. Successors and Representatives. This Settlement Agreement shall be binding on and shall inure to the benefit of the successors and assigns of each Party.

17. Informed Consent. Each Party declares that prior to the execution of this Settlement Agreement, it and/or its duly authorized representatives have apprised themselves of sufficient relevant data, either through attorneys, experts or other sources of their own selection, in order to intelligently exercise their judgment in deciding whether to execute, and in deciding the contents of, this Settlement Agreement. Each Party states that

this Settlement Agreement is entered into freely and voluntarily, upon the advice and with the approval of its counsel.

18. Applicable Law. This Settlement Agreement shall be interpreted in accordance with California law, without reference to its choice of law provisions.

19. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which may be deemed an original, and all of which together shall constitute a single instrument, notwithstanding that all the Parties are not signatories to the original or same counterpart. Photocopies or facsimiles shall constitute good evidence of such execution.

Dated: _____, 2020

1444 FIFTH STREET,LLC

By: _____
Name: Matthew Wadlund
Title: _____

Dated: _____, 2020

1446 FIFTH STREET, LLC

By: _____
Name: Sean Kenmore
Title: _____

Dated: _____, 2020

CITY OF BERKELEY

By: _____
Name: Farimah Brown
Title: City Attorney

APPROVED AS TO FORM:

Christopher D. Jensen
Assistant City Attorney



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

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 2, 2020 (closed), November 10, 2020 (closed and regular), November 16, 2020 (closed) and November 17, 2020 (closed and regular).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. November 2, 2020 – Closed City Council Meeting
2. November 10, 2020 – Closed City Council Meeting
3. November 10, 2020 – Regular City Council Meeting
4. November 16, 2020 – Closed City Council Meeting
5. November 17, 2020 – Closed City Council Meeting
6. November 17, 2020 – Regular City Council Meeting

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, NOVEMBER 2, 2020

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this closed session meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location 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/83603197143>. 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: 836 0319 7143. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

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.

Preliminary Matters

Roll Call: 4:03 p.m.

Present: Kesarwani, Davila, Harrison, Hahn, Wengraf, Robinson, Arreguin

Absent: Bartlett, Droste

Councilmember Droste present at 4:12 p.m.

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 REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8

Property address:	1761 University Avenue, Berkeley, CA
Agency Negotiators:	Dee Williams-Ridley, City Manager, David White, Deputy City Manager, Lisa Warhuus, Director of Health, Housing and Community Services
Negotiating parties:	City of Berkeley, 2180 Milvia Street, Berkeley, CA County of Alameda and Property Owner – Rajputana Hospitality Investments, LLC
Under negotiation:	Price and terms

Action: No reportable action.

OPEN SESSION:

No reportable action taken.

Adjournment

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

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

Adjourned at 5:53 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on November 2, 2020.

Mark Numainville
City Clerk

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, NOVEMBER 10, 2020

3:30 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this closed session meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89262559332>. 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: 892 6255 9332. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

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.

Preliminary Matters

Roll Call: 3:33 p.m.

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

Absent: Bartlett

Councilmember Bartlett present at 3:44 p.m.

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 – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) and 54956.9(d)(1)

- a. *1444 Fifth Street LLC v. City of Berkeley*, Alameda County Superior Court Case No. 19032434

Action: No reportable action taken.

- b. *Sandoval v. City of Berkeley, et al. Alameda County Superior Court, Case No. RG19016889*

Action: No reportable action taken.

- c. *Schulz, Christopher v. City of Berkeley, WCAB Case # ADJ12125804*

Action: M/S/C (Arreguin/Droste) to direct outside counsel and approved a stipulated settlement of permanent disability with an Award of lifetime future medical care, or in the alternative, by Compromise and Release, with a release of future medical care, as to a workers' compensation matter Schulz, Christopher v. City of Berkeley, WCAB Case #: ADJ12125804.

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

- d. *Jackson, Willie v. City of Berkeley, WCAB Case #ADJ3231307*

Action: M/S/C (Arreguin/Robinson) to direct outside counsel and approved settlement of \$86K by Compromise and Release with a release of future medical care, as to a workers' compensation matter Jackson, Willie v. City of Berkeley, WCAB Case #: ADJ3231307.

Vote: All Ayes.

OPEN SESSION:

The City Council met in closed session Pursuant to Government Code Section 54956.9(d)(2) and provided direction to outside counsel and approved a stipulated settlement of permanent disability with an Award of lifetime future medical care, or in the alternative, by Compromise and Release, with a release of future medical care, as to a workers' compensation matter Schulz, Christopher v. City of Berkeley, WCAB Case #: ADJ12125804.

The City Council met in closed session Pursuant to Government Code Section 54956.9(d)(2) and provided direction to outside counsel and approved settlement by Compromise and Release with a release of future medical care, as to a workers' compensation matter Jackson, Willie v. City of Berkeley, WCAB Case #: ADJ3231307.ublic Reports of actions taken pursuant to Government Code section 54957.1.

Adjournment

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

Vote: All Ayes.

Adjourned at 5:26 p.m.

I hereby certify that the forgoing is a true and correct record of the closed session meeting held on November 10, 2020.

Mark Numainville
City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

- None

Supplemental Communications and Reports 3

Item #1: Conference with Legal Counsel – Pending Pursuant to Government Code Sections 54956.9(a) and 54956.9(d)(1)

a). 1444 Fifth Street LLC v. City of Berkeley, Alameda County Superior Court Case No. 19032434

1. Rachel Doughty, on behalf of Greenfire Law

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, November 10, 2020
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87207824735>. 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: 872 0782 4735. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

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.

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: 6:42 p.m.

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

Absent: None

Report from Closed Session

The City Council met in closed session Pursuant to Government Code Section 54956.9(d)(2) and provided direction to outside counsel and approved a stipulated settlement of permanent disability with an Award of lifetime future medical care, or in the alternative, by Compromise and Release, with a release of future medical care, as to a workers' compensation matter Schulz, Christopher v. City of Berkeley, WCAB Case #: ADJ12125804.

The City Council met in closed session Pursuant to Government Code Section 54956.9(d)(2) and provided direction to outside counsel and approved settlement by Compromise and Release with a release of future medical care, as to a workers' compensation matter Jackson, Willie v. City of Berkeley, WCAB Case #: ADJ3231307.ublic Reports of actions taken pursuant to Government Code section 54957.1.

Ceremonial Matters:

1. Adjourned in Memory of Adam David "A.D." Miller, Berkeley Resident and Author
2. Adjourned in Memory of Eddie Mae Eddings, Berkeley Resident and Photographer
3. Adjourned in Memory of Dave Altman, Berkeley Resident
4. Adjourned in Memory of victims of COVID-19, suicide, and other causes
5. Recognition of the election of Berkeley native Kamala Harris to the office of Vice-President of the United States

City Manager Comments:

The City Manager provided an update on the Reimagining Public Safety process.

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

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

Action: M/S/C (Arreguin/Hahn) to accept revised agenda material from Councilmember Kesarwani on Item 12.

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

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

Vote: All Ayes.

1. **Amending Berkeley Municipal Code Chapter 12.70 Sections 12.70.020 V, 12.70.035 E and 12.70.037 C to be in accordance with California Health and Safety Code**

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,736-N.S. amending Berkeley Municipal Code Chapter 12.70 to update Section 12.70.020 Definitions section V and repealing Section 12.70.035.E and 12.70.037.C and adjusting the definition of "smoke" or "smoking" to include medical cannabis to align with the State of California Health and Safety code.

First Reading Vote: All Ayes.

Financial Implications: None

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

Action: Adopted second reading of Ordinance No. 7,736–N.S.

2. **Memorandum of Understanding for a Winter Relief Program**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a memorandum of understanding (MOU) between Alameda County and the City of Berkeley for a Winter Relief Program, consisting of \$25,000 allotted from Alameda County to the City, which will provide homeless people on the streets of Berkeley housing respite through May 31, 2021.

Financial Implications:

Contact: Erin Steffen, City Manager's Office, (510) 981-7000

Action: Adopted Resolution No. 69,602–N.S.

Consent Calendar

3. Memorandum of Understanding: Berkeley Fire Fighters Association, Local 1227

From: City Manager

Recommendation: Adopt one Resolution approving a new one (1) year Memorandum of Understanding (hereafter referred to as “MOU”) with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 (hereafter referred to as the “Association”) with a term of June 28, 2020 through June 30, 2021 and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 69,603–N.S.

4. Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)

From: City Manager

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and necessary amendments with Cazadero Performing Arts Camp, at 5385 Cazadero Hwy, Cazadero, CA 95421 for a term of twenty-five (25) years, with an option to renew for ten (10) years.

Financial Implications: See report

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

Action: Adopt first reading of Ordinance No. 7,737–N.S. Second reading scheduled for December 1, 2020.

5. Referral Response: Including Climate Impacts in City Council Reports

From: City Manager

Recommendation: Request that the City Manager update the templates and associated training materials to add “Climate Impacts” in the “Environmental Sustainability” section of reports to the City Council, and codify the changes in Appendix B in the next update to the Berkeley City Council Rules of Procedure. This recommendation is a partial response to a January 21, 2020 referral, sponsored by Councilmembers Davila and Bartlett, to require that all City Council items and staff reports include “climate impacts” in addition to environmental sustainability.

Financial Implications: See report

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

Action: Approved recommendation.

Consent Calendar

- 6. Acceptance of \$20,000 Grant for utility bill management software analysis**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept a \$20,000 grant award from the Energy Council through East Bay Energy Watch Partnership, to support staff analysis of online utility bill database management services.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
Action: Adopted Resolution No. 69,604–N.S.
- 7. Resumption of Fees at Oregon Park Senior Apartments** *(Continued from October 13, 2020)*
From: City Manager
Recommendation: Authorize the City Manager to resume charging fees, including housing inspection service fees, at Oregon Park Senior Apartments (OPSA), located at 1425 Oregon Street, to increase the effectiveness of housing code enforcement.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
Action: Item 7 removed from the agenda by the City Manager.
- 8. Purchase Order: Pape Machinery, Inc. for One (1) John Deere 310SL Backhoe Loader**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell Contract No. 032119-JDC and authorizing the City Manager to execute a purchase order for one 2020 John Deere 310SL Backhoe Loader with Pape Machinery, Inc. in an amount not to exceed \$150,000.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,605–N.S.
- 9. Purchase Order: Altec Industries, Inc. for One Aerial Bucket Truck**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcwell contract bid procedures, and authorizing the City Manager to execute a purchase order for one (1) aerial bucket truck with Altec Industries, Inc. in an amount not to exceed \$200,000.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,606–N.S.

Council Consent Items

10. Berkeley Holiday Fund: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Mayor Arreguin (Author), Councilmember Davila (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: Councilmember Hahn added as a co-sponsor. Adopted Resolution No. 69,607–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Harrison - \$150; Councilmember Robinson - \$200; Councilmember Hahn - \$500; Councilmember Wengraf - \$500; Councilmember Bartlett - \$250; Councilmember Kesarwani - \$200; Councilmember Davila - \$500; Councilmember Droste - \$500.

11. Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street
From: Mayor Arreguin (Author)

Recommendation: Refer to the City Manager a proposal to install stop signs at the intersections of Eighth Street and Carleton Street and Eighth Street and Pardee Street.

Financial Implications: See report

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

Action: Approved recommendation.

12. Authorize Installation of Security Cameras at Major Berkeley Arterial Streets Serving as Entry and Exit Points for the City and Request an Environmental Safety Assessment in High Crime Areas of the City
From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor)

Recommendation: In order to deter would-be perpetrators of gun violence and apprehend those engaging in gun violence, adopt the following recommendations:

1. Request that the City Manager install security cameras and increased lighting at appropriate arterial streets serving as entry into and exit out of the City of Berkeley in conjunction with prominently displayed signage;
2. Refer to the City Manager to perform an environmental safety assessment of the high crime areas specifically in South and West Berkeley;
3. Refer costs for security cameras and lighting to the mid-year budget process for FY 2020-21.

Financial Implications: See report

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

Action: Moved to Action Calendar. Item automatically referred to the Agenda & Rules Committee as Unfinished Business. (Item includes supplemental material)

Council Consent Items

13. **Budget Referral to Reinstate Partial Funding for the Gun Buyback Program Previously Authorized by City Council**
From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor), Councilmember Davila (Co-Sponsor)
Recommendation: Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) \$40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018.
Financial Implications: \$40,000
Contact: Rashi Kesarwani, Councilmember, District 1 (510) 981-7110
Action: Moved to Action Calendar. Item automatically referred to the Agenda & Rules Committee as Unfinished Business.
14. **Open Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Pool (King pool) to implement the City of Berkeley Shower Program at these locations and provide the ability for our community to shower during the COVID 19 pandemic** *(Item contains revised materials. Reviewed by the Budget & Finance Committee)*
From: Councilmember Davila (Author)
Recommendation: Direct the City Manager to open the Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening these locations will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.
(On October 8, 2020, the Budget & Finance Committee took action to send the item to Council with a qualified positive recommendation acknowledging that the City Manager is already implementing a shower program and to thank the City Manager for initiating this program and to encourage its continued operation during the COVID emergency. Vote: All Ayes.)
Financial Implications: \$270,100
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Approved recommendation of the Budget & Finance Committee.

Council Consent Items

15. **Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Harrison (Author)
Recommendation: Refer to the City Manager the design of a Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents as a companion to the Council referral to expand the Seismic Transfer Tax Rebate Program to include efficiency and electrification retrofit measures.
(On October 7, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to move recommendation two to "Refer to the City Manager the design of a Companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements for low income residents" to the City Council with a positive recommendation. Vote: All Ayes.)
Financial Implications: See report
 Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
Action: Councilmembers Hahn and Bartlett added as co-sponsors. Approved recommendation of the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee.
16. **Budget Referral - \$20,000 radar speed feedback sign for Wildcat Canyon Road**
From: Councilmember Wengraf (Author)
Recommendation: Referral to the City Manager for a solar powered radar speed feedback sign to be installed on Wildcat Canyon Road at the cost of \$20,000 to be considered during the Mid-Year Budget Process.
Financial Implications: \$20,000
 Contact: Susan Wengraf, Councilmember, District 6 (510) 981-7160
Action: Councilmember Harrison added as a co-sponsor. Approved recommendation.
17. **Consider Fire Safety Options for Fire Pit at Codornices Park**
From: Councilmember Wengraf (Author)
Recommendation: Referral to the Parks & Waterfront Commission to consider safety options regarding the future of the fire pit at Codornices Park. Please consider 1) Complete removal of fire pit or 2) Manufacture of a cover that can be secured and locked.
Financial Implications: See report
 Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Councilmember Hahn added as a co-sponsor. Approved recommendation.

Action Calendar

18. **Presentation: Report on Homeless Outreach during COVID 19 Pandemic**
From: City Manager
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Item automatically referred to the Agenda & Rules Committee as Unfinished Business.
19. **Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, 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, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code
Financial Implications: None
Contact: Andrew Greenwood, Police, (510) 981-5900, Savita Chaudhary, Director of Information Technology (510) 981-6541, Dave White, City Manager's Office, (510) 981-7000.
Action: Item automatically referred to the Agenda & Rules Committee as Unfinished Business.
20. **Annual Commission Attendance and Meeting Frequency Report** (*Continued from October 27, 2020*)
From: City Manager
Recommendation: Review and accept the annual Commission Attendance and Meeting Frequency Report.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6908
Action: Item automatically referred to the Agenda & Rules Committee as Unfinished Business. (Item includes supplemental material)
21. **Support Community Refrigerators** (*Continued from September 22, 2020*)
From: Councilmember Davila (Author)
Recommendation:
1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Item automatically referred to the Agenda & Rules Committee as Unfinished Business.

Action Calendar

22. **Vote of No Confidence in the Police Chief** *(Continued from September 15, 2020)*
From: Councilmember Davila (Author)
Recommendation: Adopt a resolution taking a Vote of No Confidence in the Police Chief.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Item automatically referred to the Agenda & Rules Committee as Unfinished Business.

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

Adjournment

Adjourned at 11:00 p.m.

I hereby certify that the forgoing is a true and correct record of the regular session meeting held on November 10, 2020.

Mark Numainville
City Clerk

Communications

Housing at North Berkeley and Ashby BART Stations

1. 20 identical form letters
2. Steve Gilmartin
3. Janice Schroeder
4. Mary Behm-Steinberg
5. Daniel Borgstrom
6. Shirley Dean
7. Virginia Browning
8. Kurk Ribak
9. Claire Broome
10. Sloane and Nick Morgan
11. Vicki Sommer
12. Phil Allen
13. Kenneth Gross
14. Catherine Fox
15. Eileen Hughes

Inside Arts Venues

16. Lisa Bullwinkel

17. Sharon Dolan, Chair, Berkeley Cultural Trust (2)
18. Blake Parker, on behalf of Freight & Salvage
19. Karen Elliot
20. Barbara Higbie
21. Celia Ramsay
22. Evie Ladin
23. Andrea Hirsig
24. Suzy Thompson
25. Stephen Leake
26. Dan Warrick
27. Hali Hammer
28. Fritzi Drosten
29. Susan Wengrofsky
30. Gail Husson
31. Julie Greenfield
32. Tobie Lurie
33. Sharon and Richard Tamm (2)
34. Dee Williams-Ridley, City Manager
35. Virginia Browning
36. Brenda Larabee
37. Esther Lerman
38. Yvonne Martinez
39. Susan Rudio
40. Katy Waffle
41. Sara Sunstein
42. Kathleen Archambeau
43. Diana Dominguez

1155-1173 Hearst

44. Teal Major (2)
45. Dale Anania
46. Councilmember Harrison
47. Pam Ormsby
48. Mark Rhoades
49. Yashu Jiang
50. Stacey Shulman

Homelessness and Encampments

51. Eric Friedman (2)
52. Hillary Kilimnik
53. Erwan Illian

Vision 2025

54. Emily Raap, on behalf of PETA
55. Kathleen Willey

Public Swimming Pools

- 56. Paul Preston
- 57. Donna Mickleson
- 58. Linda Worthman

Affordable Housing

- 59. Barbara Fisher

5G and the Berkeley Police Department

- 60. Virginia Hollins-Davidson
- 61. Phoebe Anne Sorgen (2)

Taxation

- 62. Arthur Stopes III (2)

1811 Delaware

- 63. Loren Fono, et al neighbors

Caren Act

- 64. Louis Lin
- 65. Russbumber

Mail Not Being Collected

- 66. Nina Ruymaker
- 67. Councilmember Robinson

Cal Students Party

- 68. Anne Herrick (2)
- 69. Jen Loy, on behalf of the University of California, Berkeley

Electric Mobility

- 70. Tom Lent, on behalf of Walk Bike Berkeley (2)

Berkeley Lab Proposal

- 71. Dana Perls, on behalf of Friends of the Earth

Berkeley Police Association Request – Chemical Agents

- 72. Emily Murphy, on behalf of the Berkeley Police Association

Plastic Bag Ban

- 73. Ciara Khor-Brogan

Ward Street Crosswalk

- 74. George Torgun

Red Flag Event – Berkeley Hills

- 75. Ben Glickstein
- 76. Thomas Lord
- 77. Phoebe Anne Sorgen
- 78. David Lerman (2)

Berkeley High School Distance Learning Challenges

- 79. Sara Woods

Removing Cops from Behavioral Crisis Calls

- 80. Russbumper

Zachary Running Wolf Hate Crime Felonies

- 81. Russbumper

Supplemental Communications and Reports 1

Item #4: Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)

- 82. Larisa Cummings
- 83. Robert Hodges
- 84. Shelley Horwitz
- 85. Rebecca Whitney
- 86. David Lerman

Item #11: Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street

- 87. Dianna Dar
- 88. Birgitta Durell
- 89. Jennifer Lynch
- 90. Sadie Scheffer
- 91. Jesse Marsh
- 92. Nicole Mion

Item #12: Authorize Installation of Security Cameras at Major Berkeley Arterial Streets Serving as Entry and Exit Points for the City and Request an Environmental Safety Assessment in High Crime Areas of the City

- 93. Steve Kromer

Item #22: Vote of No Confidence in the Police Chief

- 94. Paul Lee, on behalf of Friends of Adeline
- 95. Peter Shelton (In Support of the Berkeley Police Department)
- 96. Police Chief Greenwood (Reply to Mr. Shelton)

Supplemental Communications and Reports 2

Item #4: Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)

- 97. Radha Seshagiri

- 98. Patti Kjonaas
- 99. Frank Nappi
- 100. Bruce Lowry
- 101. Carlotta Jacobs
- 102. David Wooley

Item #11: Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street

- 103. Olivia Brayan

Item #12: Authorize Installation of Security Cameras at Major Berkeley Arterial Streets Serving as Entry and Exit Points for the City and Request an Environmental Safety Assessment in High Crime Areas of the City

- 104. Sally Nelson

Item #16: Budget Referral - \$20,000 Radar Speed feedback Sign for Wildcat Canyon Road

- 105. David Cohn
- 106. David Biale
- 107. Rachel Biale
- 108. Craig Peterson
- 109. Joe Lurie
- 110. Maya Trilling
- 111. Valerie Gilbert-Perens
- 112. Gail Machlis
- 113. Jerry Beckerman
- 114. Donna Rosenthal
- 115. Evan and Erika Mills
- 116. Fred Bamber (2)
- 117. Cameron Mitchell
- 118. Lola Vollen
- 119. Svetlana Livdan
- 120. Terry Pink Alexander

Item #17: Consider Fire Safety Options for Fire Pit at Codornices Park

- 121. Paul Teicholz
- 122. Susan Reinold
- 123. Jon Ann Driscoll
- 124. Steve Tracy
- 125. Wendy Stock

Item #18: Presentation: Report on Homeless Outreach During COVID-19 Pandemic

- 126. John Caner, on behalf of the Berkeley Chamber, Downtown Berkeley Association and Visit Berkeley

Item #20: Annual Commission Attendance and Meeting Frequency Report

- 127. Supplemental material, submitted by the City Clerk

Item #22: Vote of No Confidence in the Police Chief

128. Shauna Wright

Supplemental Communications and Reports 3

Item #4: Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)

- 129. Diane Fukawa
- 130. Frank Bliss
- 131. Jeremy Steinkoler
- 132. Rachel Medanic
- 133. Kristen Burmester
- 134. Joan Bell
- 135. Susan Brooks
- 136. Doris Fuawa
- 137. Radha Seshagiri
- 138. George Gaebler
- 139. Michael Ely
- 140. Debbie Chin Rokeach
- 141. Anne Wolf
- 142. Marianne Bilter
- 143. James Lovekin
- 144. Andrea Fuchilieri
- 145. Catherine Epstein

Item #12: Authorize Installation of Security Cameras at Major Berkeley Arterial Streets Serving as Entry and Exit Points for the City and Request an Environmental Safety Assessment in High Crime Areas of the City

- 146. Revised material, submitted by Councilmember Kesarwani
- 147. Sivan Orr
- 148. Elliot Halpern
- 149. Gloria Park
- 150. Mansour Id-Deen
- 151. Kelly Hammargren
- 152. Elana Auerbach
- 153. Elizabeth Ferguson
- 154. Ambrose Carroll
- 155. Alice Rosenthal
- 156. Sylvia Santillanez-Robson
- 157. Barbara
- 158. Christopher Kohler
- 159. Isabel Barbera
- 160. Julia Sen

Item #16: Budget Referral - \$20,000 Radar Speed feedback Sign for Wildcat Canyon Road

- 161. Bruce Perens
- 162. Victoira Hritonenko

Item #18: Presentation: Report on Homeless Outreach During COVID-19 Pandemic

163. Jack Hlavac, Managing Director of DoubleTree Hilton Berkeley Marina

Item #19: Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

164. Alecia Harger

165. Isabel Cholbi

166. Uma Channer

Item #21: Support Community Refrigerators

167. Isabel Cholbi

168. Derek Imai, ASUC External Affairs Vice President

169. Anna Tseselsky

170. Sylvia Santillanez-Robson

171. Samantha Warren

172. Alecia Harger

173. Sahand Hassanipour

174. Isabel Barbera

Item #22: Vote of No Confidence in the Police Chief

175. Berkeley Copwatch

176. Naomi Levinthal

177. Diana Bohn

178. Alice Rosenthal

179. Derek Imai, ASUC External Affairs Vice President

180. Anna Tseselsky (2)

181. Sylvia Santillanez-Robson

182. Naji Amro

183. Friends of Adeline (2)

184. Uma Channer

185. Isabel Cholbi

186. Alecia Harger

187. Mark Mis

188. Chimey Lee

189. Lynn Cooper

190. Julia Bleier

191. Isabel Barbera

192. Negeene Mosaed

Miscellaneous Communications

Gun Violence

193. Moni Law (2)

Trash Clean Up

194. Narendra Dev

Telecom Laws

195. Stephanie Thomas

Problem Solving

196. Enrique Martinez

You Should Be Ashamed

197. Mari Mendonca

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, NOVEMBER 16, 2020

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this closed session meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free); enter Meeting ID: 817 4728 3367. 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: 4:03 p.m.

Present: Davila, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani, Bartlett, Harrison

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—ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(2)

a. *One case*

Action: M/S/C (Hahn/Droste) to authorize the City Attorney to continue discussions with Alameda County regarding the County's breach of the City's contract with the County for behavior health services and, if necessary, to initiate litigation to remedy the breach of contract.

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

OPEN SESSION:

The City Council authorized the City Attorney to continue discussions with Alameda County regarding the County's breach of the City's contract with the County for behavior health services and, if necessary, to initiate litigation to remedy the breach of contract.

Adjournment

Action: M/S/C (Hahn/Davila) to adjourn the meeting.

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

Adjourned at 5:16 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on November 16, 2020.

Mark Numainville
City Clerk

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, NOVEMBER 17, 2020

3:30 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
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Preliminary Matters

Roll Call: 3:32 p.m.

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

Absent: Bartlett

Councilmember Bartlett present at 3:42 p.m.

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

CLOSED SESSION:

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

1. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) and 54956.9(d)(1)

- a. *1444 Fifth Street LLC v. City of Berkeley*, Alameda County Superior Court Case No. 19032434

Action: No reportable action.

2. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Paul Buddenhagen, Deputy City Manager, David White, Deputy City Manager, LaTanya Bellow, Human Resources Director, Dania Torres-Wong, Chief Labor Negotiator, Burke Dunphy, Chief Labor Negotiator, David Brannigan, Fire Chief.

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.

Action: No reportable action.

3. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) and 54956.9(d)(1)

- b. *Shipp, Theresa v. City of Berkeley* WCAB Case # DJ10911597

Action: No reportable action.

OPEN SESSION:

No reportable action taken.

Adjournment

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

Vote: All Ayes.

Adjourned at 5:41 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on November 17, 2020.

Mark Numainville
City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

- None

Supplemental Communications and Reports 3

Item #2: Conference with Labor Negotiators; Government Code Section 5497.6

1. Alene Pearson
2. Shannon Allen

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, November 17, 2020
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

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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: 6:05 p.m.

Present: Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin.

Absent: None.

Report from Closed Session

The City Council met in closed session on November 16, 2020 and authorized the City Attorney to continue discussions with Alameda County regarding the County's breach of the City's contract with the County for behavior health services and, if necessary, to initiate litigation to remedy the breach of contract.

Ceremonial Matters:

1. Recognition of United Against Hate Week 2020

City Manager Comments:

The City Manager provided an update on the Reimagining Public Safety Process.

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

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

Action: M/S/C (Arreguin/Droste) to accept revised materials from the City Manager on Item 19 and Item 22.

Vote: All Ayes.

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

Vote: All Ayes.

Consent Calendar

1. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Cause 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 and September 22, 2020.

Financial Implications: See report

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

Action: Adopted Resolution No. 69,608–N.S.

2. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the council meetings of October 1, 2020 (closed), October 6, 2020 (closed), October 8, 2020 (closed), October 13, 2020 (special and regular), October 20, 2020 (closed and special), and October 27, 2020 (closed and regular).

Financial Implications: None

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

Action: Approved the minutes as submitted.

3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 17, 2020

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 - \$7,429,349

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

Action: Approved recommendation.

Consent Calendar

4. Revenue Contract: The Center at Sierra Health Foundation for \$100,000 for Information Technology Equipment, Telehealth Licenses, and Personal Protective Equipment

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to apply for funding provided by The California Department of Health Care Services through the Behavioral Health Telehealth Request for Applications and accept the funding and execute any resultant revenue agreements and amendments to purchase Information Technology equipment, Telehealth licenses, and Personal Protective Equipment up to \$100,000 total in fiscal year 2021 and fiscal year 2022.

Financial Implications: See report

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

Action: Adopted Resolution No. 69,609–N.S.

5. Contract No. 32100021 Amendment: Telfords for Tyler Munis ERP System (locally referred to as ERMA) Implementation Support

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32100021 with Telfords, for Consulting Services for Tyler Munis ERP system project management and implementation support services and to increase the contract amount by \$50,000 for a total not to exceed \$100,000 and to extend the contract through June 30, 2021.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 69,610–N.S.

6. Refer to the Planning Commission to Amend the General Plan Land Use Classification and Rezone Parcels Located at 1709 Alcatraz Street, 3404 King Street, 3244 Ellis Street, 1717 Alcatraz Avenue and 2024 Ashby Avenue

From: City Manager

Recommendation: Refer to the Planning Commission consideration that the parcels located at 1709 Alcatraz Street (APN 052-1533-001-03), 3404 King Street (APN 052-1435-001-02), 3244 Ellis Street (APN 052-1533-005-00), 1717 Alcatraz Avenue (APN 052-1533-005-00) and 2024 Ashby Avenue (APN 053-1592-022-00) be reclassified to the new Adeline Corridor Mixed Use General Plan Land Use Classification; and consideration that the same areas be rezoned to the new Commercial – Adeline Corridor District.

Financial Implications: None

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

Action: Approved recommendation.

Consent Calendar

7. **Contract No. 103266-1 Amendment: Karste Consulting, Inc. for Emergency Preparedness Services and Training**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 103266-1 (Contract No. 9786C in FUND\$) with Karste Consulting, Inc. to increase the amount by \$100,000 for a total amount not to exceed \$350,000 and to extend the term through December 31, 2022.
Financial Implications: Various Funds - \$100,000
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,611–N.S.

8. **Contract No. 108747-1 Amendment: Acumen Industrial Hygiene for Industrial Hygiene Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 108747-1 (Contract No. 10203A in FUND\$) with Acumen Industrial Hygiene for industrial hygiene services, increasing the amount by \$100,000 for a new total contract amount not to exceed \$250,000 and extending the contract through June 30, 2022.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,612–N.S.

9. **Contract No. 108007-1 Amendment: Don’s Tire Service, Inc. for Tire Repair Services for City Fleet Vehicles**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 108007-1 (Contract No. 10140 in FUND\$) with Don’s Tire Services, Inc. for repair and replacement services for automobile and truck tires for City of Berkeley fleet vehicles for an additional \$123,534, for a new total not to exceed \$273,534, and extend the authorized term through June 30, 2021.
Financial Implications: Equipment Maintenance Fund - \$123,534
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,613–N.S.

10. **Purchase Order: Bruce’s Tire, Inc. for New Automobile and Truck Tires for City Fleet Vehicles**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to increase the available spending with Bruce’s Tire Inc. for the purchase of automobile and truck tires for City of Berkeley fleet vehicles for an additional \$317,563, for a new total not to exceed \$1,192,563, and extend the authorized term through June 30, 2021.
Financial Implications: Equipment Maintenance Fund - \$317,563
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,614–N.S.

Consent Calendar

11. **Annual Report on Gifts Received in Excess of \$1,000 Aggregate Value**
From: Board of Library Trustees
Recommendation: Adopt a Resolution accepting the Library's annual gift report to the Berkeley City Council as presented and recommended by the Board of Library Trustees.
Financial Implications: None
Contact: Tess Mayer, Commission Secretary, (510) 981-6100
Action: Adopted Resolution No. 69,615–N.S.

Council Consent Items

12. **Budget Referral: Berkeley Age-Friendly Continuum**
From: Mayor Arreguin (Author), Councilmember Wengraf (Co-Sponsor)
Recommendation: Refer to the FY21 Annual Appropriations Ordinance process \$20,000 for the Berkeley Age-Friendly Continuum.
Financial Implications: \$20,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Councilmembers Harrison and Kesarwani added as co-sponsors. Approved recommendation.

Council Consent Items

13. **Improving Hate Crimes Reporting and Response** *(Reviewed by the Public Safety Committee)*

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

Recommendation: Refer to the City Manager to review the following proposals and implement new systems for reporting and response to hate incidents and crimes: - Develop a Hate Crimes Reporting Hotline (modeled after the San Francisco District Attorney's hotline) to be staffed by the Berkeley Mental Health Division or a non-profit community partner. The Hotline will provide support for victims and those reporting hate crimes/incidents, and direct victims to resources and how to report hate crimes or incidents. Consider existing internal and external resources including the City's 311 Customer Service line and the County's Hate Crimes Reporting Hotline. -Explore adding hate crimes to the BPD Online Crime Reporting System to allow individuals to report specific hate related criminal acts or incidents. -Launch a public information campaign including the production of informational videos, posters, and ads in different languages about what is a hate crime and how to report it to Berkeley Police. -Conduct proactive outreach and develop partnerships with religious leaders, community service providers and organizations that work with groups which have historically been the target of hate crimes/incidents. -Refer to the Police Review Commission to review existing BPD policy on hate crimes (BPD Policy 319), request a report from BPD on hate crimes statistics and its implementation of BPD Policy 319, and review: privacy policies/procedures for reporting; culturally appropriate personnel structures to respond to incidents that will encourage reporting, reduce fear and provide support; The creation of accessible and multilingual reporting procedures and resources that deliver the clear message that hate has no place in Berkeley. -Refer to the Peace and Justice Commission, Youth Commission and Police Review Commission to develop a citywide campaign to promote outreach, education and dialogue regarding bullying, hate incidents and hate crimes. -Develop a public facing mapping tool that indicates patterns of hate incidents and crimes to help with outreach and prevention; -Coordinate with educational institutions (e.g. UC Berkeley and BUSD) to achieve goals. -Review other emerging policies and best practices in other communities that support an inclusive and safe community.

(On November 2, 2020 the Public Safety Committee made a positive recommendation to send the item to the City Council, as submitted in the revised material received on November 2, 2020 and further revised to include: Consider existing internal and external resources including the City's 311 Customer Service line and the County's Hate Crimes Reporting Hotline; and to coordinate with educational institutions (e.g. UC Berkeley and BUSD) to achieve goals.)

Financial Implications: Unknown

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

Action: Approved the recommendation as written on the agenda.

Council Consent Items

14. **Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley**
From: Councilmember Hahn (Author), Councilmember Robinson (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)
Recommendation:
1. Refer to the City Manager to incorporate relevant elements of the Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley, submitted to the City Council by the Commission on Disability, into the Berkeley Pedestrian Master Plan currently being updated, and any other planning processes for which the report would provide relevant information.
2. Refer to the Public Works and Parks and Waterfront Commissions to return to Council reports on ways that elements of the Navigable Cities Framework can be incorporated into the work, projects, contracts, and policies of the Public Works and the Parks, Recreation & Waterfront Departments.
Financial Implications: Staff time
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Councilmember Harrison added as a co-sponsor. Approved recommendation.

Action Calendar – Public Hearings

15. **Renewal of the Elmwood Avenue BID for Calendar Year 2021**
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 2020-21 and, if no majority protest exists, levy annual assessments in the District for calendar year 2021 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. 1 speaker.
M/S/C (Arreguin/Wengraf) to close the public hearing.
Vote: All Ayes.

Action: M/S/C (Wengraf/Robinson) to adopt Resolution No. 69,616–N.S. confirming the Annual Report and Budget for the Elmwood Business Improvement District (hereafter, “the District”, “the Elmwood BID” or “the BID”) for 2020-21 and, if no majority protest exists, levy annual assessments in the District for calendar year 2021 to finance services and improvements and authorize a fiscal agency contract with Elmwood Business Association for receipt and expenditure of District funds.
Vote: All Ayes.

Action Calendar – Public Hearings

16. Renewal of the Solano Avenue BID for Calendar Year 2021

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 (hereafter, “Solano BID Advisory Board” or “the BID”) for 2020-2021 and, if no majority protest exists, levy annual assessments in the District for calendar year 2021 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. 2 speakers.
M/S/C (Arreguin/Droste) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Hahn/Wengraf) to adopt Resolution No. 69,617–N.S. confirming the Annual Report and Budget for the Solano Avenue Business Improvement District (hereafter, “Solano BID Advisory Board” or “the BID”) for 2020-2021 and, if no majority protest exists, levy annual assessments in the District for calendar year 2021 to finance services and improvements and authorize a fiscal agency contract for receipt and expenditure of District funds.

Vote: All Ayes.

17. Closure of the crossing at Camelia Street/Union Pacific (UP) Railroad Corridor; Amending Berkeley Municipal Code Chapter 14.24

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 14.24, to close the existing Union Pacific (UP) railroad crossing at Camelia Street to all traffic.

Financial Implications: See report

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

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

Vote:

Action: M/S/C (Wengraf/Davila) to adopt first reading of Ordinance No. 7,738–N.S. Second reading scheduled for December 1, 2020.

Vote: All Ayes.

Action Calendar – Public Hearings

18. General Plan Amendment: Vehicle Miles Traveled for Transportation Impact Analysis under the California Environmental Quality Act

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution approving a General Plan amendment that replaces Level of Service (LOS) with Vehicle Miles Traveled (VMT) as the criteria used to determine transportation-related environmental impacts under the California Environmental Quality Act (CEQA). This update is required by Senate Bill (SB) 743. Findings for the General Plan amendment are included in the report.

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/Harrison) to close the public hearing.

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

Councilmember Wengraf absent 7:51 p.m. – 7:54 p.m.

Action: M/S/C (Hahn/Davila) to adopt Resolution No. 69,618–N.S. approving a General Plan amendment that replaces Level of Service (LOS) with Vehicle Miles Traveled (VMT) as the criteria used to determine transportation-related environmental impacts under the California Environmental Quality Act (CEQA). This update is required by Senate Bill (SB) 743. Findings for the General Plan amendment are included in the report.

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

Recess 7:54 p.m. – 8:06 p.m.

Action Calendar – New Business

19. Amendment: FY 2021 Annual Appropriations Ordinance

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending FY 2021 Annual Appropriations Ordinance No. 7,724 - N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments since July 1, 2020 in the amount of \$184,267,388 (gross) and \$179,848,051 (net).

Financial Implications: See report

Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

Action: 4 speakers. Discussion held. Item continued to December 15, 2020.

Council Action Items

20. Updates to the COVID-19 Emergency Response Ordinance

From: 4x4 Joint Task Force Committee on Housing

Recommendation: Adopt first reading of an ordinance (effective February 1) amending Berkeley Municipal Code 13.110, Title 13, "The COVID-19 Emergency Response Ordinance," to enhance emergency tenant protections consistent with recently adopted Alameda County laws, action in other jurisdictions, and consultation with community stakeholders representing marginalized groups.

Financial Implications: See report

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Action: 7 speakers. M/S/C (Hahn/Harrison) to:

1) Refer the ordinance as presented in Supplemental Communications Packet #2 to the City Attorney to present a revised ordinance for a first reading at a special meeting on December 8, 2020 at 4:00 p.m. with the second reading to occur on December 15, 2020.

2) Request that the City Attorney retain the intent of the proposed ordinance and the comments by Council on 11/17, clarify the applicability of the ordinance (residents, boarders, tenants), conform the ordinance to state law and adhere closely to the county laws while meeting Berkeley needs, include an Ellis Act carve out option, request collaboration with the Councilmembers on the 4x4 Committee, the City Manager, and Rent Board legal staff.

3) Request that the City Attorney issue a legal memo or schedule a closed session meeting to review legal considerations on the Ellis Act carve out.

Vote: All Ayes.

21. Contract: Youth Listen Campaign with Voices Against Violence, A Program of the McGee Center for Food, Faith & Justice

From: Councilmember Davila (Author)

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments for the Youth Listen Campaign with Voices Against Violence: A Program of the McGee Center for Food, Faith & Justice, for the period October 15, 2020 through June 15, 2021, for an amount not to exceed \$50,000.

Financial Implications: \$50,000

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Action: Moved to Consent Calendar. Amended to be a budget referral (no resolution adopted). Approved recommendation from Supplemental Communications Packet #1.

Information Reports

22. FY 2020 Year-End Results and FY 2021 First Quarter Budget Update

From: City Manager

Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

Action: Item continued to December 15, 2020 to be heard directly before the AAO item.

Public Comment – Items Not Listed on the Agenda - 6 speakers.

Adjournment

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

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

Councilmember Droste absent 10:16 p.m. – 10:22 p.m.

Adjourned at 10:22 p.m.

I hereby certify that the forgoing is a true and correct record of the regular session meeting held on November 17, 2020.

Mark Numainville
City Clerk

Communications

North Berkeley BART Development Plans

1. 16 form letters
2. Laura Klein
3. Michael Katz
4. Virginia Browning
5. Eileen Hughes
6. Julieta Pisani McCarthy
7. Norma Harrison
8. Kelly Hammargren

Vision 2025

9. Philip le Roux
10. Andrew Sharo
11. Pathma Venasithamby
12. Karen Musalo
13. Maria Steinmann

Artificially Sweetened Drinks

14. Holly Scheider
15. Pauline Bondonno

Overtaxed and Overgoverned

16. Judy Hunt

Animal Welfare

17. Margaret McGarrahan

Mental Health Services

18. Eric Friedman

South Berkeley Street Cleaning and Housing

19. Ann Einstein

Berkeley Mutual Aid

20. Karen Dewald

Barbeques During Red Flag Days

21. Barbara Freeman

Sharp Containers for People's Park

22. Christopher Kohler

5G

23. Vivian Warkentin (2)

24. Phoebe Anne Sorgen

25. Judy Ann Alberti

International Day of Tolerance

26. Mina Karimabadi

Supplemental Communications and Reports 1

Item #20: Updates to the COVID-19 Emergency Response Ordinance

27. Revised material, submitted by Councilmember Davila

Item #21: Contract: Youth Listen Campaign with Voices Against Violence, A Program of the McGee Center for Food, Faith & Justice

28. Revised material, submitted by Councilmember Davila

Supplemental Communications and Reports 2

Item #1: Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Cause by a Novel (New) Coronavirus (COVID-19)

29. Kelly Hammargren

Item #20: Updates to the COVID-19 Emergency Response Ordinance

30. Revised material, submitted by Councilmember Davila

31. Nelson G. Nelson

32. Thomas Luce

Supplemental Communications and Reports 3

Item #6: Refer to the Planning Commission to Amend the General Plan Land Use Classification and Rezone Parcels Located at 1709 Alcatraz Street, 3404 King Street, 3244 Ellis Street, 1717 Alcatraz Avenue and 2024 Ashby Avenue

33. Dana Perls

34. Tracey Brieger

Item #18: General Plan Amendment: Vehicle Miles Traveled for Transportation Impact Analysis under the California Environmental Quality Act

35. Presentation, submitted by Planning

Item #19: Amendment FY 2021 Annual Appropriations Ordinance

36. Revised material, submitted by Budget

Item #20: Updates to the COVID-19 Emergency Response Ordinance

37. William Bogert

38. Lisa Camasi

39. Andrew Reichart

40. Diana Bohn

41. Berkeley Tenants Union

42. Peter Selawsky

43. Elsa Ramos

44. Marc Janowitz

45. Evelina Nava, on behalf of the East Bay Community Law Center

46. Hale Zukas

47. Chimey Lee

Item #21: Contract: Youth Listen Campaign with Voices Against Violence, A Program of the McGee Center for Food, Faith & Justice

48. Rev. Angela Jernigan

49. Alan Roselius

50. Rev. Molly Baskette

Item #22: FY 2020 Year-End Results and FY 2021 First Quarter Budget Update

51. Revised material, submitted by Budget



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: David White, Deputy City Manager
 Subject: Contract: National Institute for Criminal Justice Reform to Manage and Lead a Community Engagement Process to Develop a New Paradigm of Public Safety in Berkeley

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the National Institute for Criminal Justice Reform in an amount not-to-exceed \$270,000 for the period beginning January 1, 2021 and ending June 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

The total amount of the contract is not-to-exceed \$270,000. A General Fund appropriation for this contract will be included in the First Amendment to the FY 2021 Annual Appropriations Ordinance. Given their experience in Oakland facilitating the re-imagining public safety initiative, the National Institute for Criminal Justice Reform has indicated that there is the potential to pursue philanthropic resources to augment the scope of work especially as it pertains to the communications effort and community engagement process. City staff have agreed to work collaboratively with the National Institute for Criminal Justice Reform and their team to pursue additional funding opportunities.

CURRENT SITUATION AND ITS EFFECTS

On July 14, 2020, in Resolution No. 69,501-N.S., City Council passed a package of items providing direction for the development of a new paradigm of public safety in Berkeley. As part of the items that were adopted, City Council adopted [Item 18c](#) (“Referral to City Manager to Re-imagine Policing Approaches to Public Safety Using a Process of Robust Community Engagement, to Develop a Path Forward to Transforming Public Safety and Policing in Berkeley”) and [Item 18d](#) (“Transform Community Safety and Initiate a Robust Community Engagement”), which directs the City Manager to engage a qualified firm(s) or individual(s) to lead a robust, inclusive, and transparent community engagement process with the goal of achieving a new and transformative model of positive, equitable and community-centered safety for Berkeley. In response to the legislative package adopted by City Council, on September 8, 2020,

the City issued a Request for Proposal (Attachment 2) to solicit proposals from firms and/or individuals who can manage and lead this assignment.

A review panel consisting of city staff, community, and other stakeholders was convened to review and interview the firms that submitted proposals to the City. Of the six (6) firms that submitted proposals, four (4) were interviewed. Of the four (4) firms that were interviewed by the review panel, two were interviewed by the City Manager. A consensus was reached to recommend the National Institute for Criminal Justice Reform and their team to the City Council to lead the community engagement effort.

The contract with the National Institute of Criminal Justice Reform will provide for the following:

- Working with the City Auditor on the assessment of emergency and non-emergency calls for service.
- Developing a summary and presentation of new and emerging models of community safety and policing.
- Developing and implementing a communications strategy to ensure that the community is well informed, a robust community engagement process, and managing the Task Force to be established by the City Council.
- Identifying the programs and/or services that are currently provided by the Berkeley Police Department that can be provided by other City departments and / or organizations.
- Developing a final report and implementation plan that will be used to guide future decision making.

BACKGROUND

In response to a culmination of events -- the deaths of George Floyd and Breonna Taylor, as well as the use of force by Police Departments throughout the country in responding to community gatherings demanding change – along with concerns raised by citizens and community stakeholders, on July 14, 2020, the City Council passed a package of items providing direction for the development of a new paradigm of public safety in Berkeley that is summarized below:

- Having the City's elected Auditor perform an analysis of City's emergency 9-1-1 calls-for-service and responses, as well as analysis of the Berkeley Police Department's (BPD) budget.
- Evaluate initiatives and reforms that reduce the footprint of the Berkeley Police Department and limit the Berkeley Police Department's scope of work primarily to violent and criminal matters.
- Aspire to reduce the Berkeley Police Department's budget by 50% to generate resources to fund the following priorities:
 - Youth programs;
 - Violence prevention and restorative justice programs;
 - Domestic violence prevention;
 - Housing and homeless services;
 - Food security;
 - Public Health and Mental Health services including a specialized care unit;
 - Healthcare;
 - New city jobs;
 - Expanded partnerships with community organizations, and
 - Establishing a new Department of Transportation to administer parking regulations and traffic laws.
- Create plans and protocols for calls for service to be routed and assigned to alternative preferred responding entities and consider placing dispatch in the Fire Department or elsewhere outside the Police Department. The Fire Department is leading this effort.
- Analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit. This work is being led by our Health, Housing and Community Services Department and a [contract with Resource Development Associates to facilitate the design of the Specialize Care Unit is on the December 1, 2020 agenda](#).

- The City will align its work with the school district’s commitment to look at exploring and reducing policing in the schools.
- Analysis of litigation outcomes and exposure for city departments in order to guide the creation of city policy to reduce the impact of settlements on the General Fund. This work is being led by the City Attorney.
- Pursue the creation of a Berkeley Department of Transportation to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs and infrastructure, and identify and implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations. This work is being led by our Public Works Director.

In addition to the items listed above, on July 14, 2020, the City Council adopted [Item 18c](#) (“Referral to City Manager to Re-imagine Policing Approaches to Public Safety Using a Process of Robust Community Engagement, to Develop a Path Forward to Transforming Public Safety and Policing in Berkeley”) and [Item 18d](#) (“Transform Community Safety and Initiate a Robust Community Engagement”), which directs the City Manager to engage a qualified firm(s) or individual(s) to lead a robust, inclusive, and transparent community engagement process with the goal of achieving a new and transformative model of positive, equitable and community-centered safety for Berkeley.

In response to the legislative package adopted by City Council, on September 8, 2020, the City issued a Request for Proposal (Attachment 2) to solicit proposals from firms and/or individuals who can plan, develop, and lead an inclusive and transparent community engagement process to help the City achieve a new paradigm of public safety in Berkeley. The City received a total of six (6) proposals that were deemed to be complete and met the submittal requirements outlined in the Request for Proposal.

In order to ensure a thorough review of the proposals, the City convened a team that consisted of 13 individuals (6 city staff and 7 members of the community and other stakeholders). The following outlines the individuals that reviewed the proposals:

- | | |
|--------------------|------------------|
| Elana Auerbach | Kathy Lee |
| LaTanya Bellow | Emily Murphy |
| Farimah Brown | Andrea Pritchett |
| Kitty Calavita | Kevin Schofield |
| Shamika Cole | Marc Staton |
| Lupe Gallegos-Diaz | David White |
| Alecia Harger | |

As summarized in regular updates provided to the City Council, the proposal review team met on three occasions. At the first meeting, the team discussed the proposals that were submitted to the City and ultimately selected four (4) out of the six (6) teams

to be interviewed. At the second meeting, the proposal review team convened to discuss the format of the interviews and develop a set of questions that will be asked of each of the teams invited to participate in the interviews. The review panel met for a third and final time on Thursday November 12, 2020 from 5:00 pm to 10:30 pm to conduct interviews of the four teams on the zoom platform, rank the teams, and discuss perceived “Strengths” and “Concerns”. The City Manager interviewed the top two firms on Friday November 20, 2020.

Based on the strength of its team, subject matter expertise, familiarity with the City, and robust community engagement process, the National Institute for Criminal Justice Reform and the team that they have assembled is being recommended to the City Council to lead the community engagement effort. Working with the National Institute for Criminal Justice Reform includes the following team members:

- Analysis Group, Inc.
- Berkeley Youth Alternatives
- Bright Research Group
- Pastor Michael Smith
- Reverend Michael McBride
- The Justice Collaboratory
- Renne Public Law Group

The Scope of Work for this assignment includes the following:

- Working with the City Auditor on the assessment of emergency and non-emergency calls for service. As necessary, the National Institute for Criminal Justice Reform will build on the work of the City Auditor to provide additional mapping and analysis to provide a strong analytical framework for this assignment.
- Developing a summary and presentation of new and emerging models of community safety and policing.
- Developing and implementing a communications strategy to ensure that the community is well informed and a robust community engagement process to ensure that a diversity of perspectives are heard, especially the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, survivors and victims of harm and other stakeholders that have been historically marginalized and under-served. The National Institute for Criminal Justice Reform will also manage the Task Force being considered by the City Council on December 15, 2020. In addition, the National Institute for Criminal Justice Reform will manage the Task Force established by the City Council.

- Identifying the programs and/or services that are currently provided by the Berkeley Police Department that can be provided by other City departments and / or organizations. The National Institute for Criminal Justice Reform and its team will coordinate with City departments that are leading work surrounding priority / emergency medical dispatching, the Specialized Care Unit, and BerkDoT.
- Developing a final report and implementation plan that will be subject to public review prior to being finalized.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The National Institute for Criminal Justice Reform and its team was selected as the vendor for this contract through a competitive RFP process, and the evaluation panel for the RFP included both City Staff and community stakeholders.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to approve the attached Resolution and the City could restart the RFP process. This is not recommended due to the need to provide timely recommendations to City Council. Alternatively, the City Council could decide not to approve the contract at a level that exceeds the \$200,000 in funds that were allocated to this assignment as part of the adopted FY 21 budget. In this case, city staff would work with the National Institute for Criminal Justice Reform and its team to reduce the scope of work to align with available resources. In the event city staff cannot negotiate a scope of work that is in line with City Council direction, city staff would approach the other firm that was interviewed by the City Manager.

CONTACT PERSON

David White, Deputy City Manager, (510) 981-7012

Shamika Cole, Associate Management Analyst, (510) 981-7043

Attachments:

1: Resolution

2: Request for Proposal

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

CONTRACT: NATIONAL INSTITUTE FOR CRIMINAL JUSTICE REFORM TO
MANAGE AND LEAD A COMMUNITY ENGAGEMENT PROCESS TO DEVELOP A
NEW PARADIGM OF PUBLIC SAFETY IN BERKELEY

WHEREAS, on July 14, 2020, the City Council of the City Berkeley passed a package of items providing direction for the development of a new paradigm of public safety in Berkeley that included direction to the City Manager to hire a firm to lead a robust community engagement effort; and

WHEREAS, City of Berkeley issued a Request for Proposal on September 8, 2020 and the National Institute for Criminal Justice Reform and their team was selected through a competitive Request for Proposal process; and

WHEREAS, the National Institute for Criminal Justice Reform is being recommended to the City Council based on the strength of their team, subject matter expertise, familiarity with the City, and robust community engagement process; and

WHEREAS, the National Institute for Criminal Justice Reform has agreed to perform the work necessary for this assignment including, but not limited to:

- Working with the City Auditor on the assessment of emergency and non-emergency calls for service.
- Developing a summary and presentation of new and emerging models of community safety and policing.
- Developing and implementing a communications strategy to ensure that the community is well informed, a robust community engagement process, and managing the Task Force to be established by the City Council.
- Identifying the programs and/or services that are currently provided by the Berkeley Police Department that can be provided by other City departments and / or organizations.
- Developing a final report and implementation plan that will be used to guide future decision making.

WHEREAS, the services to be performed by the National Institute for Criminal Justice Reform and their team align with the Strategic Plan goal to champion and demonstrate social and racial equity.

December 15, 2020

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

Section 1. The City Manager or her designee is hereby authorized to execute a contract and any amendments with National Institute for Criminal Justice Reform to manage and lead a community engagement to develop a new paradigm for public safety in the City of Berkeley for a total contract not-to-exceed \$270,000 from the General Fund for the period beginning January 1, 2021 and ending June 30, 2022. A General Fund appropriation for this contract will be included in the First Amendment to the FY 2021 Annual Appropriations Ordinance.

Section 2. A record signature copy of the contract and any amendments between the City and the National Institute for Criminal Justice Reform shall be on file in the Office of the City Clerk.



Finance Department
General Services Division

**FOR PROPOSALS (RFP)
Specification No. 21-11413
FOR
CITY OF BERKELEY POLICE RE-IMAGINING
PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY**

Dear Proposer:

The City of Berkeley is soliciting written proposals from qualified firms or individuals **who can plan, develop, and lead an inclusive and transparent community engagement process to help the City achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley. The qualified firm or individual will also be asked to summarize its work and research in a report and implementation plan that will consist of a series of recommendations to be considered by the City Council of the City of Berkeley.** As a Request for Proposal (RFP) this is not an invitation to bid and although price is very important, other factors will be taken into consideration.

The project scope, content of proposal, and vendor selection process are summarized in the RFP (attached). **Proposals must be received no later than 2:00 pm, on Tuesday, October 6, 2020.** Proposals are to be sent via email with the “**City of Berkeley Police Re-Imagining**” and **Specification No. 21-11413** clearly indicated in the subject line of the email. Please submit one (1) PDF of the technical proposal. Corresponding pricing proposal shall be submitted as a separate document.

Email Proposals to:

City of Berkeley
Finance Department/General Services Division
purchasing@cityofberkeley.info

Proposals will not be accepted after the date and time stated above. Incomplete proposal or proposals that do not conform to the requirements specified herein will not be considered. Issuance of the RFP does not obligate the City to award a contract, nor is the City liable for any costs incurred by the proposer in the preparation and submittal of proposals for the subject work. The City retains the right to award all or parts of this contract to several bidders, to not select any bidders, and/or to re-solicit proposals. The act of submitting a proposal is a declaration that the proposer has read the RFP and understands all the requirements and conditions.

The City will conduct a non-mandatory pre-proposal conference on Tuesday, September 15, 2020 at 1:00 p.m. via ZOOM video conferencing at <https://zoom.us/j/95085315115>. To join by telephone, dial (669) 900 6833(Meeting ID: 950 8531 5115).

For questions concerning the anticipated work, or scope of the project, please **contact David White, Deputy City Manager**, via email at dwhite@cityofberkeley.info no later than Monday, September 21, 2020. Answers to questions will **not** be provided by telephone or email. Answers to all questions or any addenda will be **posted** on the City of Berkeley’s site at <http://www.cityofberkeley.info/ContentDisplay.aspx?id=7128>. It is the vendor’s responsibility to check this site. For general questions concerning the submittal process, contact purchasing at 510-981-7320.

We look forward to receiving and reviewing your proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Sweet', is positioned below the word 'Sincerely,'.

Darryl Sweet, C.P.M., CPSM
General Services Manager

I. BACKGROUND

The City of Berkeley, California was originally incorporated as a town in 1878 and as a City in 1909. On January 30, 1909, the people of the City adopted a City Charter under which it currently operates (as amended). The City Council is responsible for adopting ordinances, resolutions, the budget, appointing commissions and committees, and hiring the City Manager. The City Manager is responsible for implementing the City Council's policies, ordinances and directives, for overseeing the day-to-day operations of the City, and for appointing the directors of the City's departments. The City of Berkeley has a population in excess of 120,000 and covers approximately 10 square miles.

In response to a culmination of events -- the deaths of George Floyd and Breonna Taylor, as well as the use of force by Police Departments throughout the country in responding to community gatherings demanding change -- along with concerns raised by citizens and community stakeholders, on [July 14, 2020](#), the City Council passed a package of items providing direction for the development of a new paradigm of public safety in Berkeley that is summarized below:

- Having the City's elected Auditor perform an analysis of City's emergency 9-1-1 calls-for-service and responses, as well as analysis of the Berkeley Police Department's (BPD) budget. The City Council encouraged the Auditor to engage with subject matter experts.
- Evaluate initiatives and reforms that reduce the footprint of the BPD and limit BPD's scope of work primarily to violent and criminal matters. This work should include an evaluation of programs and services currently provided by the BPD that could be better served by trained non-sworn city staff or community partners.
- Aspire to reduce the BPD's budget by 50% to generate resources to fund the following priorities:
 - Youth programs;
 - Violence prevention and restorative justice programs;
 - Domestic violence prevention;
 - Housing and homeless services;
 - Food security;
 - Public Health and Mental Health services including a specialized care unit;
 - Healthcare;
 - New city jobs;
 - Expanded partnerships with community organizations, and
 - Establishing a new Department of Transportation to administer parking regulations and traffic laws.
- Create plans and protocols for calls for service to be routed and assigned to alternative preferred responding entities and consider placing dispatch in the Fire Department or elsewhere outside the Police Department. The Fire and Police Departments are working collaboratively on developing a model for priority dispatching and the City Council placed a parcel tax initiative on the 2020 ballot that could implement this priority.
- Analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit. This Specialized Care Unit (SCU) consisting of trained crisis-response field workers who would respond to calls that the Public Safety Communications Center operator evaluated as non-criminal and that posed no imminent threat to the safety of community members and/or Police Department or Fire Department personnel. The City Council has allocated resources to engage third-party resources to assist the City in developing this initiative.
- The City will align its work with the school district's commitment to look at exploring and reducing policing in the schools.
- Analysis of litigation outcomes and exposure for city departments in order to guide the creation of city policy to reduce the impact of settlements on the General Fund.

- Pursue the creation of a Berkeley Department of Transportation to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs and infrastructure, and identify and implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.

Any firm or individual that is interested in responding to this RFP is strongly encourage to watch the [July 14, 2020 City Council meeting](#)¹ and read the Annotated Agenda for the [July 14, 2020 City Council meeting](#)², as well as the various proposals developed by the Mayor and City Council as contained in Items 18A – 18D on the [July 14, 2020 City Council Agenda](#)³.

In addition to the items listed above, the City Council adopted [Item 18c](#) (“Referral to City Manager to Re-imagine Policing Approaches to Public Safety Using a Process of Robust Community Engagement, to Develop a Path Forward to Transforming Public Safety and Policing in Berkeley”) and [Item 18d](#) (“Transform Community Safety and Initiate a Robust Community Engagement”), which directs the City Manager to engage a qualified firm(s) or individual(s) to lead a robust, inclusive, and transparent community engagement process with the goal of achieving a new and transformative model of positive, equitable and community-centered safety for Berkeley. [Items 18c](#) and [18d](#) provide the foundation for this assignment.

Berkeley’s communities of color, particularly our African American community must be at the forefront of conversations to re-imagine approaches to policing and public safety. It is critical that the future of community health and safety is defined by the Berkeley community, elevating the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically marginalized and under-served. The community should be invited and encouraged to participate in public, transparent community forums to listen, learn and receive people’s ideas about how policing should be re-imagined and transformed so that communities of color can feel safe within their own neighborhoods, the City of Berkeley, and in their interactions with the members of the BPD.

It is anticipated that the process will be informed by deep research and engagement of subject matter experts to define a holistic, anti-racist approach to community safety, including a review and analysis of new and emerging models, programs and practices of policing and community safety that can be applied in Berkeley.

Ultimately, the firm or individual that is selected for this assignment will recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of Reduce, Improve and Reinvest as proposed by the National Institute for Criminal Justice Reform⁴, considering, among other things:

- The social determinants of health and changes required to deliver a holistic approach to community-centered safety; and
- Defining an appropriate response to calls-for-service including size, scope of operation and powers and duties of a well-trained police force; and
- Limiting militarized weaponry and equipment; and
- Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce restorative and transformative justice models, and reduce or eliminate use of fines and incarceration. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

¹ http://berkeley.granicus.com/MediaPlayer.php?publish_id=c4e8bb75-c6ef-11ea-93cb-0050569183fa&meta_id=308590

² https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-14_Annotated_Agenda_pdf.aspx

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/City_Council_07-14-2020_-_Regular_Meeting_Agenda.aspx

⁴ <https://nicjr.org/wp-content/uploads/2020/07/Shrink-the-Beast.pdf>

Finally, over the past few months, the City Council has taken action on a number of items that will inform this process:

- On [April 14, 2020](#), the City Council adopted a resolution submitting an amendment to the City Charter to establish a Director of Police Accountability and Police Accountability Board that will replace the existing Police Review Commission to a vote of the electors at the November 3, 2020 General Municipal Election.
- On [June 9, 2020](#), the City Council banned the use of tear gas in the City of Berkeley. The City Council also prohibited the use of pepper spray or smoke for crowd control during the COVID-19 pandemic.
- On [July 23, 2020](#), the City Council adopted a revised Use of Force of Policy that will go into effect on October 1, 2020.

II. SCOPE OF SERVICES

The successful firm or individual will be expected, at a minimum, to prepare a Scope of Services outlined below to help the City achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley. The successful firm or individual should identify any additional services beyond what is described below that will be needed to meet the City's expectations and explain them in their response. Finally, the firm or individual that is selected for this assignment will need to remain flexible as the process may change as circumstances and outcomes from the discussions require.

Project Work Plan and Timing

Develop a project work plan and timeline that identifies key milestones and deliverables. The work plan and timeline shall be reviewed and discussed at a kick-off meeting with the City that will also provide an opportunity to review the scope of work and available data. The selected firm or individual will prepare the agenda for the kick-off meeting and be responsible for meeting minutes.

Research and Analysis

The following outlines research and analysis that shall be performed early in the assignment to inform the community engagement process.

- Analyze emergency and non-emergency calls-for-service for the past three (3) years to determine those calls-for-service that require a response from BPD. Results of this research shall be summarized in a memorandum and presented to the City. Prior to submitting a final memo and presentation, the City will be provided a draft memorandum and presentation to provide comments or questions that shall be incorporated into the final memorandum and presentation that is made publicly available.
- Develop a summary and presentation of new and emerging models of community safety and policing. In consultation with subject matter experts, prepare a memorandum and presentation of new and emerging models of community safety and policing. This work will include a review of current research and best practices along with case study research. To the extent practicable, this work will also include model legislation and policies that have been adopted and successfully implemented. Prior to submitting a final memo and presentation, the City will be provided a draft memorandum and presentation to provide comments or questions that shall be incorporated into the final memorandum and presentation that is made publicly available.

Develop and implement a robust, transparent, and inclusive community engagement process

It is envisioned that the firm or individual that is selected for this assignment will devise and lead a well-organized and structured community engagement process that will consist of one or more committees consisting of representatives of the City Council, City leadership, members of the Berkeley Police Department, residents, and other community stakeholders to provide oversight and direction to the overall process, as well as assist in the development and vetting of proposals for a new model of policing and community safety.

The community engagement process should consist of a number of strategies including virtual (Zoom) forums, roundtable discussions and focus groups, and community surveys to better understand and address race relations, social justice and the police-community relationship in the City of Berkeley. These discussions will be designed to engage the entire community and will seek to include community based organizations including but not limited to non-profits and faith based, the Police Review Commission, the City of Berkeley Police Chief and department, other City commissions and/or commissioners, neighborhood residents, and representatives of the business community. In developing a community engagement plan, the selected firm or individual should be prepared and plan for the possibility of meeting in person. The budget that is submitted to the City should include pricing for both options.

Develop and implement an effective communications strategy

The communications strategy will be designed to provide the City Council, City leadership and employees, community stakeholders, and the entire community with regular updates to ensure that the community is well-informed of the process and progress. The communications strategy will utilize multiple channels including, but not limited to: a project website either hosted by the City or the firm and/ or individual that is selected for this assignment (to be determined), community newsletters, email, social media, and video.

Report and Implementation Plan

The culmination of the work outlined in the Scope of Services shall be compiled and summarized in an easy-to-read narrative report that clearly identifies a model of community safety and policing in Berkeley. The implementation plan will provide the City with a clear roadmap, action items and recommendations, and timeline to achieve the recommended model of community safety and policing.

It is anticipated that the Report and Implementation Plan will, at a minimum, consist of the following:

- Executive summary that outlines the process, key findings and recommendations, and path to implementation.
- Summary of research and analysis performed as part of this assignment including the review of emergency and non-emergency calls-for-service and new and emerging models of community safety and policing.
- Summary of communications and community engagement process.
- Identify the programs and/or services provided by the BPD that can be provided by other City departments or external third-party entities. Recommendations for shifting work to other City departments or third-party entities should include the process, timeline and sequencing that would underpin the shift of work. Where programs and/or services provided by BPD are to be shifted to other City departments, the report will identify the specific job classification(s) to provide such service. Recommendations shall recognize and account for collective bargaining constraints and other considerations related to the Myers-Milias-Brown Act.
- Identify financial and organizational impacts and resources needed to implement recommendations, including, but not limited to:
 - Budget impacts, both revenue and expenditures, to the BPD budget.
 - Budget implications to other City Departments that are recommended to absorb programs and/or services previously performed by the BPD.
 - The extent to which the cost of new positions to be created are offset by savings in the BPD or other parts of the organization.

- Recommendations that shift work to entities outside of the City organization should include the expected cost to pay these outside entities and identify whether there is savings in the BPD to pay for these programs or services or if new resources will be needed.
- **Phasing and Timing of Recommendations.** Recommendations shall be prioritized and a phased plan for implementation will be provided to provide the City a roadmap to transition to the recommended model of community safety and policing, as the budget permits.

An Administrative Draft Report and Administrative Draft Implementation Plan will be submitted to the City and the City will be provided 14 days to submit questions or comments, which shall be incorporated into a Public Review Draft Report and Public Review Draft Implementation Plan that shall be made publicly available.

Following release of the Public Review Draft Report and Public Review Draft Implementation Plan, the firm or individual selected for this assignment shall lead two (2) public engagement workshops (remote or in person) to allow the public to comment on the Public Review Draft Report and Public Review Draft Implementation Plan.

Following the public engagement workshops, a Final Report and Final Implementation Plan will be prepared. The Final Report and Final Implementation Plan will be presented (remote or in person) to the following:

- City's Public Safety Policy Committee;
- City's Budget and Finance Policy Committee; and
- City Council.

Project Term

This work is anticipated to begin as soon as possible and the firm or individual that is selected is expected to act with urgency. This work must be completed by March 12, 2021 for the City Council to consider recommendations as part of its Fiscal Year 2022 / 2023 budget that will be adopted by City Council on or before June 30, 2021.

III. SUBMISSION REQUIREMENTS

All proposals shall include the following information, organized as separate sections of the proposal. The proposal should be concise and to the point

1. Contractor Identification:

Provide the name of the firm, the firm's principal place of business, the name and telephone number of the contact person and company tax identification number

2. Client References:

Provide a minimum of *three (3)* client references. References should be California cities or other large public sector entities. Provide the designated person's name, title, organization, address, telephone number, and the project(s) that were completed under that client's direction.

3. Price Proposal:

The proposal shall include pricing for all services. Pricing shall be all inclusive unless indicated otherwise. Pricing proposals shall be a separate document. The Proposal shall itemize all services, including hourly rates and estimated hours for all professional, technical and support personnel, and all other charges related to completion of the work shall be itemized per key deliverable under each task identified in the Scope of Services / Work Plan.

4. Contract Terminations:

If your organization has had a contract terminated in the last five (5) years, describe such incident. Termination for default is defined as notice to stop performance due to the vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the vendor, or (b) litigated and such litigation determined that the vendor was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the vendor's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

If the firm has not experienced any such termination for default or early termination in the past five (5) years, so indicate.

5. Proposal Submission Guidelines. All proposals should follow the following Format:

Section 1 - Background: Based on your understanding, briefly discuss the general requirements of the scope of work.

Section 2 – Scope: Discuss in detail each item in the RFP and how you intend to address each. This will be the longest section of your proposal and can have subsections.

Section 3 – Schedule: Develop a table of your expected schedule for completing the project. Include a breakdown of project tasks in the proposed schedule.

Section 4 – Staff: Indicate the staff who will be assigned to project. Detail their background and experience, and provide resumes for each team member.

Section 5 – Price Proposal: Provide your proposed price for the overall project, including a breakdown of the pricing for project tasks.

Section 6 – Additional Supporting Materials: Add any additional supporting information here. This is where to provide information related to similar projects you have completed for other cities or jurisdictions and what the results were.

IV. SELECTION CRITERIA

The following criteria will be considered, although not exclusively, in determining which firm is hired.

1. Project understanding and Scope of Services. The quality, clarity, and thoroughness of the response to the RFP will be considered and evaluated. (15%)
2. Relevant experience in race relations, social justice, restorative and transformational justice, social determinants of health and safety, leading police reform and a demonstrated understanding of the history of policing in Berkeley, as well as new and emerging models, programs, and practices of community safety that are equitable and community-centered. (35%)
3. Experience/expertise leading difficult conversations and engaging large, broad, and diverse stakeholder groups ranging from those who have been impacted by police violence to law enforcement that has resulted in actionable outcomes/change and engendered trust and confidence. (35%)
4. Qualifications and references including relevant experience of project team. Evaluation will be based on documented experience on similar projects, resumes, and experience narratives submitted. The selected firm or individual and any subcontractors will demonstrate relevant experience and values to advance the goal of

transforming public safety from one that is rooted in enforcement and punishment to prevention and wellness.
(15%)

A selection panel will be convened to evaluate proposals and make a selection of the firm or individual for this assignment.

After a review of the proposals from the short listed respondents, the City may ask the proposers to make an oral presentation to answer any questions the City may have and to clarify their proposal. The City will then rank the proposals and will attempt to negotiate satisfactory contracts with them. If the City is unable to reach agreement with the selected respondents, the City will repeat the negotiation process with the next highest respondent, and so on, if necessary.

V. PAYMENT

Invoices: Invoices must be fully itemized, and provide sufficient information for approving payment and audit. Invoices must be accompanied by receipt for services in order for payment to be processed. Mail invoices to the Project Manager and reference the contract number.

City of Berkeley
Accounts Payable
PO Box 700
Berkeley, CA 94701
Attn: **David White, Deputy City Manager**
City Manager's Office

Payments: The City will make payment to the vendor on a time and materials basis within 30 days of receipt of a correct and complete invoice.

VI. CITY REQUIREMENTS

A. Non-Discrimination Requirements:

Ordinance No. 5876-N.S. codified in B.M.C. Chapter 13.26 states that, for contracts worth more than \$3,000 bids for supplies or bids or proposals for services shall include a completed Workforce Composition Form. Businesses with fewer than five employees are exempt from submitting this form. (See B.M.C. 13.26.030)

Under B.M.C. section 13.26.060, the City may require any bidder or vendor it believes may have discriminated to submit a Non-Discrimination Program. The Contract Compliance Officer will make this determination. This applies to all contracts and all consultants (contractors). Berkeley Municipal Code section 13.26.070 requires that all contracts with the City contain a non-discrimination clause, in which the contractor agrees not to discriminate and allows the City access to records necessary to monitor compliance. This section also applies to all contracts and all consultants. **Bidders must submit the attached Non-Discrimination Disclosure Form with their proposal**

B. Nuclear Free Berkeley Disclosure Form:

Berkeley Municipal Code section 12.90.070 prohibits the City from granting contracts to companies that knowingly engage in work for nuclear weapons. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that engages in nuclear weapons work. If your company engages in work for nuclear weapons, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Nuclear Free Disclosure Form with their proposal.**

C. Oppressive States:

The City of Berkeley prohibits granting of contracts to firms that knowingly provide personal services to specified Countries. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that is covered by City Council Resolution No. 59,853-N.S. If your company or any subsidiary is covered, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Oppressive States Disclosure Form with their proposal.**

D. Sanctuary City Contracting Ordinance:

Chapter 13.105 of the Berkeley Municipal Code prohibits the City from granting and or retaining contracts with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security (“ICE”). **Bidders must submit the attached Sanctuary City Compliance Statement with their proposal.**

E. Conflict of Interest:

In the sole judgment of the City, any and all proposals are subject to disqualification on the basis of a conflict of interest. The City may not contract with a vendor if the vendor or an employee, officer or director of the proposer's firm, or any immediate family member of the preceding, has served as an elected official, employee, board or commission member of the City who influences the making of the contract or has a direct or indirect interest in the contract.

Furthermore, the City may not contract with any vendor whose income, investment, or real property interest may be affected by the contract. The City, at its sole option, may disqualify any proposal on the basis of such a conflict of interest. **Please identify any person associated with the firm that has a potential conflict of interest.**

F. Berkeley Living Wage Ordinance:

Chapter 13.27 of the Berkeley Municipal Code requires that contractors offer all eligible employees with City mandated minimum compensation during the term of any contract that may be awarded by the City. If the Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with the City within a one-year period may subject Contractor to the requirements under B.M.C. Chapter 13.27. A certification of compliance with this ordinance will be required upon execution of a contract. The current Living Wage rate can be found here: https://www.cityofberkeley.info/Finance/Home/Vendors_Living_Wage_Ordinance.aspx. The Living Wage rate is adjusted automatically effective June 30th of each year commensurate with the corresponding increase in the Consumer Price Index published in April of each year. If the Living Wage rate is adjusted during the term of your agreement, you must pay the new adjusted rate to all eligible employees, regardless of what the rate was when the contract was executed.

G. Berkeley Equal Benefits Ordinance:

Chapter 13.29 of the Berkeley Municipal Code requires that contractors offer domestic partners the same access to benefits that are available to spouses. A certification of compliance with this ordinance will be required upon execution of a contract.

H. Statement of Economic Interest:

The City's Conflict of Interest Code designates “consultants” as a category of persons who must complete Form 700, Statement of Economic Interest, at the beginning of the contract period and again at the termination of the contract. The selected contractor will be required to complete the Form 700 before work may begin.

VII. OTHER REQUIREMENTS

A. Insurance

The selected contractor will be required to maintain general liability insurance in the minimum amount of \$2,000,000, automobile liability insurance in the minimum amount of \$1,000,000 and a professional liability insurance policy in the amount of \$2,000,000 to cover any claims arising out of the performance of the contract. The general liability and automobile insurance must name the City, its officers, agents, volunteers and employees as additional insureds.

B. Worker's Compensation Insurance:

A selected contractor who employs any person shall maintain workers' compensation insurance in accordance with state requirements. Sole proprietors with no employees are not required to carry Worker's Compensation Insurance.

C. Business License

Virtually every contractor that does business with the City must obtain a City business license as mandated by B.M.C. Ch. 9.04. The business license requirement applies whether or not the contractor has an office within the City limits. However, a "casual" or "isolated" business transaction (B.M.C. section 9.04.010) does not subject the contractor to the license tax. Warehousing businesses and charitable organizations are the only entities specifically exempted in the code from the license requirement (see B.M.C. sections, 9.04.295 and 9.04.300). Non-profit organizations are granted partial exemptions (see B.M.C. section 9.04.305). Persons who, by reason of physical infirmity, unavoidable misfortune, or unavoidable poverty, may be granted an exemption of one annual free license at the discretion of the Director of Finance. (see B.M.C. sections 9.04.290).

Vendor must apply for a City business license and show proof of application to Purchasing Manager within seven days of being selected as intended contractor.

The Customer Service Division of the Finance Department located at 1947 Center Street, Berkeley, CA 94704, issues business licenses. Contractors should contact this division for questions and/or information on obtaining a City business license, in person, or by calling 510-981-7200.

D. Recycled Paper

Any printed reports for the City required during the performance of the work shall be on 100% recycled paper, and shall be *printed on both sides of the page* whenever practical.

E. State Prevailing Wage:

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. seq. These labor categories, when employed for any "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," constitute a "Public Work" within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages.

Wage information is available through the California Division of Industrial Relations web site at:
http://www.dir.ca.gov/OPRL/statistics_and_databases.html

VIII. SCHEDULE (dates are subject to change)

- | | |
|--|------------------------------|
| <input type="checkbox"/> Issue RFP to Potential Bidders | Tuesday, September 8, 2020 |
| <input type="checkbox"/> Pre-proposal conference | Tuesday, September 15, 2020 |
| <input type="checkbox"/> Written Questions Due | Monday, September 21, 2020 |
| <input type="checkbox"/> Answers Provided | Thursday, September 24, 2020 |
| <input type="checkbox"/> Proposals Due from Potential Bidders | Tuesday, October 6, 2020 |
| <input type="checkbox"/> Complete Selection Process | October 16, 2020 |
| <input type="checkbox"/> Council Approval of Contract (over \$50k) | November 10, 2020 |
| <input type="checkbox"/> Award of Contract | November 11, 2020 |
| <input type="checkbox"/> Sign and Process Contract | November 11 - 23, 2020 |
| <input type="checkbox"/> Notice to Proceed | November 23, 2020 |

Thank you for your interest in working with the City of Berkeley for this service. We look forward to receiving your proposal.

Attachments:

- | | |
|---|--------------|
| • Check List of Required items for Submittal | Attachment A |
| • Non-Discrimination/Workforce Composition Form | Attachment B |
| • Nuclear Free Disclosure Form | Attachment C |
| • Oppressive States Form | Attachment D |
| • Sanctuary City Compliance Statement | Attachment E |
| • Living Wage Form | Attachment F |
| • Equal Benefits Certification of Compliance | Attachment G |
| • Right to Audit Form | Attachment H |
| • Insurance Endorsement | Attachment I |

ATTACHMENT A

CHECKLIST

- Proposal describing service (one (1) PDF of proposal)
- Contractor Identification and Company Information
- Client References
- Costs proposal by task, type of service & personnel (as a separate document from the proposal)
- The following forms, completed and **signed in blue ink** (attached):
 - Non-Discrimination/Workforce Composition Form Attachment B
 - Nuclear Free Disclosure Form Attachment C
 - Oppressive States Form Attachment D
 - Sanctuary City Compliance Statement Attachment E
 - Living Wage Form (*may be optional*) Attachment F
 - Equal Benefits Certification (EBO-1) (*may be optional*) Attachment G

ADDITIONAL SUBMITTALS REQUIRED FROM SELECTED VENDOR AFTER COUNCIL APPROVAL TO AWARD CONTRACT.

- Provide **original-signed in blue ink** Evidence of Insurance
 - Auto
 - Liability
 - Worker's Compensation
- Right to Audit Form Attachment H
- Commercial General & Automobile Liability Endorsement Form Attachment I
- Berkeley Business License

For informational purposes only: Sample of Personal Services Contract can be found on the City's website on the current bid and proposal page at the top of the page.

NON-DISCRIMINATION/WORKFORCE COMPOSITION FORM FOR NON-CONSTRUCTION CONTRACTS

To assist the City of Berkeley in implementing its Non-Discrimination policy, it is requested that you furnish information regarding your personnel as requested below and return it to the City Department handling your contract:

Organization: _____

Address: _____

Business Lic. #: _____

Occupational Category: (See reverse side for explanation of terms)	Total Employees		White Employees		Black Employees		Asian Employees		Hispanic Employees		Other Employees	
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
Official/Administrators												
Professionals												
Technicians												
Protective Service Workers												
Para-Professionals												
Office/Clerical												
Skilled Craft Workers												
Service/Maintenance												
Other (specify)												
Totals:												

Is your business MBE/WBE/DBE certified? Yes _____ No _____ If yes, by what agency? _____

If yes, please specify: Male: _____ Female: _____ Indicate ethnic identifications: _____

Do you have a Non-Discrimination policy? Yes: _____ No: _____

Signed: _____ Date: _____

Verified by: _____ Date: _____

City of Berkeley Contract Compliance Officer

Attachment B (page 1)

Occupational Categories

Officials and Administrators - Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy superintendents, unit supervisors and kindred workers.

Professionals - Occupations that require specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dietitians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, and kindred workers.

Technicians - Occupations that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences) and kindred workers.

Protective Service Workers - Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police officers, fire fighters, guards, sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

Para-Professionals - Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a staff development and promotion under a "New Transporters" concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemaker aides, home health aides, and kindred workers.

Office and Clerical - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearings reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

Skilled Craft Workers - Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairpersons, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters, and kindred workers.

Service/Maintenance - Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, and construction laborers.

Attachment B (page 2)

CITY OF BERKELEY
Nuclear Free Zone Disclosure Form

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).

4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Police Re-Imagining/21-11413**

Attachment C

CITY OF BERKELEY
Oppressive States Compliance Statement

The undersigned, an authorized agent of _____ (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Oppressive State" means: **Tibet Autonomous Region and the Provinces of Abo, Kham and U-Tsang**

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Police Re-imagining/21-11413**

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

Signature: _____ Date: _____

Attachment D

CITY OF BERKELEY
Sanctuary City Compliance Statement

The undersigned, an authorized agent of _____ (hereafter "Contractor"), has had an opportunity to review the requirements of Berkeley Code Chapter 13.105 (hereafter "Sanctuary City Contracting Ordinance" or "SCCO"). Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security ("ICE"). Contractor understands the meaning of the following terms used in the SCCO:

- a. "Data Broker" means either of the following:
 - i. 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;
 - ii. 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:
 - i. The City's computer-network health and performance tools;
 - ii. 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.

Contractor understands that it is not eligible to receive or retain a City contract if at the time the Contract is executed, or at any time during the term of the Contract, it provides Data Broker or Extreme Vetting services to ICE.

Contractor further understands and agrees that Contractor's failure to comply with the SCCO shall constitute a material default of the Contract and the City Manager may terminate the Contract and bar Contractor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

By executing this Statement, Contractor certifies that it complies with the requirements of the SCCO and that if any time during the term of the Contract it ceases to comply, Contractor will promptly notify the City Manager in writing. Any person or entity who knowingly or willingly supplies false information in violation of the SCCO shall be guilty of a misdemeanor and up to a \$1,000 fine.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day of _____, 20__, at _____, California.

Printed Name: _____ Title: _____

Signed: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Police Re-Imagining/21-11413**

CITY OF BERKELEY
Living Wage Certification for Providers of Services

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, subsequent contracts may be subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

Section I.

1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?

YES ____ **NO** ____

If **no**, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If **yes**, please continue to question **1(b)**.

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES ____ **NO** ____

If you have answered, "**YES**" to questions **1(a)** and **1(b)** this contract **IS** subject to the LWO. If you responded "NO" to **1(b)** this contract IS NOT subject to the LWO. **Please continue to Section II.**

2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?

YES ____ **NO** ____

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES ____ **NO** ____

If you have answered, "**YES**" to questions **2(a)** and **2(b)** this contract **IS** subject to the LWO. If you responded "NO" to **2(b)** this contract IS NOT subject to the LWO. **Please continue to Section II.**

Section II

Please read, complete, and sign the following:

THIS CONTRACT **IS** SUBJECT TO THE LIVING WAGE ORDINANCE.

THIS CONTRACT **IS NOT** SUBJECT TO THE LIVING WAGE ORDINANCE.

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Police Re-Imagining/21-11413**

Section III

-
- **** FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY ****

I have reviewed this Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract **IS / IS NOT** (circle one) subject to Berkeley's Living Wage Ordinance.

Department Name

Department Representative

Attachment F (page 2)

To be completed by
Contractor/Vendor



**Form EBO-1
CITY OF BERKELEY**

CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

If you are a **contractor**, return this form to the originating department/project manager. If you are a **vendor** (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Name:		Vendor No.:	
Address:	City:	State:	ZIP:
Contact Person:		Telephone:	
E-mail Address:		Fax No.:	

SECTION 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.
 Yes No (If "Yes," proceed to Section 5; if "No," continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?
 Yes No
If "Yes," continue to Question C.
If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? Yes No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? Yes No

If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.) If you answered "Yes" to both Questions C and D, please continue to Question E. If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.

- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? Yes No

**If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)
If you answered "No," continue to Section 3.**

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
 - By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
 - At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
 - Upon expiration of the contractor's current collective bargaining agreement(s).

Attachment G (page 1)

B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent?* Yes No

* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

SECTION 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

SECTION 5. CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this _____ day of _____, in the year _____, at _____, _____
(State) (City)

Name (please print)

Signature

Title

Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY

- Non-Compliant (The City may not do business with this contractor/vendor)
- One-Person Contractor/Vendor Full Compliance Reasonable Measures
- Provisional Compliance Category, Full Compliance by Date: _____
- Staff Name(*Sign and Print*): _____ Date: _____

Attachment G (page 2)

CITY OF BERKELEY
Right to Audit Form

The contractor agrees that pursuant to Section 61 of the Berkeley City Charter, the City Auditor's office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this contract.

In the event of such audit, Contractor agrees to provide the Auditor with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Auditor's office. City agrees to provide Contractor an opportunity to discuss and respond to/any findings before a final audit report is filed.

Signed: _____ Date: _____

Print Name & Title: _____

Company: _____

Contract Description/Specification No: **Police Re-Imagining/21-11413**

Please direct questions regarding this form to the Auditor's Office, at (510) 981-6750.

Attachment H

CITY OF BERKELEY
Commercial General and Automobile Liability Endorsement

The attached Certificates of Insurance are hereby certified to be a part of the following policies having the following expiration dates:

Policy No.	Company Providing Policy	Expir. Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The scope of the insurance afforded by the policies designated in the attached certificates is not less than that which is afforded by the Insurance Service Organization's or other "Standard Provisions" forms in use by the insurance company in the territory in which coverage is afforded.

Such Policies provide for or are hereby amended to provide for the following:

1. The named insured is _____.
2. CITY OF BERKELEY ("City") is hereby included as an additional insured with respect to liability arising out of the hazards or operations under or in connection with the following agreement:
_____.

The insurance provided applies as though separate policies are in effect for both the named insured and City, but does not increase the limits of liability set forth in said policies.

3. The limits of liability under the policies are not less than those shown on the certificate to which this endorsement is attached.
4. Cancellation or material reduction of this coverage will not be effective until thirty (30) days following written notice to _____, Department of _____, Berkeley, CA.
5. This insurance is primary and insurer is not entitled to any contribution from insurance in effect for City.

The term "City" includes successors and assigns of City and the officers, employees, agents and volunteers.

Insurance Company

Date: _____

By: _____
Signature of Underwriter's
Authorized Representative

Contract Description/Specification No: **Police Re-Imagining/21-11413**

Attachment I



Office of the City Manager

CONSENT CALENDAR

December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services Department

Subject: Contract No. 31900009 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for McKinley House (2111 McKinley Avenue, Berkeley, CA 94703)

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900009 with Building Opportunities for Self-Sufficiency (BOSS) through November 1, 2021, adding \$120,000 for a total contract Not to Exceed (NTE) of \$370,000, to fund Mental Health clients living at 2111 McKinley Avenue in Berkeley. This will extend the contract by one year.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the scope of work in the amount of \$120,000 are available in the FY 2021 Mental Health Services Act Fund.

CURRENT SITUATION AND ITS EFFECTS

The City has utilized BOSS as the property manager for 2111 McKinley Avenue for many years, and they have provided this vital service efficiently and reliably. The project houses six clients of the Mental Health Division's Full Service Partnership (FSP) program, and the funding will be used to support the operating costs for BOSS. The Mental Health Division would like to extend the current contract by one year, allowing BOSS to continue to provide much needed housing support for some of our most vulnerable formerly homeless clients.

BACKGROUND

The City owns the parcel located at 2111 McKinley Avenue (Alameda County Assessor's Parcel No. 52-2017-16-1), known as McKinley House. The land is improved with a seven-unit apartment building. Prior to the implementation of this program there was significant neighborhood communication and collaborative partnership. Six of the units are utilized as supportive housing units for Full Service Partnership Program clients of the Berkeley Mental Health Division, and one unit is used for an onsite property manager. The City's Mental Health Division operates the Full Service Partnership (FSP), which provides an intensive service program for adults age 18 and older who have been diagnosed with mental illness. The FSP Program is funded by the

Mental Health Services Act, and takes a team approach in partnering with eligible individuals to develop and assist in the achievement of individualized, recovery-focused goals to enable persons with serious mental illness to live successfully in the community rather than in institutions.

The Mental Health Division and BOSS desire to continue collaborating to provide housing and supportive services at McKinley House to participants in the FSP Program who are referred by the Mental Health Division. The framework to achieve this objective consists of the City leasing the property to BOSS, who in turn subleases the individual dwelling units to eligible individuals referred by the Mental Health Division. BOSS provides property management services, and the Mental Health Division provides services to residents through the FSP Program.

The McKinley House contract is funded through State of California, Mental Health Services Act (MHSA) funds. In order to use MHSA funds, locally approved plans and updates are required. The MHSA Three Year Program and Expenditure Plan (Three Year Plan) is the local plan that, informed by area stakeholders, details the uses of MHSA funds. Development of the MHSA FY20/21 – 21/22 Three Year Plan included conducting community program planning, writing a draft plan, providing a 30-day public review period, and conducting a public hearing on September 24th at the Mental Health Commission. Per MHSA regulations, all MHSA Plans and Updates must be approved by the local governing board. At the time this report was written the Three Year Plan has not yet been heard but is on the December 1, 2020 City Council Agenda for approval. Per the Three Year Plan, the Mental Health Division is proposing to continue all current programming including the McKinley House contract.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

BOSS has been providing property management services at 2111 McKinley Avenue for many decades, and has done so in a satisfactory capacity.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Steven Grolnic-McClurg, Manager of Mental Health, (510) 981-5249
Conor Murphy, Assistant Management Analyst, HHCS, (510) 981-7611

Attachments:
1: Resolution

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

CONTRACT NO. 31900009 AMENDMENT: BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY (BOSS) FOR MCKINLEY HOUSE (2111 MCKINLEY AVENUE, BERKELEY, CA 94703)

WHEREAS, vendor Building Opportunities for Self Sufficiency (BOSS) has operated McKinley House as transitional housing for homeless families for several decades; and

WHEREAS, the Master Lease and Property Management Agreement for McKinley House was approved by the Council of the City of Berkeley by Ordinance No. 7,619-N.S. on July 24, 2018; and

WHEREAS, a contract authorizing BOSS to provide property management services at McKinley House was approved by the Council of the City of Berkeley by Resolution No. 67,748-N.S. on November 29, 2016; and

WHEREAS, funding for McKinley House in FY21 was included in the Mental Health Services Act (MHSA) Fiscal Years 20/21-21/22 Three Year Plan, presented at the Mental Health Commission on September 24, 2020 and on the City Council agenda for December 1, 2020; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute a contract and any amendments with Building Opportunities for Self-Sufficiency (BOSS) to provide property management services for McKinley House through November 1, 2021 adding \$120,000 for a total amount not to exceed \$370,000. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services

Subject: Contract No. 32000232 Amendment: Worldwide Travel Staffing for Nurse Registry Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000232 with Worldwide Travel Staffing for nurse registry services. The total not to exceed limit will be \$1,272,580 and the contract end date will be extended to June 30, 2025. The contract will serve the needs of the Health, Housing and Community Services Department, providing fill-in nursing services as necessary at the Mental Health Clinic, Berkeley High School Health Center, COVID-19 Disease Containment Unit, the Public Health Emergency Preparedness' COVID-19 vaccine readiness planning, and the Berkeley Respite Program's nursing services.

FISCAL IMPACTS OF RECOMMENDATION

The original contract was in the amount of \$313,800 and the amendment will increase the limit by \$958,780 for a total not to exceed of \$1,272,580 and extend the term end date to June 30, 2025. The additional \$958,780 will be divided as follows:

Program	Amount	ERMA GL Account
Disease Containment Unit	\$324,480	336-51-501-503-2075-000-451-612410-
PHEP Vaccine Readiness	\$20,300	350-51-506-557-2075-000-451-612250-
Respite Nursing Services	\$100,000	311-51-504-530-2075-000-444-612990-
Mental Health Clinic	\$500,000	158-51-503-520-0000-000-451-612250-
Berkeley High School	\$14,000	324-51-506-560-0000-000-451-612410

Increase: \$958,780

The Mental Health Realignment funds of \$500,000 will be appropriated each year over the course of the contract term depending on staff vacancy rates and corresponding salary savings, at an approximate amount of \$100,000 per year and will be subject to Council approval of each fiscal year's Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

This Nurse Registry contract allows the Health, Housing and Community Services Department to utilize per diem nursing when there are nursing vacancies to provide required medical services to City's most vulnerable populations. It also allows the

department to more readily respond to the COVID-19 response efforts. This contract aligns with the Strategic Plan goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

The City released a Request for Proposals (RFP) under Specification No. 19-11326-C, convened a panel of stakeholders, interviewed representatives from the highest ranked responses, and selected Worldwide Travel Staffing as the most responsive, responsible bidder for this contract.

BACKGROUND

The Health, Housing and Community Services Department has experienced great difficulty in filling vacant positions for staff who can provide nursing services. Due to a variety of factors, including the Medi-Cal expansion through the Affordable Care Act, an existing shortage of nurses in the region has been greatly exacerbated. Many area providers are experiencing staff shortages in qualified nurses.

Additionally, COVID specific funds have been allocated to the City that must be spent within a very short time frame. Salary savings from vacant permanent positions, as well as targeted COVID revenue will be used to fund this contract. While we continue to actively recruit for permanent staff, this contract allows the Health, Housing and Community Services Department to utilize per diem nurses to provide vital health and mental health services to vulnerable populations as well as COVID-19 community response when permanent, career positions are vacant.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Worldwide Travel Staffing was selected as the vendor for this contract through a competitive RFP process. They offer nurses who provide community health services to youth and psychiatry services to Medi-Cal, uninsured, disenfranchised, and underserved populations. These services are necessary for the provision of public and mental health treatment provided by the City and have proven to be effective in delivering these services. This contract will only be utilized during staff shortages and are not a replacement of permanent staffing.

ALTERNATIVE ACTIONS CONSIDERED

The City could not provide mandated medication monitoring services and other nursing services for individuals with mental illness and physical illness, or provide a comprehensive COVID-19 response without these services.

CONTACT PERSON

Ann Song, Acting Administrative and Fiscal Manager, HHCS, (510) 981-5399

Attachments:

1: Resolution

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

CONTRACT NO. 32000232 AMENDMENT: WORLDWIDE TRAVEL STAFFING FOR
NURSE REGISTRY SERVICES

WHEREAS, on May 26, 2020, the City of Berkeley entered into Contract No. 32000232 with Worldwide Travel Staffing for nurse registry services in an amount not to exceed \$313,800 for the period March 1, 2020 to June 30, 2023; and

WHEREAS, the City of Berkeley's Health, Housing and Community Services Department has experienced great difficulty in filling vacancies in nursing positions; and

WHEREAS, Worldwide Travel Staffing offers nurses who provide mental health and community health services, provided by licensed nurses, to youth, Medi-Cal, uninsured, disenfranchised, and under-served populations; and

WHEREAS, Worldwide Travel Staffing's services support mental health goals of improving the health and well-being of the community during periods of staff shortages; and

WHEREAS, Worldwide Travel Staffing was selected through a competitive Request for Proposals process; and

WHEREAS, funds are available in the current year budget.

WHEREAS, funds are available to perform this work in the current year budget in the ERMA GL Account 336-51-501-503-2075-000-451-612410-, 350-51-506-557-2075-000-451-612250-, 311-51-504-530-2075-000-444-612990-, 158-51-503-520-0000-000-451-612250-, 324-51-506-560-0000-000-451-612410-, and this contract amendment has been entered into the Citywide contract database and assigned contract number 32000232; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 32000232 with Worldwide Travel Staffing to increase the total contract amount by \$958,780 for a total contract amount not to exceed \$1,272,580 for the period of March 1, 2020 to June 30, 2025 for the purpose of funding nurse registry services. A record signature copy of said contract and amendments to be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services
David Brannigan, Fire Chief, Fire Department

Subject: Revenue: Federal COVID-19 Funding from HHS CARES Act Provider Relief Fund

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to accept payments from the Health and Human Services (HHS) CARES Act Provider Relief Fund and to execute any resultant revenue agreements and amendments; which enables City Departments to conduct and implement mitigation strategies in response to COVID-19 in the estimated amount of \$181,962 for FY 2021.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley has applied for funds in the estimated amount of \$181,962 from the HHS CARES Act Provider Relief Fund. Once the payment has been received, it will be deposited into the One-Time Grants fund by department as follows:

Health Housing and Community Services (HHCS) Department: approximately \$93,466
Fire Department: approximately \$88,496

The amount of the allocation is up to 2% of patient care revenue reported in FY 2019. HHCS generated \$4,673,280 in revenue from patient care through the provision of case management, behavioral health services, and clinical services in FY 2019. The Fire Department generated \$4,424,808 in revenue from Ambulance Services in FY 2019. No match is required and the total payment is expected to be approximately \$181,962 for July 1, 2020 through June 30, 2021. If awarded, the allocation will be added into the FY 2021 Budget through the Second Amendment to the FY 2021 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley receives funding from many sources annually to conduct efforts towards improving the health and safety of the community. As a local health jurisdiction, the City is entitled to specific Federal and State funding to meet core public health objectives.

The Health, Housing and Community Services and the Fire Departments are committed to providing essential services to the community and City staff to prevent the spread of disease and to respond to health threats such as pandemics. If awarded, these funds would allow the Departments to achieve the following:

Ensure HHCS Aging Services Meals on Wheels program prepares and delivers nutritious meals to medically vulnerable residents of Berkeley in order to allow these individuals to safely shelter in place and prevent the spread of COVID-19. The Provider Relief Fund allocation would fund Senior Service Aides to staff this much needed program.

Enable the Berkeley Fire Department to work diligently to provide a resilient, safe, connected, and educated community. These funds would be utilized for COVID-19 testing, the vaccination process, PPE, and any other additional COVID-19 related expenses.

BACKGROUND

Through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Provider Relief Fund supports healthcare providers in the battle against the COVID-19 pandemic. Qualified providers of health care, services, and support may receive Provider Relief Fund payments for healthcare-related expenses or lost revenue due to COVID-19. To be eligible, a provider must have billed Medicare fee-for-service in 2019, be a known Medicaid and CHIP or dental provider, and provide or provided after January 31, 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19, or prevented in the spread of COVID-19. HHS broadly views every patient as a possible case of COVID-19. The term "healthcare related expenses attributable to coronavirus" is a broad term that may cover a range of items and services purchased to prevent, prepare for, and respond to coronavirus.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

These funds would support vital emergency response actions, services, and improve the health and safety of Berkeley residents and staff. These non-competitive grants provide the City with funding to continue emergency response efforts that protect the health and safety of the community and staff.

ALTERNATIVE ACTIONS CONSIDERED

This funding is essential for the Health, Housing and Community Services and Fire Departments. Each City department assesses additional funding source(s) to ensure that it supports the City's mission and goals. The alternative action of not seeking this

funding source would result in a significant reduction in other City resources and essential services to the community and staff.

CONTACT PERSON

Stacie Clarke, Administrative and Fiscal Manager, Fire Department, (510) 981-5507
Ann Song, Acting Administrative and Fiscal Manager, HHCS, (510) 981-5399

Attachments:

1. Resolution: CARES Act Provider Relief Fund

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

REVENUE: FEDERAL COVID-19 FUNDING FROM HHS CARES ACT PROVIDER
RELIEF FUND FY2021

WHEREAS, the City of Berkeley's Fire Department and the Department of Health, Housing & Community Services are committed to promoting and protecting the health and safety of the public and the environment by supporting the City's greatest Public Health response needs to prevent, prepare for, and respond to COVID-19; and

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services works to promote healthy environments and behaviors, protect residents from disease, prevent illness, seek to eliminate health inequities, disability, and premature death; and

WHEREAS, the City of Berkeley's Fire Department is committed to the life, health and safety of the community and City staff; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital emergency response services.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to accept payments from the Health and Human Services (HHS) CARES Act Provider Relief Fund and to execute any resultant revenue agreements and amendments; which enables the Health, Housing & Community Services and the Fire Department to conduct and implement mitigation strategies in response to COVID-19 in the estimated amount of \$181,962 for FY 2021; to promote and protect the health and safety of the public, City staff and the environment by supporting the City's response to COVID-19 through the implementation of preventive and community-based COVID-19 activities; to accept the grant funds; execute any resultant revenue agreements and amendments in line with the funding allocation, which may be larger or smaller than the projected award of \$181,962; and implement the projects and appropriation of funding for related expenses, subject to securing the funding.

BE IT RESOLVED that the funds will be appropriated as part of the FY2021 Annual Appropriations Ordinance.



Office of the City Manager

CONSENT CALENDAR

December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Savita Chaudhary, Director, Department of Information Technology

Subject: Kovarus, LLC: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to increase spending authority with Kovarus LLC ("Kovarus") for the purchase of Varonis software licenses, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) for an amount not-to-exceed \$165,000, and the period beginning December 16, 2020 through June 30, 2021.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the Varonis software is available in the Department of Information Technology's FY 2021 Cost Allocation fund's budget code 680-35-363-382-0000-000-472-613130-.

CURRENT SITUATION AND ITS EFFECTS

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

The City used Varonis to complete an initial data risk technical assessment, and is currently in an extended licensing period while it conducts a proof-of-concept statement of work. These license purchases will extend the City's Varonis licenses under the SLP vehicle.

The purpose of the Data Safety Program is to protect the City of Berkeley's information and access to information, using an enterprise standard across all city systems. Varonis

is a crucial component in this security effort. The Data Safety Program is designed to support the Digital Strategic Plan and the City's Strategic Plan goal of advancing our City's strategic goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

Prior to COVID-19, access to City information meant physically coming into a City building and logging onto our internal network and accessing information stored in a server that lives on premise. With the onset of COVID-19, the City has been required to support access to its information from remote locations and expand collaboration with external parties such as Alameda County, other Bay Area local health jurisdictions, and Emergency Operation Centers (EOC). In response, the City has begun to implement Microsoft Teams (MS Teams), and Microsoft SharePoint ("SharePoint"), replacing reliance upon on premise data storage and access to the data only through VPN. COVID-19 also required the City to create and implement an extended solution within MS Teams, which allows our information to be available on any City-managed device, anywhere, and at any time.

Given the City's intended move into SharePoint and MS Teams, the IT Department conducted a data risk technical assessment (technical DRA) – from mid-September 2020 to the end of October 2020– using Varonis because of its compatibility and ability to support the City's Microsoft on premise components as well as Cloud-based components, namely: Office365 (O365) and Azure. Varonis was also a more complete, less expensive and more expedient solution than Microsoft's native option.

Following the success of the technical DRA, the City contracted with Kovarus for a short-term contract in order to conduct a proof-of-concept with Varonis. The success of this proof-of-concept now presents the City with an opportunity to procure up to three (3) year licensing at substantial savings, in addition to additional software and goods that have been negotiated and placed on the SLP cooperative contract with Kovarus.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Using cooperative purchasing agreements significantly improves the quality of purchasing executed by the City, and participation in such agreements allows the City to gain greater efficiencies and economies of scale.

Varonis does not license its software directly, but instead requires the purchase of software and services of its products through a reseller. Staff considered issuing a specific bid for the purchase of network hardware, but doing so would not return better pricing than what is established through the California Department of General Services' SLP contract.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered postponing and greatly limiting the scope of planned and budgeted SharePoint and MS Teams roll-outs to Virtual Private Network (VPN) only. The initial rollout was completed with this limitation in the immediate response to COVID-19's Shelter-in-Place (SIP) orders. However, given the extended period of SIP and work-from-home requirements that has proven necessary for COVID-19 containment and mitigation, the risk of continued postponement and restrictions imposed by traditional access methods such as a using a VPN, sending staff back into the office to access and print information required to work with remotely, etc., not only exposes the City's information and methods of accessing that information, but also has a negative impact on the City's ability to deliver services to the community.

CONTACT PERSON

Savita Chaudhary, Director, Department of Information Technology, 510-981-6541

Attachments:

1: Resolution

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

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

WHEREAS, with the onset of COVID-19, the City has been required to expand support of access to its information from remote locations and expand collaboration with external parties such as Alameda County, other Bay Area local health jurisdictions, and EOCs, replacing reliance upon on premise data storage and access to the data only through VPN; and

WHEREAS, COVID-19 also required the City to create and implement an extended solution within MS Teams, which allows our information to be available on any City-managed device, located anywhere, and at any time; and

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

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

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

WHEREAS, funding for purchases with Kovarus, LLC are funded by the Department of Information Technology's Internal Service Fund, and citywide purchases will be made as needed by other available funding.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to increase spending authority with Kovarus, LLC for the purchase of software, and other goods related to the City's Data Safety Program, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) for an amount not-to-exceed \$165,000, and the period beginning December 16, 2020 through June 30, 2021.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
 Subject: Donation: Friends of Berkeley Tuolumne Camp for Berkeley Tuolumne Camp Construction

RECOMMENDATION

Adopt a Resolution accepting a cash donation from the Friends of Berkeley Tuolumne Camp up to the amount of \$700,000 for the Berkeley Tuolumne Camp construction.

FISCAL IMPACTS OF RECOMMENDATION

The cash donation of up to \$700,000 will be deposited into the Playground Camps Fund and will be appropriated in the Second Amendment to the FY 2021 Annual Appropriations Ordinance (AAO). The FY 2022 funds can either be appropriated with the FY 2022 AAO or during the year as part of the FY 2022 AAO #1.

CURRENT SITUATION AND ITS EFFECTS

The Friends of Berkeley Tuolumne Camp (FOBTC) wish to make a donation of up to \$700,000 for the Berkeley Tuolumne Camp Construction. The Berkeley Tuolumne Camp Project is being funded by insurance proceeds, Federal Emergency Management Agency grant funds and City catastrophic reserve funds. The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7, 166-N.S.).

FOBTC wishes to support the Project by donating funds to be utilized solely for construction costs not covered by these other sources. These funds will be used for the construction of shade structures and to supplement revegetation. The construction costs for this scope of work is under development, but is not expected to exceed \$700,000. All of the donated funds will be used to fund construction costs that are not eligible for insurance funds; and this donation will be not used for City staff time.

BACKGROUND

Berkeley Tuolumne Camp, established in 1922, was destroyed by the Rim Fire, a federally declared disaster, in August 2013. The property was covered by the City's insurance policy, and insurance proceeds will be the primary source of reconstruction funds. The City has also been awarded a Public Assistance Grant from the Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (CalOES) to

partially fund reconstruction. Construction of the Berkeley Tuolumne Camp Project is underway.

The FOBTC is dedicated to preserving and enhancing the camp experience for present and future generations through education, volunteer efforts, and financial support. Since the loss of Berkeley Tuolumne Camp in 2013, FOBTC has worked to support the reconstruction effort with donations, community partnerships, and with education and outreach to camp supporters. In addition, many former Tuolumne campers and FOBTC members have attended and generously supported the Echo Lake Family Camp program since the loss of Berkeley Tuolumne Camp.

The total cost estimate for the Berkeley Tuolumne Camp Rebuild Project is \$54M. This cost will be covered by insurance, FEMA and state grant funding, and City funds. On April 4, 2017, City Council allocated \$3.3M of City funds from the Catastrophic Reserve to fund the City cost share of the reconstruction project (Resolution No. 67,889-N.S.).

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

This donation is specifically for construction services of project elements that are not eligible under other funding sources.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Scott Ferris, Director, PRW, 981-6700
Liza McNulty, Project Manager, PRW, 981-6437

Attachments:

1: Resolution

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

DONATION: FRIENDS OF BERKELEY TUOLUMNE CAMP FOR BERKELEY
TUOLUMNE CAMP CONSTRUCTION

WHEREAS, the Friends of Berkeley Tuolumne Camp (FOBTC) is dedicated to preserving and enhancing the Camp experience for present and future generations through education, volunteer efforts, and financial support; and

WHEREAS, the Friends of Berkeley Tuolumne Camp have offered a donation to the City of up to \$700,000 for the construction of shade and revegetation at Berkeley Tuolumne Camp which is ineligible for funding from other sources; and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, the cash donation will be deposited into Camps Fund donation revenue budget code (125-52-543-583-0000-000-461-481110-18CP01) and will be used only for construction costs that are ineligible for insurance or Public Assistance Grant funding;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation up to the amount of \$700,000 from the Friends of Berkeley Tuolumne Camp is hereby accepted.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

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: Joint Use Agreement between the City of Berkeley and Berkeley Unified School District

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a Joint Use Agreement between the City of Berkeley (City) and the Berkeley Unified School District (BUSD) for use of BUSD playgrounds, pools and buildings and City park facilities.

SUMMARY

The current Joint Use Agreement between the City and BUSD that covers pools and parks and has been in place since 1991 (Attachment 1) will expire on December 31, 2020. A separate agreement for the use of the Martin Luther King Junior Youth Services Center (MLK-YAP) expired in 2019 and is currently in holdover status. A new agreement is needed for the City and BUSD to jointly use these facilities. City and BUSD staff have been meeting consistently over the last eight months at the direction of City Council and the BUSD School Board to finalize the details of this Agreement. The proposed new agreement for the use of BUSD elementary school playgrounds, pools, the MLK-YAP center, and City parks will establish a new Joint Use Agreement between the two entities (Attachment 2).

FISCAL IMPACTS OF RECOMMENDATION

Maintenance costs for these facilities are already budgeted in the Parks Tax or BUSD budget. The only new direct cost, estimated at \$25,000 to \$50,000, associated with this agreement is the new fencing that separates the play area from the school at the West Campus site. Other potential City costs could be for BUSD staff that are needed to open or close BUSD elementary school playground sites on weekends, holidays or during school breaks.

This Agreement specifies a 30-year term for King Pool and MLK-YAP building, which will allow the City to use grant or bond funds to improve or maintain these facilities. The Agreement also specifies a 5-year term with an additional 5-year option for West Campus Swimming Pool, which means this site is not eligible for grant or T1 funding

and the upcoming \$500,000 needed in maintenance will need to come from the General Fund.

CURRENT SITUATIONS AND ITS EFFECTS

Multiple facilities covered in the expiring 1991 agreement are no longer applicable because either the City has ceased to operate particular facilities or they have been repurposed by BUSD. The remaining facilities that are covered by this new Agreement are properties owned by BUSD and operated and maintained by the City of Berkeley. These properties include three pool sites (King, West Campus, and Willard), two parks (King and Thousand Oaks), and six elementary school site playgrounds that were jointly funded by BUSD and the City. This new Agreement covers these pools, parks and the MLK-YAP facility site.

City Use of BUSD Pools and Other Facilities

The City will assume full responsibility for the operation, maintenance and capital expenditures of the following sites for the full term of the new agreement:

30-Year Term (expires January 2051):

- King Junior High Pool - 1700 Hopkins Street
- Martin Luther King Jr. Youth Services Facility (MLK-YAP) - 1730 Oregon Street.

These sites are envisioned as long-term assets and a 30-year agreement allows the City to spend grant or bond funds on the maintenance and improvements during the next 5 years since most outside funding sources require at least a 25-year agreement.

5-Year Term with 5-year Option (expires January 1, 2026):

- West Campus Pool - 2100 Browning Street

The City envisions San Pablo Park as the long-term home of the City's second municipal pool. The West Campus Pool will be operated and maintained until the San Pablo Park site can be developed in the next 5-10 years.

6-Month Term (expires July 1, 2021)

- Willard Pool - 2425 Stuart Street

The former Willard Junior High School pool and locker room will not be included in this long-term agreement. Willard Middle School uses the former pool area as the school's garden which is an integral part of the curriculum that takes place within BUSD. This garden also supports the Willard Young Leaders Entrepreneur Program and the Middle School CTE Pathway program. The City will identify an alternative site for its shower program and Recreation Hub over the next six months.

Public Use of BUSD Elementary School Sites

BUSD will open the playgrounds and fields of each site listed below to the general public on weekends and non-school days (including all holidays and school vacations or school breaks). The 1991 Agreement was limited to 6 elementary sites. This new Agreement expands this to add up to 6 more elementary sites, creating additional public spaces and playgrounds for residents to enjoy on weekends and non-school days. The new sites are labeled with an asterisk in the list below. BUSD will continue to operate and maintain these sites.

25-Year Term (expires January 1, 2046)

- Berkeley Arts Magnet – 2015 Virginia St *
- Cragmont – 830 Regal Road *
- Emerson – 2800 Forest Ave *
- Jefferson – 1400 Ada St*
- John Muir – 2955 Claremont Ave
- Malcolm X – 1731 Prince St
- Rosa Parks (except for the playground area) – 920 Allston Way
- Sylvia Mendez – 2840 Ellsworth St
- Thousand Oaks Field – 840 Colusa Ave
- Washington – 2300 Martin Luther King Jr Way
- West Campus (temporary Oxford site) – 1122 University Ave *
- Oxford School site (only if it reopens as a school) – 1130 Oxford Ave *

Also under this 25-year term, the City will continue to operate and maintain the following two District-owned property as City parks (See Exhibit A to the Agreement attached to the Resolution):

- King Park
- Thousand Oaks Park

As described in the 1991 Agreement, the new agreement will keep open two BUSD sites as parks, with the exception of the playing fields at Thousands Oak Park, which shall be reserved for District use during school hours, when school is in session.

District Use of City Parks and Park Facilities**25-Year Term** (expires January 1, 2046)

BUSD will have access to City parks, park buildings, and sports fields at no cost except for staffing. Specifically, BUSD will be able to reserve the San Pablo Park tennis courts for Berkeley High School interscholastic tennis matches during the boys and girls high school tennis seasons and have the right to reserve the King Junior High School pool for use by King Middle School aquatic programs during the school day (after 9 AM- and before 3 PM), provided that BUSD provide all required staff.

BACKGROUND

The Berkeley Unified School District and the City of Berkeley have collaborated on public recreation for many years. Agreements have been in place since the construction of Willard Pool (1963), West Campus Pool (1964) and King Pool (1965). An agreement for the use of the south pool at Berkeley High was added in 1982. In 1991, the four pools agreements were consolidated into the larger MOU between BUSD and the City which included multiple facilities.

Pools

In November of 2000, both BUSD and the City each passed General Obligation Bonds to renovate the Berkeley High School old gym building with the intention of the City to renovate the Warm Water pool using City Measure R (\$3.25M). After several years of building evaluations and master planning, BUSD decided to build classrooms in the existing space and recommended that the new Warm Water Pool be located across the street on Milvia. This left the City bond funds from Measure R unusable because they were associated with original site. In October 2007, the City completed a study of the new Milvia Street location for the Warm Water Pool. BUSD decided against use of this site for the Warm Water Pool, however, and instead designated it for parking and tennis courts.

In early 2008, the City and BUSD approved a joint resolution on the future development of public pools in Berkeley. This resolution established an 11-member task force to develop a comprehensive plan for all the pools on BUSD property. The City funded the costs of the planning process. In November 2009, the City adopted the [Citywide Pools Masterplan](#).¹

In November of 2010, the City placed a Mello-Roos Bond measure on the ballot that included approximately \$22.5M for capital and operations. The measure needed a 2/3 vote to pass, but failed with approximately 62.5% of the vote. A similar measure was put on the ballot in 2012 with the same result. In 2010, the City closed the aged Willard Pool and filled it with soil for safety purposes. The facility was in poor shape, and many of the pool systems and infrastructure had failed. In June of 2011, BUSD started construction of its South Bancroft Project and the Warm Water Pool was closed, leaving the City with 2 operating pools.

Maintenance and Operations

The City currently operates King and West Campus pools year-round. While Willard pool is closed, the building serves as a hub for the City's Recreation Division and host to the City's daily public shower program. The pool area is used as community garden by the Willard Middle School. All three pool sites are owned by Berkeley Unified School District (BUSD) and operated by the City of Berkeley (City). The City currently covers all capital, maintenance and operational expenses at the three sites.

¹ See https://www.cityofberkeley.info/Parks_Rec_Waterfront/Recreation/Citywide_Pools_Master_Plan.aspx

Martin Luther King Junior Youth Services Center

The Martin Luther King Junior Youth Services Center is located at 1730 Oregon Street, adjacent to Grove Park. It is the home to the Recreation Divisions Young Adult Program (YAP). The property was leased to the City for 50 years in 1946 and the building was constructed by the City in 1950. Upon expiration of the lease, the City and BUSD negotiated a short-term lease because the site was being considered as an expansion of the BUSD corporation yard, which is located on the western border of the property. This lease has since expired in 2010 and the property remains in holdover status (e.g., month-to-month).

Maintenance and Operations

The YAP program offers meaningful recreation experiences to several thousand middle school youth from predominantly African American and Hispanic households in south and west Berkeley. These activities include after school care, tutoring, violence prevention and leadership development.

Through programs such as After School and Summer Achievers, Justice in Action, From Boys to Men, and Young Divas, as well as a variety of service projects and special events, teens are given the opportunity to enhance their grades, gain valuable service learning experience, make new friends, and go on exciting field trips. The YAP community center includes a gymnasium, as well as a pre-k, teen and computer room. The City is responsible for all maintenance at this site. While the operation of these facilities is supported by the General Fund, the maintenance is supported by Parks Tax funding.

Parks and Elementary School Playgrounds

In 1974, the residents of Berkley passed a property tax increase (Measure Y) that generated \$3.3M over five years to acquire, develop and renovate parks in the City. The City, in collaboration with BUSD, used a portion of the Measure Y funding to build or improve open space areas as school sites. Per the Agreement, these Measure Y parks were to be open to the public when not being used by BUSD for the duration of the 1991 Agreement. These sites included the parks at King and Thousand Oaks (TO), and the playground areas at Sylvia Mendez (LeConte), Malcolm X, Rosa Parks (Columbus), John Muir, Washington, and Grizzly Peak elementary schools.

Maintenance and Operations

The City is responsible for maintenance responsibilities for King Park and Thousand Oaks Park and Thousand Oaks sports field. This maintenance is supported by Parks Tax funding

ENVIRONMENTAL SUSTAINABILITY

The new Joint Use Agreement between BUSD and the City will allow the community to have greater access to open space, which is a goal contained in the City's Climate Action Plan in Chapter 3 – Sustainable Transportation and Land Use Actions. Goal 2 in

this chapter aims to increase and enhance access to urban green and open space – as a way to improve the health and quality of life for residents.

RATIONALE

If the Agreement were to lapse or if a new agreement was not negotiated, community access to BUSD owned pools, facilities and elementary sites would be discontinued.

ALTERNATIVE ACTIONS CONSIDERED

The City considered the alternative to continue to support only one pool, but that alternative was rejected based on a desire to maintain existing service levels and concerns about geographic equity.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation and Waterfront, 981-6700

Attachments:

1. Resolution
 - a. Exhibit A - 2021 Facility Agreement between the City and BUSD
2. 1991 Facility Agreement between the City and BUSD

RESOLUTION NO. ##-###

AUTHORIZING AN AGREEMENT WITH THE BERKELEY UNIFIED SCHOOL DISTRICT FOR JOINT FACILITY USE, SITE DEVELOPMENT, SERVICES

WHEREAS, the City and the Districted entered in an agreement dated May 14, 1991 governing the joint use of certain District property and facilities by the City (“1991 Agreement”); and

WHEREAS, certain provisions of the 1991 Agreement expire on December 31, 2020; and

WHEREAS, the City and District mutually desire to continue to allow the joint use of certain District property so that the City can continue to provide recreational and other services to its residents; to allow the joint use of certain City property for the benefit of the District and its students; and to replace the 1991 Agreement with an updated joint use agreement that accomplishes these goals.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Berkeley hereby authorizes the City Manager to execute the Joint Facility Use Agreement with BUSD in substantially the same form as the agreement attached hereto as Exhibit A.

Attachments: Exhibit A - 2021 Facility Agreement between the City and BUSD

Exhibit A

**JOINT USE AGREEMENT BETWEEN THE CITY OF BERKELEY AND BERKELEY
UNIFIED SCHOOL DISTRICT**

THIS AGREEMENT is made and entered into this ___ day of December 2020, by and between the CITY OF BERKELEY, a municipal corporation (“City”), and the BERKELEY UNIFIED SCHOOL DISTRICT (“District”).

RECITALS

WHEREAS, the City and the Districted entered in an agreement dated May 14, 1991 governing the joint use of certain District property and facilities by the City (“1991 Agreement”);

WHEREAS, certain provisions of the 1991 Agreement expire on December 31, 2020;

WHEREAS, the City and District mutually desire to continue to allow the joint use of certain District property so that the City can continue to provide recreational and other services to its residents; to allow the joint use of certain City property for the benefit of the District and its students; and to replace the 1991 Agreement with an updated joint use agreement that accomplishes these goals.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows.

AGREEMENT

1. **Effective Date.** This Agreement shall be effective on January 1, 2021.
2. **City Use of District Pools and Other Facilities.**
 - a. The District hereby agrees to grant the City exclusive use of the following District facilities for the following terms:
 - i. King Junior High School pool and associated facilities located at 1700 Hopkins Street, Berkeley, California, until January 1, 2051.
 - ii. Martin Luther King Jr. Youth Services Facility (YAP) located at 1730 Oregon Street, Berkeley, California, until January 1, 2051.
 - iii. West Campus pool and associated facilities located at 2100 Browning Street, Berkeley, California, until January 1, 2026.

iv. Willard Junior High School pool (former) locker room and shower building, located at 2425 Stuart Street, Berkeley, California, until July 1, 2021.

The City agrees to assume full responsibility for operating each of these facilities for the terms listed in Section 2.a, and will be responsible for all maintenance and capital costs during the above-listed terms. The District grants the City an option to extend its term of exclusive use of the West Campus pool and associated facilities at its sole discretion for an additional five (5) years, until January 1, 2031. The City shall provide the District notice of its intent to exercise the option by no later than July 1, 2025.

b. Any capital improvement at the above-listed facilities exceeding \$25,000 in expenditures or any construction (regardless of dollar value) that will impact structural, accessibility, or fire or life safety systems must be approved in advance by the District. Approval of any capital improvement shall not be unreasonably withheld.

c. Upon the termination of the City's exclusive use rights, each facility and all improvements constructed thereon shall revert to the District. The District shall not assert any claim for breach of this agreement, waste, or any other claim for property damages based on the condition of any facility upon its return to the District at the termination of the City's rights under this Section.

3. Public Use of District Elementary School Sites.

a. This Section applies to the following elementary schools operated by the District: Berkeley Arts Magnet; Cragmont; Emerson; Jefferson; John Muir; Malcolm X; Rosa Parks (except for the playground area); Sylvia Mendez; Thousand Oaks; Washington; and West Campus (temporary Oxford site); and, should it reopen as a school, the former Oxford Elementary School site.

b. The District agrees that the playgrounds and fields of each site listed in Section 3.a will be open and accessible to the general public on weekends and non-school days (including all holidays and school vacations or breaks) until January 1, 2046.

c. The District shall post signage in a form reasonably acceptable to the City at each site listed in Section 3.a that provides adequate notice about restrictions on accessibility of the site to the general public.

d. No fee will be charged to the City for the use of District property; provided, however, the City will reimburse the District for direct staffing costs required to keep each of these sites open to the public on weekends and non-school days. The City may elect to waive its right to keep any site open to the public in lieu of paying direct staffing costs for that site.

e. The public use of District facilities is subject to the jurisdiction of the City of Berkeley Health Officer. The District shall comply with all applicable orders of the Health Officer in allowing public access under this Section.

f. The City agrees to construct fencing, subject to the review and approval of the District (which shall not be unreasonably withheld), between school buildings and playground and field areas at the West Campus and Oxford sites. The District will otherwise remain responsible for operation and maintenance costs for the sites listed above.

4. Maintenance of King and Thousand Oaks Sites as City Parks.

a. The City will operate and maintain the following District-owned property as a City park as delineated in Exhibit A:

- i. King Park
- ii. Thousand Oaks Park

b. The sites listed in Section 4.a shall remain open and accessible to the general public until January 1, 2046, except as set forth in City Park Rules; provided, however, that playing fields at Thousands Oak Park shall be reserved for District use during school hours, when school is in session.

c. No fee will be charged to the City for the use of District property. The City will pay for all maintenance and capital expenditures at the sites described in Section 4.a during the term of this Agreement.

d. Upon the termination of this Agreement, each site and all improvements constructed thereon shall revert to the District. The District shall not assert any claim for breach of this agreement, waste, or any other claim for property damages based on the condition of any site upon its return to the District at the termination of the City's rights under this Section.

5. District Use of City Parks and Park Facilities.

a. The City hereby agrees that the District will have access to City parks, park buildings, and sports fields at no cost, except as provided in this Agreement, until January 1, 2046.

b. The City agrees the District will have the right to reserve the San Pablo Park tennis courts for Berkeley High School interscholastic tennis matches during the boys and girls high school tennis seasons. The District will have priority access to the courts for those purposes after providing reasonable notice to the City.

c. The City agrees that the District will have the right to reserve the King Junior High School pool for use by the District's Middle School aquatic programs, and that priority considerations will be given to the District's request to reserve the pool for this purpose.

d. The District is responsible for paying any costs incurred to staff City facilities used by the District during the term of this Agreement and for any other services requested by and agreed to by the District. The City will not assess a facility rental charge for use of facilities by the District under this Agreement.

6. Indemnification.

a. The City shall indemnify, defend, and hold harmless the District and its officers, employees, agents, and volunteers against any and all liability for injury or damage caused or willful act or omission of the City or its officers, employees, agents, or volunteers arising from the City's use of District facilities under this Agreement or the District's use of City facilities under this Agreement; provided, however, that the City shall not be required to indemnify the District for any such claims, demands, or actions to the extent they result from the negligence or intentional acts on the part of the District or its officers, agents, employees, or volunteers.

b. The District shall indemnify, defend, and hold harmless the City and its officers, employees, agents, and volunteers against any and all liability for injury or damage caused by any negligent or willful act or omission of the District or its officers, employees, agents, or volunteers arising from the District's use of City facilities under this Agreement or the City's use of District facilities under this Agreement; provided, however, that the District shall not be required to indemnify the City for any such claims, demands, or actions to the extent they result from the negligence or intentional acts on the part of the City or its officers, agents, employees, or volunteers.

c. The provisions of this Section shall survive the termination of this Agreement.

7. Termination. Upon termination of this Agreement, all improvements, facilities, and fixtures on the properties referenced herein shall revert to the ownership District. Nothing herein shall prejudice the rights of the City and the District to extend the term of this Agreement or otherwise extend the term of the City's right to exclusive use of the properties referenced herein.

8. Authorization to Execute. Each party represents that the individual signing this Agreement is authorized to bind the party on whose behalf he, she, or they signs.

9. **Entire Agreement.** As to the matters set forth herein, this Agreement is the entire, integrated agreement and understanding of the Parties. This Agreement supersedes any prior Agreement between the parties regarding the subject matter of the Agreement, including but not limited to the 1991 Agreement.

10. **Modification.** This Agreement may be modified only by a writing signed by the parties.

11. **Severability.** If any part of this Agreement is found to be void, invalid or unenforceable, the remainder shall remain in full force and effect and shall be interpreted to carry out the parties' intent with respect to their obligations and rights.

12. **Drafting of Agreement.** The parties and their respective counsel have participated in the drafting and negotiation of this Agreement. For all purposes, this Agreement shall be deemed to have been drafted jointly by all parties.

13. **Applicable Law.** This Agreement shall be interpreted in accordance with California law, without reference to its choice of law provisions.

14. Execution in Counterparts. This Agreement may be executed in counterparts, and fax copies shall constitute good evidence of such execution.

CITY OF BERKELEY

Dated: _____, 2020

By: _____
City Manager

Registered on behalf of the City Auditor by:

By: _____
City Clerk

By: _____
Finance Department

APPROVED AS TO FORM:

By: _____
City Attorney

BERKELEY UNIFIED SCHOOL DISTRICT

Dated: _____, 2020

By: _____

APPROVED AS TO FORM:

By: _____

Exhibit A - Maps of joint use BUSD school parks maintained by COB

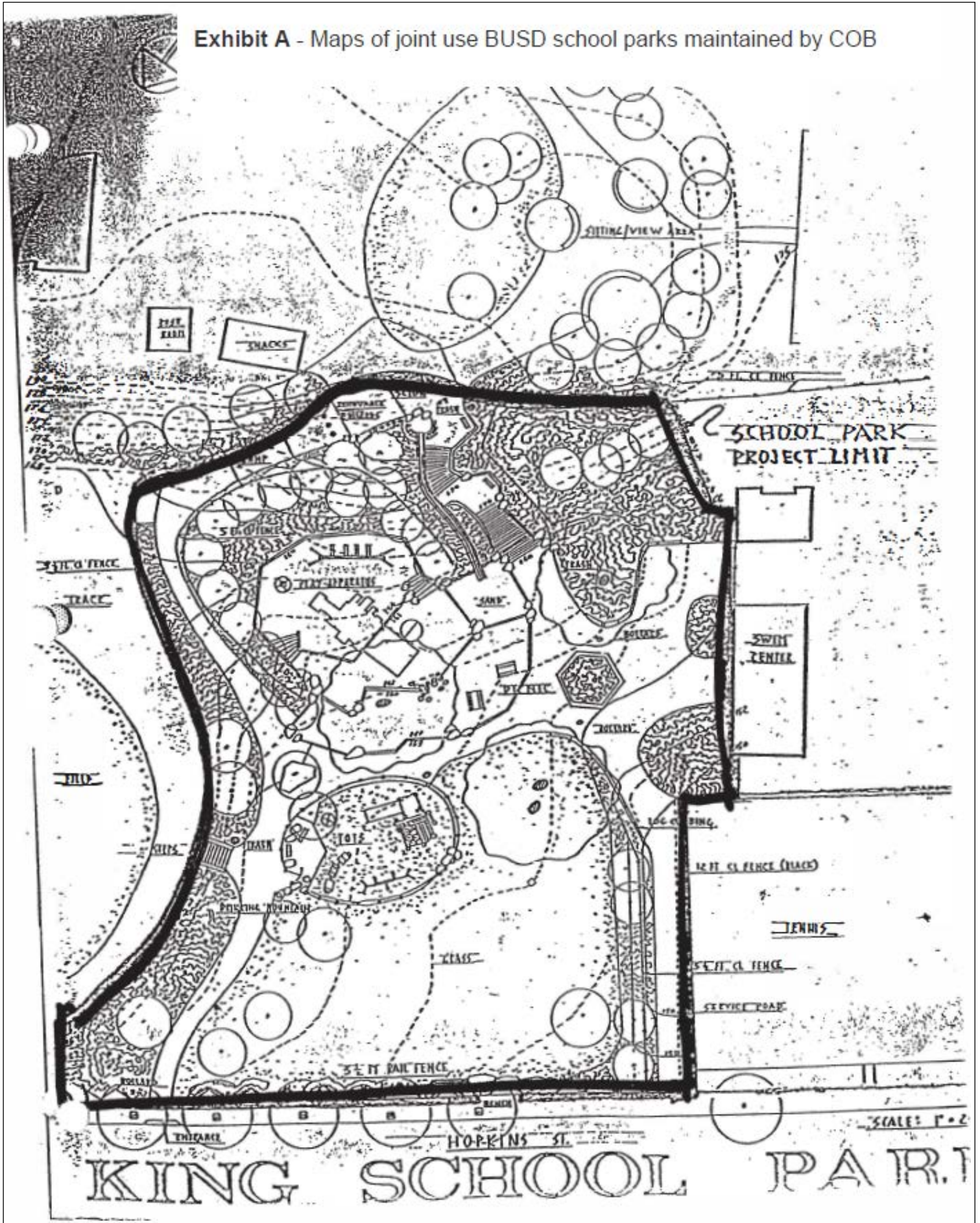
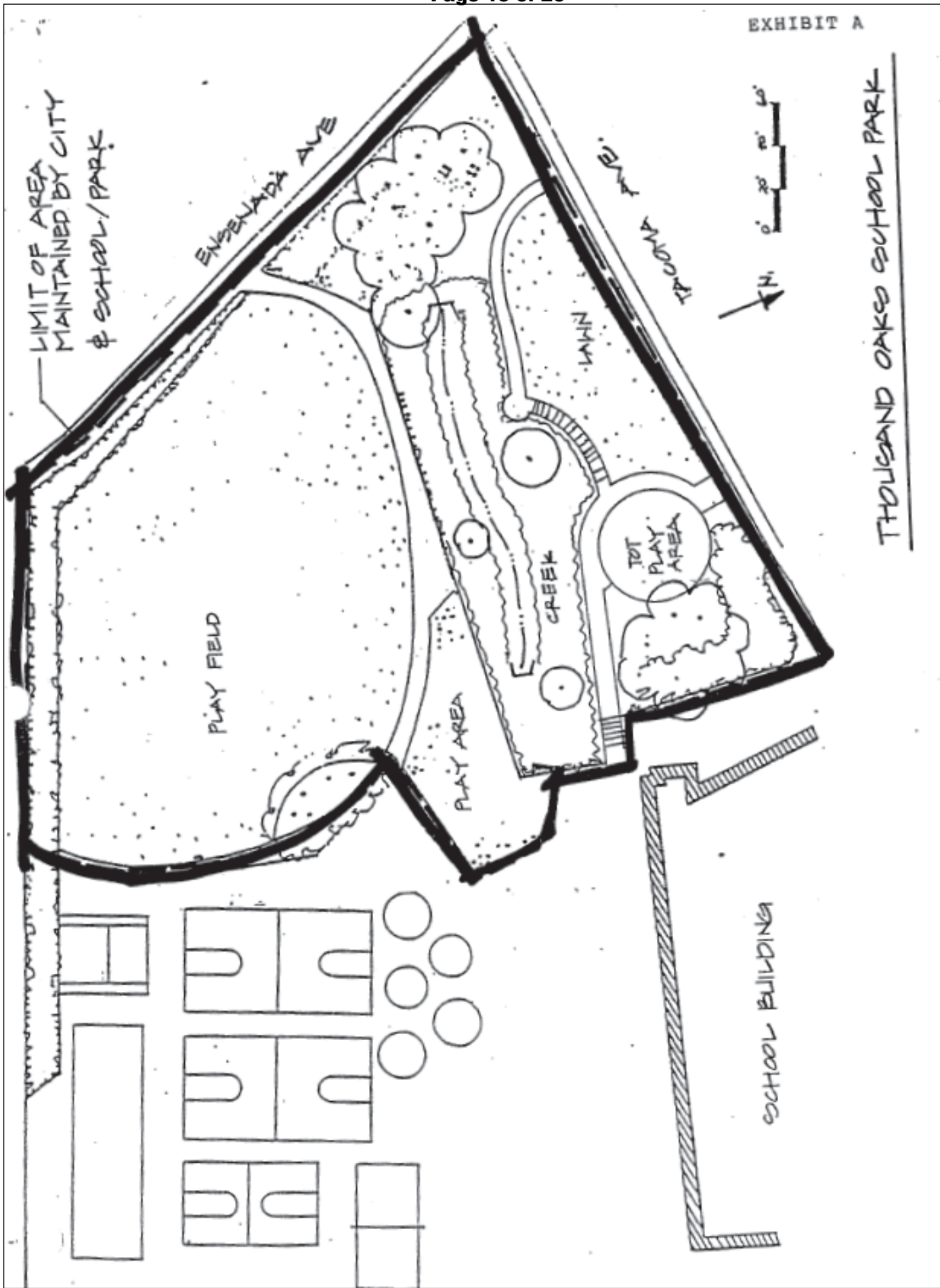


EXHIBIT A



RESOLUTION NO. 55,918 -N.S.

AUTHORIZING AN AGREEMENT WITH THE BERKELEY UNIFIED SCHOOL DISTRICT FOR MUTUAL FACILITY USE, SITE DEVELOPMENT, SERVICES, FEES AND PAYMENT SCHEDULE.

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

That the City Manager is hereby authorized to enter into an agreement with the Berkeley Unified School District for mutual facility use, site development, services, fees and a payment schedule for Berkeley Unified School District's outstanding account, without interest as follows:

1. First Payment upon ratification of agreement		\$ 85,000
2. Second Payment	July 1991	75,000
3. Third Payment	July 1992	125,000
4. Fourth Payment	July 1993	<u>74,801</u>
	TOTAL	\$359,801

FURTHER RESOLVED, that the agreement shall be effective July 1, 1990.

FURTHER RESOLVED, that a record signature copy of said agreement is to be on file in the office of the City Clerk.

Copies sent 6/13/91

To: Auditor
Berkeley Unified School
District
Health & Human Services

RESOLUTION

No. 55,918 N.S.

Dated June 4, 1991

Adopted by the Council of the City of Berkeley by the following vote:

Ayes: Councilmembers Chandler, Collignon, Dean, Goldfarb, Shirek,
Skinner, Wainwright, Woodworth, and President Hancock.

Noes: None.

Abstaining: None.

Absent: None.

Lois Hancock
Mayor and President of the Council

Attest Marie McKechnie
City Clerk and Clerk of the Council

A G R E E M E N T

THIS AGREEMENT, made and entered into this 3rd day of June 1991, by and between the CITY OF BERKELEY, a municipal corporation, hereinafter called CITY, and the BERKELEY UNIFIED SCHOOL DISTRICT, hereinafter call DISTRICT.

WITNESSETH:

WHEREAS, for a number of years the City and District have mutually provided services, site development and facility use through mutual understanding and various agreements; and

WHEREAS, in the spirit of cooperation, the City and District have entered into negotiations to clarify and continue the mutual facility use, site development and services; and

WHEREAS, the effective date for the agreement shall commence on July 1, 1990;

WHEREAS, this agreement only governs the specific items described herein and shall not be construed to waive any rights or debts or otherwise due either party.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

Section 1. Berkeley High School Donahue gym

As of January 7, 1991, the City will relocate its activities from Berkeley High School Donahue Gymnasium complex to King Junior High School's Gymnasium.

Section 2. Use of District properties

The District encourages the use of its facilities by the City.

Priority on use of District properties will be as follows:

- a. District
- b. City
- c. Others

It is agreed that the City and District will charge each other for the use of their facilities based on direct cost, defined as follows:

Direct costs are actual and necessary costs which create a financial liability to the lessor by the lessee. These costs shall include, but are not limited to, personnel overtime, utilities, equipment, and supplies required by the use. Also included are the costs to repair damage caused during such use.

It is agreed that both parties will inform each other on or before January 1 of each year what facilities they would like to schedule for

their use for the subsequent fiscal year, starting July 1 through June 30.

City and District will agree annually on direct cost rates on or before January 1 for the subsequent fiscal year starting July 1.

Section 3. King Junior High School Outdoor Recreational Facilities Development

The City and District agree to jointly study the further development of the outdoor recreational facilities at King Junior High School.

Section 4. King Junior High School Tennis Courts

If the City obtains funds for the rehabilitation of the five (5) tennis courts at King Junior High School, the District will lease these courts to the City at no cost for a term ending December 31, 2020 or twenty-five (25) years, whichever is longer.

The District shall close the King Junior High School tennis courts at such time as the City and District determine that they are unsafe.

Section 5. Measure Y Parks

The City and District have five (5) agreements on Measure Y Parks. The maintenance of the Measure Y Parks shall be as follows:

- a. The City will fully maintain Measure Y Parks at King Junior High and Thousand Oaks School.
- b. The District will fully maintain Le Conte, Malcolm X and Columbus Measure Y Parks.
- c. Under this agreement, there will be no need for billing between the City and District in regard to maintenance of Measure Y Parks.
- d. There is no existing agreement between the City and District in regard to Measure Y Parks at John Muir and Washington School. Therefore, the District will continue to maintain John Muir and Washington School Measure Y Parks.
- e. This agreement will require that the four (4) existing agreements on Measure Y Parks be canceled (King Junior High School, Le Conte, Thousand Oaks, and Malcolm X). Further, the Columbus agreement shall be amended to provide only for City interest to promote eligibility of East Bay Regional Park District's County AA Bond moneys.
- f. The District will then enter into new twenty-five (25) year lease agreements with the City for King Junior High School and Thousand Oaks park lands or for a period ending December 31, 2020.
- g. The District has basic requirements for the use of all District properties, including its fields. These

requirements include:

- i. Permit for use of facilities.
- ii. Minimum insurance
- h. The District extends these same requirements to Measure Y Parks, except Thousand Oaks and King Junior High School which the City will manage.
- i. The District and City will separate the utility services for the Measure Y Parks at Thousand Oaks and King Junior High School, where feasible.
- j. The District will continue to allow public access to Measure Y Parks between the hours of 8:30 A.M. to sunset, except during school hours.
- k. The City will use \$40,000 of County AA money to rehabilitate the Columbus School, Measure Y Park.
- l. The District will maintain the Columbus School Measure Y Park in accordance with generally accepted field maintenance standards, as mutually agreed to by the City and District.

Section 6. Mental Health Center Rental (1925 Derby Street

The District will waive rental fees for the period July 1, 1989 through June 30, 1993. Thereafter, the rental fee will be based on the District's direct costs.

Section 7. Old City Hall Custodial Overtime Facility Meetings

The City will be charged one (1) hour of custodial overtime for the set-up and clean-up for each meeting. In addition, the City will be charged for custodial overtime when a meeting extends past 11:00 P.M. in 15-minute increments.

Section 8. Pools

Effective July 1, 1990, the City will operate and maintain all pools except for the locker rooms and showers at Berkeley High School. It is further agreed that the costs of use for Willard Junior High School, King Junior High School, Berkeley High School, and West Campus pool will include maintenance, operating and capital improvement costs over the useful life. It is agreed that capital improvement costs will be amortized over the useful life or within the remaining lease term of the capital improvements and will be charged back to the District based on hours of use with a minimum District share of twenty percent (20%) of capital improvement costs. All capital improvements must be mutually agreed to by the City and District prior to construction. The maintenance and operations costs will be charged back to the District based on actual hours of use.

The District will inform the City on or before June 1 of each year what facilities it would like to schedule for its use for the subsequent

fiscal year beginning July 1 through June 30.

The District will have first priority on the use of all pools between the hours of 8:00 A.M. and 5:00 P.M. on school days. The District is open to negotiations with the City on joint use of pools during school hours.

The existing lease agreements on pools are as follows:

<u>SCHOOL</u>	<u>LEASE BEGIN</u>	<u>LEASE END</u>
Willard	1/10/63	12/31/03
King	11/23/65	11/22/05
West Campus	7/15/64	7/14/04
Berkeley High	12/07/82	12/06/07

The Alameda County AA Bond funding requires a minimum of twenty-five (25) years lease in order to obtain this money. Therefore, it is in the best interest of the City and District to extend all pool leases so that there would be a minimum remaining lease period of twenty-five (25) years. Further, it is desirable that all pool leases expire simultaneously.

Therefore, all four existing pool leases shall be extended to December 31, 2020. Upon completion of the leases for the pool at King, Willard and West Campus the buildings, equipment and apparatus will revert to City's ownership.

Further, the District may wish to develop any or all of the properties on which existing pools are located. The District has the option of relocating any and all of its existing pools on the existing site or to another site, said location to be done at the cost of the District to a site mutually agreed to between the City and District.

Section 9. Quarterly Meetings; City and District

The City and District staff will hold quarterly meetings to communicate with each other on the implementation of the various sections of the agreement between the City and the District.

Section 10. Open Space

The City and the District agree it is desirable to maintain open space. If school sites are withdrawn from school use, the District will make every effort to maintain adequate open space consistent with the District's development objectives and in accordance with Measure L.

Section 11. Building Permits

The City will exempt the District from the City requirement of obtaining building permits only for building construction fees that relate to educational projects.

Section 12. Election Costs

The District will be paid the current flat rate for polling places as established by Alameda County and the City at school sites used as

polling places.

Section 13. District/City Sub-Lease of Mutual Property

The City and District will not sub-lease any property rented from one another, except to the extent provided in any existing lease between City and District not specifically incorporated herein.

Section 14. Summary of Account Outstanding

The parties owe each other sums of money as set forth in Attachment 2 for the provision of services specified in the attachment. Nothing in this section shall modify, abrogate or otherwise govern any obligation not specifically described in such attachment. After accounting for offsetting charges for the period July 1, 1986 through June 30, 1990, the District shall pay the City the amount of \$359,801 over a three year period without interest as follows:

a. First payment upon ratification of this agreement		\$ 85,000
b. Second payment	July 1991	75,000
c. Third payment	July 1992	125,000
d. Fourth payment	July 1993	74,801
	TOTAL	\$ 359,801

IN WITNESS WHEREOF, first party has hereunto set its corporate name and seal by its officers thereunto duly authorized and second party has hereunto set its name by its officers thereunto duly authorized, the day and year first above written.

CITY OF BERKELEY

By Carl Woodworth
Mayor

By [Signature]
City Manager

By _____
City Clerk

Registered by:
By Amalabkin
City Auditor

Approved as to form:
Katherine J. [Signature]
Deputy City Attorney

BERKELEY UNIFIED SCHOOL DISTRICT

By Siene R. Hegarty
President of its Board of Education

By [Signature]
Acwsg Superintendent of Schools

CITY OF BERKELEY AND BERKELEY UNIFIED SCHOOL DISTRICTSUMMARY OF ACCOUNTS OUTSTANDING

DESCRIPTION	CHARGES TO CITY	CHARGES TO DISTRICT
1. City billing for swim center at King, Willard West Campus		
1987		\$58,145
1988		49,325
1989		40,020
1990		30,435
2. District bill for swim pool at Berkeley High		
1987	\$16,218	
1988	15,160	
1989	16,940	
1990	18,998	
3. City billing for Berkeley High swim pool maintenance		
1987		13,000
1988		14,449
1989		15,458
1990		21,562
4. City billing for Measure Y Parks		
1989		85,000
1990		85,000
5. City billing for playground equip-		
1989		19,000
1990		19,000

6. District billing for Columbus Measure Y Park maintenance		
1989	10,000	
1990	2,000	
7. District billing Donohue Gym		
1988	7,000	
1989	7,000	
1990	7,000	
8. District billing for West Campus gym		
1988	0	
1989	0	
1990	5,000	
9. District billing for summer paly- ground 5 sites		
1989	0	
1990	401	
10. District billing for rental of East Campus Bld. for Mental Health		
1989	wavied	
1990	waived	
11. District rent not paid to District by City		
1990	10,683	
12. Double payment District owe City		
1986		25,807
GRAND TOTAL	\$ 116,400	\$ 476,201
NET		\$ 359,801

CITY OF BERKELEY
CONSENT CALENDAR INFORMATION

HEALTH AND HUMAN SERVICES THROUGH
From: CITY MANAGER *[Signature]* Deadline for Council Action _____
Council Meeting Date: June 4, 1991

IT IS RECOMMENDED THAT THE CITY COUNCIL: AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BERKELEY UNIFIED SCHOOL DISTRICT FOR MUTUAL FACILITY USE, SERVICES AND PAYMENT SCHEDULE

1. COMMENTS, CITY ATTORNEY:

Council approval is required.

2. BACKGROUND AND NEED FOR COUNCIL ACTION;

Since 1949, the City of Berkeley (City) and the Berkeley Unified School District (District) have entered into a number of contracts for the mutual use of City and District facilities, site development, services and fees associated with the usage and services. Many of the agreements were written, while some agreements have been oral agreements between City and District staff. For the past ten years there have been a number of disagreements and disputes between the City and District in regard to the application and interpretation of use fees associated with the various written and oral agreements. As a result of the disagreements, no payments have been made between the City and District since July 1986.

In a spirit of cooperation, the City and District began discussions in December of 1988 to identify and compile the various written and oral agreements into a document that would provide the framework for shared facility use, site development and services. The City and District staff entered into negotiations on October 12, 1989. They were suspended subsequent to the earthquake and only concluded on December 20, 1990. The recommendations were forwarded to the School Board for approval and were ratified on February 6, 1991.

The delay in submission to the City Council was caused by the District's request for a sewer fee waiver. The City Attorney has rendered a opinion that the City, as a recipient of federal Clean Water Act funds, cannot waive the fees for sewer operation and maintenance incurred by the District. As a result, staff is in the process of calculating the fees to be assessed the School District.

It is recommended that the City Council authorize the City Manager to enter into an agreement with the Berkeley Unified School District for facility usage, site development, services, fees and the schedule for payment of fees without interest. The agreement shall become effective July 1, 1990 (Attachment 1).

AUTHORIZE AGREEMENT WITH
BERKELEY UNIFIED SCHOOL DISTRICT

CONSENT CALENDAR
June 4, 1991

3. FINANCIAL IMPLICATIONS (include any dollar amount, in-kind services, multi-year commitment) AND SOURCE OF FUNDS (for both cash and in-kind services; indicated if amount is currently budgeted and requirement for budget code). IF SUBMITTAL, AUTHORIZATION OR EXECUTION OF GRANTS IS INVOLVED (includes new grants or modification form) AN FNO06 (budget modification form) SHOULD BE SUBMITTED WITH ITEM. ITEM WILL NOT BE PROCESSED UNLESS FNO06 IS INCLUDED.

The agreement will set forth the fee structure for the use of various facilities, site development and services rendered by the City and District. After accounting for offsetting charges (Attachment 2) for the period July 1, 1986 through June 30, 1990, the District shall pay the City the amount of \$ 359,801 over a three year period without interest as follows:

Facility & Services

1.	First payment upon ratification of agreement		\$ 85,000
2.	Second payment	July 1991	75,000
3.	Third payment	July 1992	125,000
4.	Fourth payment	July 1993	74,801
	TOTAL		\$ 359,801

4. COUNCIL POLICY AND LEGISLATIVE HISTORY, IF ANY;

Council has entered into various agreements with the Berkeley Unified School District for facility use, site development, services and fees.

5. COMMUNITY GROUPS AFFECTED

The entire population of the City of Berkeley

6. NAME, TITLE AND TELEPHONE NUMBER OF PERSON(S), DEPARTMENT(S) BOARD(S), COMMISSION(S), COMMITTEE(S) TO CONTACT FOR ADDITIONAL INFORMATION:

Anton Jungherr, Associate Superintendent of Schools, Berkeley Unified School District644-6674
Emmett E. Jones, Assistant City Manager, Health & Human Services..644-6459



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront
Liam Garland, Director, Public Works

Subject: Recommendations for Implementing Phase 2 of the Measure T1
Infrastructure Bond Program

RECOMMENDATION

Adopt a Resolution to implement the City Manager, Parks and Waterfront Commission, and Public Works Commission Final List of Projects for Phase 2 of the Measure T1 infrastructure bond program (Attachment 1).

SUMMARY

Robust and thoughtful collaboration between staff, the Public Works and Parks and Waterfront Commissions, and Berkeley residents over many months have resulted in the joint recommendation for Measure T1 Phase 2 projects in Attachment 1. These recommendations encompass more than 30 important projects to enhance our right of way, improve the safety and resilience of our facilities, delight people in our parks, and address equity head on. They are the result of hundreds of diligent hours of contemplation over more than 50 public meetings with diverse groups of people, and represent the best thinking of our community and staff. They build on our lessons learned from implementation of T1 Phase 1 projects, the majority of which are completed or nearing completion. If approved, Phase 2 T1 projects will total \$53.25 million. Staff will come back to Council with 2 separate items requesting the authorization to sell bonds over 5 years.

FISCAL IMPACTS OF RECOMMENDATION

It is projected that the proceeds of the \$100M infrastructure bond will yield an additional \$3.7M of interest income, resulting in \$103.7M of funding available for T1 projects. Phase 1 Bond expenditures will total approximately \$42.7M, leaving \$61M for future expenditures (see below tables).

Bond Funding			
	Phase 1	Remaining	Total
Bonds sold	\$35M	\$65M	\$100M
Interest	\$1.7M	\$2M [^]	\$3.7M [^]
Total	\$36.7M	\$67M	\$103.7M

[^]This is an estimate based on market conditions

Bond Expenditures			
	Phase 1	Remaining	Total
Projects	\$37.75M	\$53.25M	\$91M
Staff/FESS	\$4.6M	\$7.1M*	\$11.6M
Art	\$0.35M	\$0.65M	\$1M
Total	\$42.7M	\$61M	\$103.7M

*Assumes a 5 year duration of Phase 2

The \$42.7M for Phase 1 includes \$37.75M for direct project costs, \$4.6M for staff and furniture, equipment, supplies and services (FESS), and \$350,000 for Civic Art. The amount of bonds sold and interest for Phase 1 was \$36.7M. The additional \$6M needed to complete Phase 1 projects will be included in the Phase 2 bond sale.¹

If Phase 2 is executed in the 5-year time frame as proposed, \$53.25M will be used for direct project costs, \$7.1M for staff and FESS costs, and \$650,000 for Civic Art.

In Phase 1, it was anticipated that staff and FESS costs would be between 13 and 15 percent of total costs, but actual costs are projected to come in significantly lower, at 10.8 percent. It is anticipated that staff and overhead costs in Phase 2 will in come below 12 percent.

Phase 1 spending is being leveraged by an additional \$20.9M in grants and other funding sources. Multiple proposed Phase 2 projects are expected to similarly leverage other funding sources, as staff has already begun applying for grants associated with these projects.

This recommendation for Phase 2 projects proposes two bond sales within the next 2 years to sell the remaining \$65M in bonds: a \$29.138M bond sale in March or April of 2021 and a \$35.861M bond sale in November of 2022 (see Attachment 4).

CURRENT SITUATIONS AND EFFECTS

Summary

Staff are in the final stages of completing 45 Measure T1, Phase 1 (July 2017 – June 2021) projects. Twenty of these projects are currently under construction. Five full-time equivalent staff associated with T1 are divided between an Associate Management Analyst and twelve Project Managers in the Public Works (PW) and Parks, Recreation and Waterfront (PRW) Departments.² This staff, T1 projects, and bond measure finance and logistics issues are closely managed by a team of PRW and PW management staff,

¹ This \$6M in Phase 1 costs includes \$5.3M of previously identified funding and another \$700,000 for unforeseen construction costs, Covid-19 issues and delayed construction costs at the Adult Mental Health Services Center, North Berkeley Senior Center, and the Marina Streets project.

² A portion of the Project Managers' wages are funded through their involvement in T1 and a portion by the department budgets.

with public review and oversight by both the Parks and Waterfront and Public Works Commissions (“Primary Commissions”).

This team did a tremendous amount of work during Phase 1. They developed a T1 Policies and Procedures Operations Manual, a financial expenditure audit of the first 2 years, 20 reports to City Council and quarterly updates and facilitated over 90 community and focus groups meetings.³

On Friday, October 16, 2020, staff surpassed the 85% expenditure mark of the \$35M Phase 1 bonds sold in November of 2017. Meeting this deadline ensured that the interest (\$1.7M) obtained from Phase 1 bond sales is kept by the City, untouched by Federal or State taxes.

Planning for Phase 2 began in July of 2019, with staff and the two Primary Commissions developing a process for determining Phase 2 projects. In January 2020, the public process for Phase 2 began, with staff providing the Primary Commissions with an initial list of unfunded infrastructure projects.

When the Covid-19 Shelter-In-Place order began, Commission meetings and the Phase 2 public process were suspended. In June of 2020, the City Manager gave the Primary Commissions permission to meet and implement the T1 Phase 2 process. From July through October 2020, staff and the Primary Commissions led more than 50 public meetings (commission and community) through the Phase 2 public process, adjusting for the withdrawal of \$5.3M from T1 expenditures, and reviewing potential priority projects.

In November 2020, after the conclusion of the public process, the Primary Commissions each met three times (jointly on 11/4 and 11/19) to discuss potential Phase 2 projects. Taking in all the community feedback, at the November 4 meeting, staff presented a list of \$53.25M worth of projects organized in three general categories: Public Works Projects, Parks & Waterfront Projects, and Non-Departmental Citywide Projects with \$17-18M proposed in each category. The Primary Commissions each met with Staff to refine criteria, develop a prioritization process, and identify their respective priority projects.

On November 19, 2020 the two commissions came to a joint consensus on the final T1 Phase 2 proposed project list being recommended to Council for use of the remaining \$53.25M.

Phase 2 Public Process

Staff and the Primary Commissions completed a robust Phase 2 public process that included 3 concurrent commission meetings, 13 regular commission meetings, 3 concurrent commission sub-committee meetings, 24 focus group meetings, 6 participating commission meetings and 5 large area meetings. The goal of this process

³ All reports and quarterly updates are available at the Measure T1 website: www.cityofberkeley.info/MeasureT1Updates.aspx

was to encourage significant citywide public participation in the T1 Phase 2 project selection process by reaching out to a large cross section of community groups, thoroughly advertising large area meetings and providing various methods for community members to provide feedback. The feedback from the focus groups and large area meetings along with a summary of the over 400 emails can be found [here](#).⁴ Below is a brief summary of the public process.

July 2019 - October 2019

T1 staff worked with the T1 joint subcommittees from the Primary Commissions (7/8, 8/12, 9/16) to identify and vet an extensive public process for determining potential Phase 2 projects. This process was approved by both primary commissions in October (10/3 and 10/9) 2019.

November 2019 – January 2020

Eleven (11) participating commissions were updated on the status of Phase 1 projects and the Phase 2 public process.

January 29, 2020

At this concurrent primary commission Meeting, the T1 Phase 2 public process was started. Primary commissions were provided with a [list of unfunded projects](#)⁵ throughout the City.

February 2020 – September 2020

Staff and representatives from the Primary Commissions attended [24 neighborhood meetings](#)⁶ with groups recommended by City Councilmembers.

February 2020- November 2020

Staff received [over 400 public comments and suggestions](#)⁷ for T1 phase 2 projects via email at T1@cityofberkeley.info.

October 2020

Five large geographic based meetings (10/1-Districts 7-8, 10/8-Districts 5-6, 10/15-Districts 2-3, 10/22-Districts 1-4, 10/29 Waterfront/Shoreline/Aquatic Park), delineated largely by council districts, were held to obtain feedback regarding projects for Phase 2. These meetings gave residents the opportunity to [suggest both neighborhood and City-wide projects](#)⁸ and averaged over 80 attendees per meeting.

⁴ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_General/T1%20P2%20-%20Email%20Summary%20-%202020-11-17%20SF.pdf

⁵ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Commissions/2020-%2001-29%20-%20Joint%20PRW%20and%20PWC%20-%20Minutes%20-%20Draft.pdf

⁶ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_General/T1%20P2%20-%20Focus%20Group%20Notes%20-%20Feb%20-%20Nov%202020%20-%20SF.pdf

⁷ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_General/T1%20P2%20-%20Email%20Summary%20-%202020-11-17%20SF.pdf

⁸ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_General/T1%20P2%20-%20Five%20Large%20Mtg%20Notes%20Combined%20-%202020-11-04.pdf

September - November 2020

Staff presented to 6 of 11 Participating Commissions⁹ that have been meeting during the Shelter-In-Place order: Children, Youth and Recreation, Civic Arts, Disaster and Fire Safety, Housing Advisory, Landmarks Preservation and Transportation Commissions. This update reviewed Phase 1 projects and [gathered feedback](#)¹⁰ on project ideas for Phase 2.

November 2020

Primary Commissions met concurrently on November 4th and 19th and met separately on November 11th and 12th to review feedback received from the public and Participating Commissions to develop a list of recommended projects for the Phase 2.

Primary Commission Recommendations

After participating in the community process, discussing the criteria and the potential list of projects at great length during 2020, and collaborating via concurrent meetings and subcommittees, the Public Works Commission and the Parks and Waterfront Commission submitted separate reports, (Attachments 2 and 3, respectively) recommending the same list of Phase 2 projects to be implemented over a 5-year process that includes 2 bond sales (Attachment 4).

On November 19, 2020, the Public Works Commissions approved a motion to send a list of recommended Phase 2 projects to Council and to endorse the list of recommended projects from the Parks and Waterfront Commission (Attachment 3): (M/S/C: Krpata/Schueler/U): Brennan; Constantine; Erbe; Freiberg; Hitchens; Humbert; Krpata; Nesbitt; Schueler; Noes: None; Abstain: None; Absent: None.

On November 19, 2020, the Parks and Waterfront Commission approved a motion to send a list of recommended Phase 2 projects to Council and to endorse the list of recommended projects from the Public Works Commission (Attachment 2): (M/S/C: Kamen/Kawczynska/U): Cox; Diehm; Kamen; Kawczynska; Landoni; McGrath; Skjerping; Srioudom; Wozniak; Noes: None; Abstain: None; Absent: None.

Staff fully support the final joint Primary Commission recommendations for T1 Phase 2 projects. These recommendations include work on upgrading streets and transportation infrastructure, renovating City facilities, and improving four large community facilities in South Berkeley:

⁹ The 11 Participating Commissions include: Children, Youth and Recreation Commission, Civic Arts Commission, Community Environmental Advisory Commission, Commission on Aging, Commission on Disability, Disaster and Fire Safety Commission, Energy Commission, Housing Advisory Commission, Landmarks Preservation Commission, Transportation Commission and Zero Waste Commission.

¹⁰ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20P2%20-%20Focus%20Group%20Notes%20-%20Feb%20-%20Nov%202020%20-%20SF.pdf

- African American Holistic Resource Center (currently a temporary Berkeley Mental Health clinic)
- Martin Luther King Junior Youth Services Center
- South Berkeley Senior Center
- Willard Clubhouse public restrooms

And the renovation and development of up to ten public restrooms:

- Right-of-Way (ROW) Restrooms (2-3 new)
- Tom Bates Sports Complex (new)
- Ohlone Park (new)
- Cesar Chavez Park (new)
- Willard Park (replacement)
- Harrison Park (renovation)
- K Dock (renovation) and
- Telegraph Channing Garage Mall (renovation)

Covid-19 Implications on T1 Finances, Phase 1 Projects, Phase 2 Public Process

The direct impacts of Covid-19 restrictions on current construction projects have mostly affected the three large building projects: Mental Health Services Center (MHSC), North Berkeley Senior Center and Live Oak Community Center. Contractors, inspectors and project managers have had to make adjustments to comply with new restrictions and, in some cases, have resulted in time delays. Staff have worked closely with the City Attorney's office on change orders related to these delays in order to ensure costs are controlled.

The financial impacts have been much more significant. In March of 2019, City Council approved an additional \$5.3M in General Fund for Phase 1 projects because of the addition of the MHSC in January 2018, energy upgrades on the three large facilities and construction cost increases. Given the Covid-19 emergency and demands for those General Fund dollars to meet immediate operational needs in the FY21 budget, staff are implementing alternative strategies to fund Phase 1 projects without the \$5.3M of additional General Fund allocation. These strategies include the following:

Delaying two Phase 1 projects. The last large T1 project to go to construction will be the Marina Streets project, which includes the reconstruction of University Avenue and Spinnaker Way, and repaving of Marina Blvd. The \$8.2 million project is funded by T1 (\$4.2 million), SB1 streets funding (\$1 million) and the Doubletree Hotel (\$3 million). Bidding was delayed from last summer to this December. Additionally, the Grove Park Ballfield improvements were also delayed. Bids for the Grove Park project came back significantly higher (\$350,000) than the engineer's estimate of \$650,000 in early May. Staff will be rebidding this project at the end of FY21. Delaying this project provides time to re-scope and develop a project that can be effectively completed.

Accelerating Phase 2 public process and bond sale. Accelerating the anticipated Phase 2 bond sale from November 2021 to April 2021 allows for both the delayed Phase 1 projects to start construction in next year's construction period. This strategy required shortening the Phase 2 public process from 15 to 12 months and did not affect the number of public process meetings as staff and Primary Commissions were able to gather feedback from over 50 public meetings on potential Phase 2 projects.

Borrowing approximately \$1.4M funding from PRW, PW and HHCS special funds. Despite delaying the two identified construction projects to be reimbursed by the Phase 2 bond sale and accelerating the Phase 2 public process and bond sale, without the \$5.3M in General Fund, T1 funds will be exhausted in January of 2021. Therefore, T1 needs to borrow \$1.4M from special funds in order to sustain an appropriate cash flow until Phase 2 bonds are sold in March or April of 2021. Council approved these actions in [September 2020¹¹](#) and [December 2020¹²](#).

Using \$6.0M from T1 Phase 2 bond funding to support Phase 1 projects. When T1 Phase 2 bond funds are sold in March or April 2021, \$6.0M will be needed to complete Phase 1 projects. This \$6.0M includes \$5.3M of previously identified funding and another \$700,000 to support additional costs associated with the Adult Mental Health Services Center, North Berkeley Senior Center and the Marina Streets projects. These costs are due to unforeseen construction costs, Covid-19 issues and delayed construction costs.

Phasing of Remaining Funding

On December 22, 2016, the City Manager provided a [memo to City Council¹³](#) that identified staff's initial recommendations for allocating Phase I of Measure T1 funding. It recommended that T1 funding be allocated in 3 distinct phases (see below) and that each phase expend between \$30-35M of funding. On June 27, 2017, City Council authorized the spending of \$35M for Phase 1. The estimated cost for completion of T1 Phase 1 projects is actually \$42.7M.

- Phase 1 July 2017- June 2021 (bond sale in Nov 2017)
- Phase 2 July 2021- June 2025
- Phase 3 July 2025- June 2029

During the January 29, 2020 concurrent Primary Commissions meeting, commissioners recommended that staff attempt to consolidate the remaining phases so that residents would see more significant construction results sooner (4 or 5 years as opposed to 8 years), save funding on staff and FESS costs and avoid repeating a very

¹¹ See https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-15_Item_08_Measure_T1_Loan.aspx

¹² See [https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Loan%20-%20Mental%20Health%20Bldg%20-%20Consent%20-%202020-12-01%20\(004\).pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Loan%20-%20Mental%20Health%20Bldg%20-%20Consent%20-%202020-12-01%20(004).pdf)

¹³ See https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Measure%20TI%20GO%20Bonds%20Recommendations%20122216.pdf

comprehensive public process for a smaller amount of funding. Staff evaluated this proposal and concluded that while it was not feasible to spend the remaining funding and meet the 85% deadline with existing staff in one phase, it was possible to spend the remaining funding with two overlapping bond sales in which much of the planning and design work was done in an initial phase (2A) and the construction of the larger projects completed in a later phase (2B) if the projects were sequenced correctly.

In the November 2020 concurrent meetings staff and the Primary Commissions agreed to recommend the following schedule given the list of proposed projects:

- Phase 1 July 2017- June 2021 (bond sale in Nov 2017)
- Phase 2A January 2021- June 2025 (bond sale in March or April 2021)
- Phase 2B July 2022 – June 2026 (bond sale in Nov 2022)

The attached detailed list displays how the recommendations for phasing and funding of 2A and 2B (Attachment 4). This schedule would consolidate the last 8 years into 5 years and will allow staff time to design and plan the larger projects in phase 2A and construct in phase 2B, thus being able to keep a balanced work load and meet the 85% federal expenditure requirement. Staff will need to get City Council approval for both bond issuances separately.

BACKGROUND

In November 2016, Berkeley voters approved [Measure T1](#)¹⁴ – a \$100 million dollar general obligation bond to repair, renovate, replace or reconstruct the City’s aging existing infrastructure, including facilities, streets, sidewalks, storm drains, and parks. Measure T1 passed with 86.5% of the vote.

After the passage of Measure T1, the City Manager proposed a [three phase implementation plan](#)¹⁵ for the Measure T1 program. The \$100 million of bond proceeds is anticipated to be spent within 12 years, with each phase expected to last four years. From December 2016 through June 2017, the City undertook a robust public process to gather input on the proposed projects for Phase 1. Three citywide public meetings were held in March and April 2017. In addition, the Primary Commissions invited and received input from 11 other City Commissions.

The Primary Commissions submitted a [joint report to Council in June 2017](#)¹⁶ detailing their recommendations. The City Manager incorporated this input and submitted a [final recommended list of projects](#).¹⁷ Council adopted this list and proposed plan for implementing Phase 1 of the T1 bond program on June 27, 2017.

¹⁴ See <https://www.cityofberkeley.info/MeasureT1/>

¹⁵ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20GO%20Bonds%20Recommendations.pdf

¹⁶ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf

¹⁷ See https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-%2027_Item_49_Implementing_Phase_1.aspx

On January 23, 2018, Council adopted Resolution 68,290-N.S., authorizing the allocation of \$2 million from Measure T1 Phase 1 for major renovations of the City of Berkeley's Adult Mental Health Clinic located at 2640 Martin Luther King Jr. Way.

On December 10, 2019, staff provided an [update to Council on the Phase 2 public process](#).¹⁸

On March 26, 2019, the Council approved Resolution 66,802-N.S. authorizing \$5.3 million from the General Fund to complete Phase 1 projects, and to be repaid to the General Fund after Phase 2 bond funds were received. This additional funding was provided to cover the cost of approved projects exceeding bond proceeds, due to an increase in energy upgrades included in the facility projects, and soaring escalation in construction costs.

On May 4, 2020, staff issued the [FY21 Budget Update](#)¹⁹ at the Council Budget and Finance Policy Committee.²⁰ This report projected a \$25.5 million budget shortfall in FY21, due to impacts from the Covid-19 emergency.

On May 13, 2020, staff issued an [update to Council on Measure T1 funding](#).²¹ This report described the strategies being pursued to complete Phase 1 projects in the absence of the \$5.3M from General Fund, given the Covid-related citywide budget shortfall: delay selected projects, use special funds to complete projects and reimburse with bonds sold, and accelerate the Phase 2 public process and bond sale.

On September 15, 2020, Council approved a loan of [\\$600,000 from the Parks Tax Fund and \\$600,000 from the Measure BB](#)²² – Local Streets and Roads fund to complete Phase 1 projects. The loan will be repaid following the Phase 2 bond sale.

On October 13, 2020, Council approved [additions to the Phase 1 project list](#),²³ with no additional funding. This action was taken to ensure that the City met the 85% federal expenditure requirement.

¹⁸ See https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Measure%20T1%20Update%20on%20Phase%202_121019.pdf

¹⁹ See <https://www.cityofberkeley.info/uploadedFiles/Clerk/2020-05-04%20Agenda%20Packet%20-%20Budget.pdf>

²⁰ See <https://www.cityofberkeley.info/uploadedFiles/Clerk/2020-05-04%20Agenda%20Packet%20-%20Budget.pdf>.

²¹ See https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Measure%20T1%20Project%20Funding%20Update%20051320.pdf

²² See https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-15_Item_08_Measure_T1_Loan.aspx

²³ See https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Item_06_Measure_T1_Phase_1_Project_List.aspx

On November 12, 2020, staff provided an [update on Measure T1](#)²⁴ to the Council Budget and Finance Policy Committee. The report and presentation reviewed Covid-related impacts, including the need for additional \$700,000 from Phase 2 bond sale to cover unforeseen construction costs and COVID-related delays.

On December 1, 2020, Council approved a [loan of \\$198,400 from the Mental Health Realignment Fund](#)²⁵ to Measure T1 to complete the Mental Health Adult Clinic renovation project. The loan will be repaid following the Phase 2 bond sale.

ENVIRONMENTAL SUSTAINABILITY

Measure T1 is an opportunity to advance the City's environmental sustainability goals. For example, facility upgrade projects will be designed and constructed to not only improve safety and address deferred improvements, but also to increase resource efficiency and access to clean energy. Measure T1 also provides an opportunity to accelerate investment into green storm water infrastructure and street improvements that advance the goals of the City's Bike and Pedestrian Plans.

RATIONALE FOR RECOMMENDATION

The City Manager and Primary Commissions Final Proposed List of Projects for Phase 2 is the result of a robust community outreach process that has involved significant work by staff and the Public Works and Parks and Waterfront Commissions and their subcommittees including over 50 public meetings and hundreds of written and verbal communications from the public. The resulting final proposed list of projects for Phase 2 of the Measure T1 bond program represents a list of projects that provides the greatest benefits for the most people in terms of safety, critical infrastructure and community needs, equity, environmental sustainability, disaster preparedness, and leveraging other funds to complete projects.

ALTERNATIVE ACTIONS CONSIDERED

Staff and commissions considered many alternative projects through a robust process and recommend these as meeting the highest priority goals.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation and Waterfront, 981-6700
Liam Garland, Director, Public Works, 981-6300

Attachments:

1. Resolution
 - a. Exhibit A – Final T1 Phase 2 Project List
2. Public Works Commission Recommendation
3. Parks and Waterfront Commission Recommendation
4. Funding and Phasing of Phase 2 Projects

²⁴ See <https://www.cityofberkeley.info/uploadedFiles/Clerk/2020-11-12%20Budget%20Item%20d%20T1.pdf>

²⁵ See [https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Loan%20-%20Mental%20Health%20Bldg%20-%20Consent%20-%202020-12-01%20\(004\).pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Loan%20-%20Mental%20Health%20Bldg%20-%20Consent%20-%202020-12-01%20(004).pdf)

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

ADOPT THE FINAL LIST OF PROJECTS FOR IMPLEMENTATION IN PHASE 2 OF THE MEASURE T1 INFRASTRUCTURE BOND PROGRAM

WHEREAS, on November 8, 2016, Berkeley voters approved ballot Measure T1, the general obligation bond program to fix existing City infrastructure in need of improvement; and

WHEREAS, after the passage of Measure T1, the City Manager proposed a [three phase implementation plan](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3__General/Measure%20T1%20GO%20Bonds%20Recommendations.pdf) (https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3__General/Measure%20T1%20GO%20Bonds%20Recommendations.pdf) for the Measure T1 program. The \$100 million of bond proceeds is anticipated to be spent within 12 years, with each phase expected to last four years; and

WHEREAS, from December 2016 through June 2017, the City undertook a robust public process to gather input on the proposed projects for Phase 1, which resulted in a [joint report to Council in June 2017](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3__General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf) (https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3__General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf) from the two Primary Commissions (Public Works and Parks and Waterfront) detailing their recommendations. The City Manager incorporated this input and submitted a [final recommended list of projects](https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-%2027_Item_49_Implementing_Phase_1.aspx) (https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-%2027_Item_49_Implementing_Phase_1.aspx). Council adopted this list and proposed plan for implementing Phase 1 of the T1 bond program on June 27, 2017 (Resolution No. 68,076); and

WHEREAS, as of December 2020, Staff are in the final stages of completing 45 Phase 1 (July 2017 – June 2021) projects; and

WHEREAS, from July 2019 through November 2020, Staff and the Primary Commissions have conducted a comprehensive Phase 2 public process to identify projects for Phase 2; and

WHEREAS, on November 19, 2020, the Public Works Commissions passed a motion to send a list of recommended Phase 2 projects to Council and to endorse the list of recommended projects from the Parks and Waterfront Commission (Attachment 3): (M/S/C: Krpata/Schueler/U): Brennan; Constantine; Erbe; Freiberg; Hitchens; Humbert; Krpata; Nesbitt; Schueler; Noes: None; Abstain: None; Absent: None.

WHEREAS, on November 19, 2020, the Parks and Waterfront Commission passed a motion to send a list of recommended Phase 2 projects to Council and to endorse the list of recommended projects from the Public Works Commission (Attachment 2): (M/S/C: Kamen/Kawczynska/U): Cox; Diehm; Kamen; Kawczynska; Landoni; McGrath; Skjerpjng; Srioudom; Wozniak; Noes: None; Abstain: None; Absent: None; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council adopts the Final List of Projects for implementation in Phase 2 of the Measure T1 infrastructure bond program as shown in Exhibit A.

Attachment – Exhibit A

Exhibit A to the Resolution

Measure T1 Phase 2 Final List of Projects (December 15, 2020)

Project Area	Site Description
Care and Shelter and Non-Departmental Citywide Projects	MLK Jr. Youth Services Center
	South Berkeley Senior Center
	African American Holistic Resource Center
	Restrooms in the Right-of-Way (ROW) (2-3)
Camps	Cazadero Dining Hall & ADA Improvements
Parks Buildings	Willard Clubhouse/Restroom Replacement
	Tom Bates Restroom/ Community Space
	<u>Restrooms in Parks:</u>
	Harrison Park Restroom Renovation
	Ohlone Park - New Restroom
Parks - Play Structures	Ohlone Park (Milvia) - Ages 2-5, 5-12, Garden Mural, Exercise
	John Hinkel Park Lower - Ages 2-12, picnic, parking
	Grove Park - Ages 2-5, 5-12
Parks	Aquatic Park Tide Tubes Clean Out, Soil Removal
	Ohlone Park Lighting
	Civic Center Park – Turtle Garden
Pools	King Pool Tile and Plaster Replacement
Waterfront	Piling Replacements
	D and E Dock Replacement
	K Dock Restroom Renovation
	Cesar Chavez Park - New Restroom (on Spinnaker Way)
Streets	T1 Streets Contribution to Annual Street Paving: Street Reconstruction of Arterials/Collectors and Vision Zero, Bus Network, and Bike/Ped Plan Improvements
	Bollard Conversion to Landscaping
Sidewalks	Sidewalks Maintenance & Safety Repairs
Pathways	Pathway Repairs/Improvements
Storm	Stormwater Infrastructure Repairs/ Replacement
Facilities	<u>1947 Center Street Improvements:</u>
	Seismic Upgrade Design
	HVAC/Electrical, Control Upgrades
	<u>Fire Stations</u>
	FS2 - HVAC, Electrical, Bedrooms, Security, Solar, Roof
	FS6 - Windows, Energy Efficiency
	<u>PW Corp Yard:</u>
	Facility Assessment
	Gate, Paving, Parking, Fuel Island
	Wash Station Compliance
	Green Room (B) Lockers, Bathroom, Training Room, Floor, Cabinets
	Storage Room (H) - Roof Repair
	Generator Upgrades
	Oxford & Telegraph Channing Garage Restrooms
	Emergency Power Supply Solar Batteries



Public Works Commission

To: Honorable Mayor and Members of the City Council

From: Public Works Commission

Submitted by: Matthew Freiberg, Chair, Public Works Commission
Shane Krpata, Vice Chair, Public Works Commission

Subject: Recommendations for Phase 2 Projects of the Measure T1 Program

RECOMMENDATIONS

Adopt a resolution that recommends approval of the T1 Phase 2 Public Works projects and the four non-department projects, as listed in this report by the Public Works Commission (PWC), along with the Parks, Recreation, and Waterfront Projects, which are included in the accompanying T-1 Phase 2 memo by the Parks and Waterfront Commission (PWFC). Table 1 below provides a summary of the public works projects that are recommended to be funded with T1 money as part of Phase 2.

FISCAL IMPACTS

Recommendations for T1 Projects will be funded through the sale of remaining T1 Bonds. The PWC support the staff recommendation for a 2-part (Phase 2a/2b) delivery of remaining bonds. This provides the most fiscally efficient delivery of projects and maximizes the ability for the City to spend bond proceeds following the specific requirements of the bond covenant.

CURRENT SITUATION AND ITS EFFECTS

On September 13, 2016, Council adopted Resolution 67,666-N.S., which established preliminary guidelines for delivering the Measure T1 infrastructure and facilities bond program. Part of this resolution included a requirement for citizen oversight of the use of these funds by the PWC and PWFCs.

In 2019, the City developed the Measure T1 Policies and Procedures Manual. This updated guidance document provides an outline of the project selection and prioritization process, which defines the project selection criteria and the roles of Staff, the commissions, community, and City Council in the project selection and approval process.

The project selection process utilized by the PWC is based on the guidance provided in the Measure T1 Manual.

Table 1: Summary of Recommended Public Works Projects

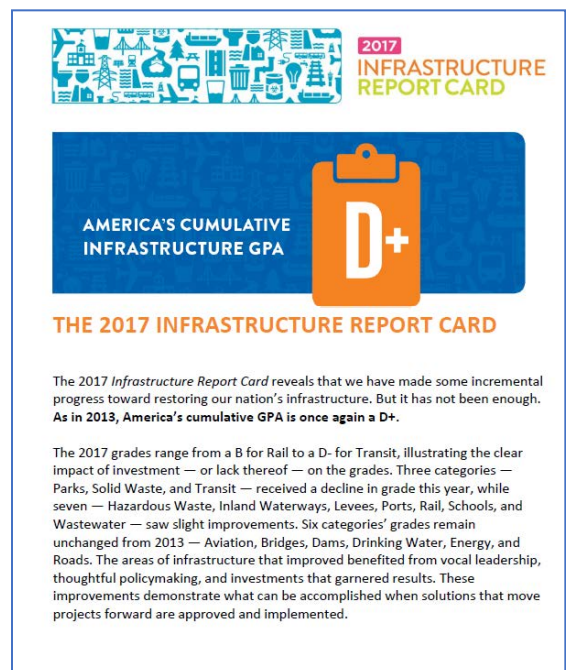
	Recommended PWC Projects	Site Details
1	T1 Streets Contribution to Annual Street Projects	Complete Streets, Telegraph Shared Streets, Pedestrian Plan, bikeways, transit routes, Vision Zero, and street reconstruction of Arterials & Collectors
2	50/50 Sidewalks Maintenance & Safety Repairs	Accelerate sidewalk improvements citywide
3	Stormwater Infrastructure Repairs/ Replacement	Repair and replacement of failed storm drains at various locations
4	1947 Center Street Facility Improvements	Seismic upgrade design, HVAC/electrical, control upgrades
5	Fire Station 2 Facility Improvements	HVAC, electrical, roof, solar, bedrooms, and security
6	Fire Station 6 Facility Improvements	Windows and energy efficiency
7	Corporation Yard Facility Improvements	Facility assessment, roof, wash station compliance, green room, lockers, bathrooms, training room, floors, and cabinets
8	Bollard Improvements	Conversion of bollards to planter/garden boxes
9	Pathway Repairs/Improvements	Repairs and improvements to pathways, including: handrails, Garber Path, and Arlington median stair crossing
10	Channing Garage Bathroom Renovation	Public restroom renovation and ADA compliance
11	Emergency Power Supply Solar Batteries	Solar battery backup power at City buildings

BACKGROUND

On November 8, 2016, Berkeley voters passed Measure T1 with an 86.5% approval. This measure authorizes the City to sell \$100 million of General Obligation Bonds (GO Bonds) to repair, renovate, replace, or reconstruct the City’s aging infrastructure and facilities. These include sidewalks, storm drains, parks, streets, senior and recreation centers, and other facilities. This is an important program that will help keep Berkeley a safe, efficient, and enjoyable place to live and work.

Aging infrastructure is a major issue across the United States. The American Society of Civil Engineers (ASCE) conducts a survey every 4 years and recently issued their Infrastructure Report Card for 2017. They gave America’s infrastructure an overall grade of D+. They stressed the need to fill the infrastructure funding gap and that infrastructure condition affects our nation’s economy, impacting business productivity, employment, personal income, and international competitiveness.

Berkeley is in a similar situation. Past studies by the City have reported on over \$500 million in unfunded facility and infrastructure needs. More than 75 years ago, the Works Projects



Administration funded more than 30 projects in Berkeley, including roads, improvements to Berkeley High and other schools, the Marina, Rose Garden, and Codornices, Frances Albrier, Indian Rock, James Kenney, John Hinkel, and Live Oak Parks. These, and many other facilities, need repair to extend their useful life.

Berkeley has recognized the needs of our infrastructure and has made progress with our streets, parks, and sanitary sewers. However, the rehabilitation needs are so large that a more focused effort and additional funding is needed. Measure T1 has already provided a major boost to fixings some of the deficiencies and the continuation of Phase 2 will continue the progress of enabling Berkeley to develop modern and effective infrastructure.

As part of the planning process for Phase 2, the PWC has coordinated with City Staff and provided oversight of the public outreach process. An initial list of potential infrastructure improvement projects was provided by City Staff. The PWC along with PWFC attended multiple public outreach meetings in a compressed public input process. Public comments from the outreach meetings as well as emails submitted to the T1 email address were synthesized, some comments led to additional projects that were included for consideration along with the Staff generated project list. Public comment was also considered by the PWC to inform the recommendations to Council for Phase 2 public works projects to be funded by remaining T1 Infrastructure Bond funds. These recommendations were approved by the Public Works Commission on Thursday, November 12th, 2020.

PUBLIC OUTREACH PROCESS

The Phase 2 public outreach process was initiated in January 2020. At this time, Staff provided an initial list of priority facility and infrastructure projects that were presented in the initial in-person public meetings with specific community groups. At least one member of the PWC participated in each of the public outreach meetings. In March 2020, the planned public engagement process was curtailed by the COVID-19 pandemic and statewide shelter-in-place mandate. The public outreach process was placed on hold until July 2020, when Staff reorganized their approach and redeveloped a plan of action to facilitate virtual public engagement and input meetings via Zoom. The public outreach process then resumed under a substantially condensed timeline while significant restrictions prohibiting commission subcommittees to meet were in effect. PWC and PWFC each met as commissions 8 times, twice jointly, and assigned individual commissioners to attend each of the 19 small area meetings and 5 large area meetings.

Through this process, Staff compiled over 138 pages of notes from the public meetings and emails while making sure to document and collect all project suggestions from members of the public, which are attached to this memo. Following each public meeting and throughout the public input process, Staff incorporated community feedback and revised their recommended project list (including project scope and cost estimates). The PWC read and reviewed all notes and emails to identify any additional Public Works specific projects for consideration in the prioritization and development of said projects. Additionally, all public comments made at regular commission meetings were also taken into consideration in the development of the PWC T1 Phase 2 project recommendations.

PROJECT LIST DEVELOPMENT AND PRIORITIZATION PROCESS

Projects considered for inclusion in the T1 program were organized in three general categories: Public Works Projects, Parks & Waterfront Projects, and Non-Departmental Citywide Projects with the Phase 2 budget allocated with \$17 million in each category. PWC and PWFC each met with Staff to refine their respective project lists, develop a prioritization process, and identify their respective priority projects. The two commissions came to a joint consensus on the final proposed project list being recommended to Council for use of the remaining \$53 million.

The project selection and priority process was conducted in three phases, a fatal flaws evaluation, a criteria scoring matrix, and project list finalization. First projects were evaluated on potential fatal flaws, by using four screening questions that evaluated the project's conformance with the specific borrowing requirements of the bond:

- Can the project be completed with the available funds remaining in T1?
- If the project is a study, can the planned project be constructed with T1 funds?
- Is the project repairing or improving an existing asset or infrastructure?
- Is the proposed project on City-owned or leased property?

Any project that resulted in a "no" response was eliminated from consideration.

Next, the projects were evaluated using an excel based decision support tool that uses a matrix approach to score Public Works projects on each of the project criteria. Criteria were based initially on the project selection process and published in the T1 Program Manual. Using these criteria as a foundation, the PWC expanded on the criteria based on public feedback from the public outreach process. Each project was scored from one to five in the eight criteria. Table 2 provides a summary of the criteria used in the prioritization matrix. Criteria scores were then totaled to produce a "Performance Score." A second evaluation was conducted with the performance score divided by the project cost to produce a "Value Score" (Figure 1). The projects were then sorted on their project score and value score rankings to identify the preliminary priority list of projects. The PWC sees the decision support tool matrix that was used by the commission as something that will provide additional value to the continued delivery of T1, as a means of continuing the same process to continually re-prioritize projects as cost estimates evolve.

It is worth noting the matrix did not outright determine the recommended list of projects, but instead assisted the decision-making process by providing enabling our team to evaluate all projects consistently without any personal prejudice or preference for specific projects.

PROJECT SELECTION PROCESS

Our guiding principles for final project selection considered projects capable of moving Berkeley toward more sustainable green infrastructure capable of addressing climate crisis concerns and providing improvements to the quality of life for the City of Berkeley's guests, residents, and employees, which is consistent with Vision 2050 recommendations adopted by Council in September 2020. Consideration for specific projects drivers include: Regulatory Compliance, ADA Compliance, Asset System Maintenance Costs, and Public Support.

The final project list was formulated with consideration of the overall budget allocated to the Public Works projects. It is worth noting that given the accelerated review process, and the preliminary nature of the project scope development, a detailed evaluation of project cost estimates has not been possible. It is understood that these project costs are likely to change as the project scopes mature and bottom-up estimates are developed. Table 3 provides a summary of the final project list with the current project estimate and the scores used in the project prioritization matrix.

Table 2: Project Prioritization Criteria

Abrv.	Criteria	Description
GB	Greatest Benefit	Project provides an impact to the greatest number of Berkeley residents.
E	Equity	Consideration of geographic and demographic distribution of projects. This criterion is applied after looking at the draft list of recommended projects. (PWC enhancement: Additional consideration of racial equity, gender equity, and geographic equity among users of different age groups, income, and ability levels.)
HSR	Health, safety, and resilience	Project addresses public health and safety, such as improvements for disaster preparedness or emergency response.
ESD	Environmental Sustainability/ Durability	Project improves water quality, has elements of green infrastructure, or also includes energy, climate, or other zero waste goals. Project uses durable elements or technologies that may lower long term cost. (PWC enhancement: Additional consideration given to projects that support climate change resilience and asset life cycle.)
PR	Project readiness	Considering projects that are underway or already shovel-ready.
LOF	Leveraging other funds	Project utilizes other funding sources. (PWC enhancement: Additional consideration of whether additional funding may be available.)
F	Feasibility	Consideration of the following: <ul style="list-style-type: none"> - The ability to complete a project/sequencing: project does not have any known barriers, such as site conditions, funding, or permitting issues, that will substantially delay or prevent completion of the project. - Renovating infrastructure before the end of the asset's useful life. The goal is to avoid larger future expenses or closure of amenity.
PS	Public Support	(PWC enhancement: Review and consideration of input from public meetings and email comments received)
PSR	Project Scope/Rank	(PWC enhancement: Criteria weight multiplied by criteria score of all criteria.)
VSR	Value Score/Rank	(PWC enhancement: Performance Score/Rank divided by project cost.)

$$\text{Performance Score} = \sum_{\text{All Criteria}} (\text{Criteria Weight} \times \text{Criteria Score})$$

$$\text{Value Score} = \frac{\text{Performance Score}}{\text{Project Cost}}$$

Figure 1. Performance Score/Rank (PSR) and Value Score/Rank (VSR) Formulas

Table 3: Public Works Commission Project Prioritization Decision Support Tool

Public Works Projects		Estimate	Description and Decision Support Tool Ratings									
1	T1 Streets Contribution to Annual Street Projects	\$6,750,000	Southside Complete Streets, Telegraph Shared Street, Pedestrian Plan, bikeways, transit routes, Vision Zero, street reconstruction of Arterials & Collectors									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			5	5	5	5	3	5	3	5	1	31
2	50/50 Sidewalks Maintenance & Safety Repairs	\$1,850,000	Pedestrian access 50/50, ADA									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			4	4	5	5	5	5	3	5	6	20
3	Stormwater Infrastructure Repairs/ Replacement	\$600,000	Water quality, Repair and replacement of failed storm drains at various locations									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			4	3	4	5	3	3	3	3	4	7
4	1947 Center Street Facility Improvements	\$1,800,000	Disaster preparedness, energy efficient building systems, air quality									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			3	3	4	5	4	3	3	4	18	23
5	Fire Station 2 Facility Improvements	\$1,450,000	HVAC, electrical, bedrooms, security, solar									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			3	3	5	4	3	4	3	3	22	19
6	Fire Station 6 Facility Improvements	\$1,300,000	Windows, Leak Repair, Lights, Mold									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			3	3	5	4	3	4	3	3	22	17
7	Corporation Yard Facility Improvements	\$2,850,000	Gate, parking, wash station compliance, Green Room (B) lockers, bathrooms, Training Room, floors, cabinets, Storage Room (H) roof repair									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			3	3	4	3	4	4	4	2	34	28
8	Bollard Improvements	\$150,000	Community building, conversion of bollards to planter/garden boxes, street safety									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			4	3	5	3	3	3	3	5	22	10
9	Pathway Repairs/Improvements	\$200,000	Pedestrian access, disaster preparedness, repairs/improvements to pathways (e.g. handrails, Garber Path, and Arlington median stair crossing)									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			4	3	5	4	3	3	3	5	12	3
10	Channing Garage Bathroom Renovation	\$300,000	Public restroom renovation and ADA compliance									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			4	5	5	4	4	4	4	4	8	4
11	Emergency Power Supply Solar Batteries	\$500,000	Solar battery backup power at City buildings									
			GB	E	HSR	SD	PR	LOF	F	PS	PSR	VSR
			4	3	5	4	3	4	4	4	12	6
<i>total</i>		\$17,750,000										

RECOMMENDED PROJECT DESCRIPTIONS

1. T1 STREET CONTRIBUTIONS TO ANNUAL PAVING PLAN:

T1 Bond language is focused on improving mobility, access, and safety for streets in need of repair. The Public Works Commission recommends using the Berkeley Strategic Transportation (BeST) Plan criteria for all street projects being considered for T1 Bond funding. The BeST plan project scoring criteria represents a prioritization strategy that takes all relevant City policies into account.

In following T1's stated goals of improving mobility, access, and safety for streets in need of repair, the Public Works Commission supports adherence to the City's Complete Streets Policy.

The Complete Streets Policy includes the following list of improvements: shared community spaces, sidewalks, shared-use paths, bicycle lanes, bicycle routes, Bicycle Boulevards, paved shoulders, street trees, landscaping, planting strips, accessible curb ramps, crosswalks, pedestrian refuge islands, pedestrian signals, signs, street furniture, bicycle parking facilities, public transit stops and facilities, transit priority signalization, and other features assisting in the safe travel for all users, such as traffic calming devices, transit bulb-outs, and road diets, and those features identified in the Berkeley Pedestrian Master Plan and Berkeley Bicycle Plan. Within the life of the T1 Bonds, projects that provide Complete and Shared Streets benefits, including the Telegraph Shared Street Plan, the Adeline Corridor Project, and the Shattuck Square redevelopment should be prioritized.

The PWC continues to recommend funding road surfacing treatments and associated road appurtenances with life expectancies longer than the 40-year bond funding period. T1 funding should be committed to long-lived components of street projects (curbs, gutters, sidewalks, road bedding, trees, and stormwater infrastructure), short-lived components such as asphalt pavements with 15-30 year life expectancies should be constructed with tax monies rather than long term bond funds.

2. 50/50 SIDEWALK MAINTENANCE AND SAFETY REPAIR:

Following Vision Zero, Complete Streets, ADA, and BeST Plan plans, all street projects should include priorities for accessible sidewalks and considerations for pedestrian and bicycle user safety, and improved access to city sidewalks apply additional funding to the 50/50 sidewalks program.

3. STORMWATER AND GREEN INFRASTRUCTURE (GI) PROJECTS:

Consistent with the Watershed Management Plan (WMP), the PWC recommends that GI should be integrated into street restoration projects. In concurrence with the WMP, GI street projects should be included in the streets that are funded by T1. If the street surface is designed and constructed to improve stormwater quality improvement and reduce runoff, then that would be an appropriate allocation of the T1 funds. Alternatively, stormwater projects concurrent with street projects included in the Five-Year Paving Plan could be funded by T1.

4 - 7. FACILITY IMPROVEMENTS:

City-owned buildings and facilities are some of the most expensive single assets. Given the critical impacts that roof failures can play in a building's useful life, the PWC prioritized roof repairs. We are recommending project list items 4, 5, 6, and 7 for needed repairs of Public Works assets, which are:

4. 1947 Center Street Facility Improvements
5. Fire Station 2 Facility Improvements
6. Fire Station 6 Facility Improvements
7. Corporation Yard Facility Improvements

However, there is concern that the City does not have adequate asset management or funding to continue to maintain buildings and facilities. The recommendations of the Vision 2050 Report recently adopted by the Council begin to address this challenge. The cost of routine maintenance of city-owned buildings should be incorporated into each department's operating budget, and those departments can then allocate funds to Public Works to plan, schedule, and contract for work that cannot be undertaken by City Staff. Bond measures are not an appropriate or cost-effective way to maintain city assets in the long run.

8. BOLLARD IMPROVEMENTS:

There are several types of bollards and diverters in place today - semi-diverters (closing half the street) and full diverters, which either create a cul-de-sac or are placed diagonally across an intersection and force vehicles to turn the corner. Most full diverters have a gap between the bollards and a low steel under-carriage device, which is supposed to only allow passage of fire trucks and other high-clearance vehicles. Nearly all diverters allow bicycles to pass through on the street, while some divert bike passage to the sidewalk. However, as cities across the state saw increasingly constrained budgets following the passage of Proposition 13, less money was available for diverter reconstruction. Thus, most of the original "temporary" diverters still consist of bollards. In some neighborhoods, residents have attempted to beautify the bollard safety elements by planting flowers in them.

9. PATHWAY REPAIRS/IMPROVEMENTS:

For decades, Berkeley paths and steps have served a critical public safety purpose as evacuation routes in times of emergency. In case of fire or earthquake, paths provide egress and can be used by firefighters to bring up equipment if streets are blocked. The Berkeley Pedestrian Master Plan recommends developing a strategy to prevent the loss of existing pathways and to identify opportunities to expand the public pedestrian pathways network in Berkeley. Paths provide an avenue for walking and connect neighbors, as well as to public transportation and shopping areas. They are tree-lined, enchanting, and a peaceful respite from the urban noise beyond. They give all Berkeley residents and visitors access to incredible hillside vistas, parks, and neighborhoods.

10. CHANNING GARAGE BATHROOM RENOVATION:

The Channing Garage Bathroom is one of two publicly accessible restrooms in the Southside neighborhood. However, the restroom facility is significantly dilapidated and

heavily relied on by both visitors to the Telegraph Business Improvement District and local unhoused populations. The closest alternate restroom facility is located at People’s Park, which is a site soon to be redeveloped and would temporarily result in the elimination of an essential public restroom. Locals, guests, and unhoused residents not only need a renovated and fully accessible restroom capable of meeting occupancy use, but they undeniably deserve safe and dignified restroom facilities to use and tend to their hygiene.

11. EMERGENCY POWER SUPPLY SOLAR BATTERIES:

In the face of rapidly accelerating climate change, and in light of Berkeley’s declared Climate Emergency, resilience and carbon-free energy supplies both become increasingly important investment criteria. Critical facilities need to have backup power, but diesel generators are not viable long-term, let alone reliable solutions. Solar power tied to batteries offer both continual long-term back-up power and bill savings opportunities even during normal grid-tied operation. The full potential for deployment far exceeds the currently available budget, but selecting a priority pilot project like the North Berkeley Senior Center will provide the City with valuable experience developing and implementing this project. As prices and functionality for both solar power and battery storage improve, the City can provide leadership and impetus in our attempts to decarbonize the economy and build resilience for our community.

CITYWIDE NON-DEPARTMENTAL PROJECTS

Multiple Non-Departmental Projects were identified by staff, with additional projects being promoted as part of the public outreach process. Table 4 provides a summary of the four non departmental projects that met the requirements of T1 and received a large amount of public support. These projects were not evaluated by the PWC using the prioritization matrix; however, there was agreement between both PWC and PWFC that these four projects should be prioritized for Phase 2 of the T1 program.

Table 4: Citywide Non-Departmental Project

	Project	Estimate	Description
1	MLK Jr. Youth Services Center (YSC)	\$7,000,000	The existing MLK Jr. YSC facility has not been updated since the 1970s. The refurbishment of this facility includes disaster preparedness, electrification, energy efficient building systems, community building.
2	South Berkeley Senior Center (SBSC)	\$3,000,000	Refurbishment of the existing SBSC includes disaster preparedness, electrification, energy efficient building systems, and enhancements to the community building.
3	African American Holistic Resource Center (AAHRC)	\$7,000,000	Refurbishment of an existing City building to allow for the space to be occupied by the AAHRC. Scope includes electrification, energy efficient building systems, community building
4	Restrooms in the Right of Way	\$1,350,000	Installation of new restrooms citywide. Restrooms will be selected from a list of facilities identified in the Citywide Bathroom Study. This project will use energy efficient fixtures and will result in a cleaner environment.
	<i>Total</i>	\$18,350,000	

PROJECTS REVIEWED BUT NOT RECOMMENDED AT THIS TIME

With over \$800M of need that the City has identified for infrastructure maintenance and improvement, many projects did not make the recommended T1 Phase 2 project list. The full list of projects provided by staff and the public process is included on Table 5. As project costs grow or other funding sources become available, staff may need to reprioritize projects off of this list. That said, there is not nearly enough funding in the T1 program to meet all of the infrastructure needs identified. We as a community will need to continue to support additional funding programs to catch up on historic deferred maintenance of public infrastructure of Berkeley.

Table 5: Projects Discussed but Not Recommended for T1 Phase 2 Funding

Category	Project	Description
Facilities	Fire Station 1	2422 Eighth St
Facilities	Fire Station 3	2710 Russell St
Facilities	Fire Station 4	1900 Marin Avenue
Facilities	Fire Station 5	2680 Shattuck
Facilities	Fire Station 7	3000 Shasta Rd
Facilities	Fire Department Warehouse	1004 Murray St
Facilities	Animal Shelter	1 Bolivar Dr
Facilities	Civic Center Building	2180 Milvia St
Facilities	830 University, Berkeley Health	830 University
Facilities	Telegraph Channing & Oxford	2450 Durant
Facilities	Old City Hall/Veterans, Civic	Downtown Civic Center
Facilities	1001, 1007, 1011 University	1001-1011 University
Facilities	Berkeley Health Clinic Electrical Assessment	830 University
Citywide Facilities	Seismic Upgrades	Citywide
Citywide Facilities	Swipe Access	Citywide
Citywide Facilities	ADA Upgrades	Citywide
Citywide Facilities	Elevators	Citywide
Streets	Citywide Street Maintenance	Citywide
Sidewalks	Sidewalk Improvements identified by ADA Transition Plan Update	Citywide
Sidewalks, bikeways	Ohlone Greenway Improvements (lighting and widening)	Ohlone Greenway

GENERAL PROGRAM RECOMMENDATIONS

The PWC reaffirms the following General Recommendations included in our review of Phase 2 Specific Project Recommendations:

A. REPORTING, ACCOUNTABILITY, AND ANALYSIS:

The PWC does not have oversight or review responsibilities under the T1 Policies and Procedures Manual. Should the Council desire routine input or feedback from the PWC in addition to the Staff reports on the progress of T1 Phase 2 projects, the manual should be revised to include reporting information and frequency. Project costs and cost benefits as well as cost avoidance, should be included in the review of projects recommended by Staff. PWC will provide Staff with the Prioritization Decision Support Tool developed in this process so the same process may be followed as Phase 2 is implemented.

B. STREETS MANAGEMENT PLAN:

The PWC recommends that the Public Works Department prepare a long-term Street Management Plan that will:

- Outline a baseline operations and maintenance funding level that will keep Berkeley's streets from deteriorating.
- Outline a process to conduct life cycle cost analysis in the selection of street surface treatment technologies.
- Outline the capital projects that will use bond funding.

C. VISION 2050:

The PWC reaffirms the recommendations of the Vision 2050 Task Force, adopted by Council in September 2020, summarized in three principles:

- Support vibrant and safe communities
- Be efficient and well-maintained
- Facilitate a green Berkeley and contribute to saving our planet

D. WATERSHED MANAGEMENT PLAN (WMP):

The WMP should be updated to reflect changing climate knowledge, groundwater management rules, Green Infrastructure Framework, and stormwater discharge permit conditions. The remaining seven city watersheds should be modeled and included in WMP recommendations prior to design work on additional bio-swales citywide.

E. MARINA MASTER PLAN:

The 2003 Marina Master Plan should be updated to reflect changed conditions, climate change, sea-level rise impacts, and a current vision for future mitigation and adaptation.

F. ADA SELF-EVALUATION AND TRANSITION PLAN:

The PWC recommends the inclusion of elements and priorities of the City of Berkeley ADA Title II Transition Plan in projects funded under T1 as the ADA Plan is updated.

The PWC acknowledges that there will be changes in priorities, specific projects, and funding as T1 Phase 2 is completed. We hope to remain a focal point for continued public input, feedback, and voice.

CONTACT PERSON

Matthew Freiberg, Chair, Public Works Commission, (831) 566-3628

Shane Krpata, Vice Chair, Public Works Commission, (507) 398-6117

Joe Enke, Acting City Engineering & PWC Commission Secretary, (510) 981-6411

ATTACHMENT

1 - PWC Project Prioritization Matrix Phase 2 of the Measure T1 Program

Project Information					Fatal Flaw Evaluation					Project Criteria										Ranking and Optimization																										
Project Information					Fatal Flaw Evaluation					Project Criteria										Ranking and Optimization																										
Project Name	Staff Priority Y/N	Project Category	Project Cost	Council District	Public Works, Park, or City Wide Benefit Project	Origin of Project (Staff, Public, other)	Description	Can the project be completed with available funds	Is this project repairing or improving existing assets	Is a Study, can the project be completed with T	Is the proposed project on City owned or Leased Property	Is the life of the asset 40 years or greater?	Score each project on a scale of 1-5. 5 for projects that exemplify the criteria, 1 for projects that do not achieve the goals of the criteria.	Greatest Benefit	Serves Historically Underserved Community	Health, safety, and resilience	Environmental Sustainability / Durability	Project Redness	Leveraging other funding	Feasibility	Public Support for Project	Total	Performance Rank	Project Value	Value Rank	Cumulative Cost	Priority Project Inclusion (1 = include, 0 = exclude)	Priority Cost	Priority Max	PWC Budget																
																											Weights																			
Citywide Street Rehabilitation	Yes	Streets	\$ 6,750,000		All	Staff	Acceleration of Road Resurfacing. Street reconstruction of arterials, collectors, Bus, and Low Stress Bike Network. Strong preference for non-asphalt road surface materials.	Yes	Yes	Yes	Yes	Yes	41	5	3	4	4	5	5	5	5	5		1	6	20	\$ 6,750,000	1	\$ 6,750,000	783	\$ 17,750,000															
Telegraph Shared Streets		Transportation	\$ 8,000,000		7	Public Works	Public	Close Telegraph to through traffic (transit, commercial delivery excepted), add plaza	Yes	Yes	Yes	Yes	41	5	5	5	5	3	5	3	5	5		1	5	21	\$ 14,750,000	0	\$ -																	
Emergency Power Supply Sola Batteries		Citywide Facilities	\$ 500,000		Various	Staff	Solar Battery Backup Power at City Buildings	Yes	Yes	Yes	Yes	41	4	4	5	5	3	5	5	5	5	5		1	82	4	\$ 15,250,000	1	\$ 500,000		\$ 17,750,000															
ADA Upgrades		Citywide Facilities	\$ 10,000,000		Various	Staff	ADA Compliance Upgrades at City Buildings	Yes	Yes	Yes	Yes	40	4	5	5	5	4	4	5	4	5	4		4	4	23	\$ 25,250,000	0	\$ -																	
50/50 Catchup - Citywide by list	Yes	Sidewalks	\$ 1,850,000		All	Public Works	Staff	Construction of projects identified for project funding to sidewalk repair in residential neighborhoods where the cost is split between the property owner and the City. Priority to sidewalks in the ADA Plan	Yes	Yes	Yes	Yes	39	4	4	5	5	3	5	3	5	5		6	21	12	\$ 27,100,000	1	\$ 1,850,000																	
Seismic Upgrades		Citywide Facilities	\$ 20,000,000		7	Public Works	Staff	HHCS, Fire Stations Bathrooms and other Upgrades	Yes	Yes	Yes	Yes	39	3	3	5	3	5	5	5	5	5		6	2	26	\$ 47,100,000	0	\$ -																	
Telegraph Channing & Oxford - Bathrooms		Citywide Facilities	\$ 300,000		7	Public Works	Staff	Bathrooms and other Upgrades	Yes	Yes	Yes	Yes	38	4	5	5	4	4	4	4	4	4		8	127	3	\$ 47,400,000	1	\$ 300,000																	
Jones Street, Heinz Avenue, Tenth Street, Ninth Street, Sacramento Street center median		Storm	\$ 2,000,000		1, 2, 2004	Public Works	Staff	Multiple requests including safety/accessibility improvements. Includes repairs to Garber Path, Turnbridge Lane, Visalia Walk, Florida Walk, Orchard Lane (Upper Section), Venente Walk, Adlington median stair crossing improvements, and others.	Yes	Yes	Yes	Yes	38	4	4	4	5	5	3	3	5	5		8	19	14	\$ 49,400,000	0	\$ -																	
Bollard conversion to Planters	Yes	Transportation	\$ 150,000		CW	Public Works	Public	Beautification Project	Yes	Yes	Yes	Yes	37	3	3	4	4	5	3	5	5	5		11	247	1	\$ 49,550,000	1	\$ 150,000																	
Pathway Repairs	Yes	Transportation	\$ 200,000		8	Public Works	Public	Multiple requests including safety/accessibility improvements. Includes repairs to Garber Path, Turnbridge Lane, Visalia Walk, Florida Walk, Orchard Lane (Upper Section), Venente Walk, Adlington median stair crossing improvements, and others.	Yes	Yes	Yes	Yes	35	4	3	5	4	3	3	3	3	5		17	175	2	\$ 49,750,000	1	\$ 200,000																	
Emergency Power Supply		Citywide Facilities	\$ 500,000		Various	Public Works	Staff	Generator Upgrades at City Buildings	Yes	Yes	Yes	Yes	35	4	3	5	4	3	4	4	4	4		17	70	5	\$ 50,250,000	0	\$ -																	
Aquatic Park		Storm	\$ 8,000,000		2	Public Works	Staff	Connection Model Yacht Basin to main Lagoon	Yes	Yes	Yes	Yes	35	4	4	3	4	3	4	4	5	5		17	4	22	\$ 58,250,000	0	\$ -																	
Ohlone Greenway Improvements (widening & lighting)		Storm	\$ -		2	Public Works	Public	Connection Model Yacht Basin to main Lagoon	Yes	Yes	Yes	Yes	35	5	4	4	3	3	3	3	5	5		17	0	29	\$ 58,250,000	0	\$ -																	
Elevators		Citywide Facilities	\$ 12,000,000		Various	Staff	Elevator Upgrades and Replacement at City Buildings	Yes	Yes	Yes	Yes	34	3	3	4	4	5	4	5	3	3	3		22	3	24	\$ 70,250,000	0	\$ -																	
1947 Center Street - Seismic Upgrade Design, HVAC/Electrical, Control Upgrades	Yes	Facilities	\$ 1,800,000		4	Public Works	Staff	Seismic Upgrade Design, HVAC, Electrical Control Upgrades	Yes	Yes	NA	Yes	33	3	3	5	4	3	4	3	4	4		24	18	15	\$ 72,050,000	1	\$ 1,800,000																	
Parker Street Storm Drain		Storm	\$ 1,000,000		2	Public Works	Staff	Increase capacity/replacement of aging pipe	Yes	Yes	Yes	Yes	32	4	3	4	5	3	3	4	4	3		27	32	8	\$ 73,050,000	0	\$ -																	
Second Street Storm Drain		Storm	\$ 1,000,000		1	Public Works	Staff	Provide Separation from EBMUD Sewer	Yes	Yes	Yes	Yes	32	4	3	4	5	3	3	4	3	3		27	32	8	\$ 74,050,000	0	\$ -																	
Fire Station 5		Facilities	\$ 3,200,000		3	Public Works	Staff	Lighting, HVAC, Electrical, Lighting, Paint	Yes	Yes	Yes	Yes	32	3	3	5	5	3	4	3	3	3		27	10	18	\$ 77,250,000	0	\$ -																	
Stormwater Infrastructure Repairs/Replacement	Yes	Storm	\$ 600,000		All	Public Works	Staff	R&R of failed storm drains at various locations	Yes	Yes	Yes	Yes	31	4	3	4	5	3	3	3	3	3		31	52	6	\$ 77,850,000	1	\$ 600,000																	
Fire Station 7		Facilities	\$ 600,000		6	Public Works	Staff	Roof Access, Lighting	Yes	Yes	Yes	Yes	31	3	3	5	4	3	4	3	3	3		31	52	6	\$ 78,450,000	0	\$ -																	
Fire Station 6*	Yes	Facilities	\$ 1,300,000		1	Public Works	Staff	Windows, Leak Repair, Lights, Drill Tower, Mole	Yes	Yes	Yes	Yes	31	3	3	5	4	3	4	3	3	3		31	24	10	\$ 79,750,000	1	\$ 1,300,000																	
Fire Station 2*	Yes	Facilities	\$ 1,450,000		4	Public Works	Staff	HVAC, Electrical, Bedrooms, Security, Solar	Yes	Yes	Yes	Yes	31	3	3	5	4	3	4	3	3	3		31	21	11	\$ 81,200,000	1	\$ 1,450,000																	
Berkeley Health Clinic Electrical Assessment		Facilities	\$ 1,500,000		2	Public Works	Staff	Electrical upgrades to main switchboard, two panel boards, and wiring devices.	Yes	Yes	Yes	Yes	31	5	5	3	3	3	3	3	3	3		31	21	13	\$ 82,700,000	0	\$ -																	
Intersection Repairs		Facilities	\$ -		4	Public Works	Public	Configure intersections consistently for bicycle and pedestrian safety so everyone knows what to expect.	Yes	Yes	Yes	Yes	30	4	3	4	4	3	3	3	3	3		36	0	29	\$ 82,700,000	0	\$ -																	
1947 Center Street- Window Replacement		Facilities	\$ 1,700,000		4	Public Works	Staff	Windows, Leak Repair, Lights, Drill Tower	Yes	Yes	Yes	Yes	29	3	3	5	5	3	3	3	2	2		39	17	16	\$ 84,400,000	0	\$ -																	
Corporation Yard Improvements	Yes	Facilities	\$ 2,850,000		2	Public Works	Staff	Green Room (B) Lockers, Bathroom, Training Room, Floor, Cabinets, Gate, parking, wash station compliance.	Yes	Yes	Yes	Yes	29	3	3	4	3	4	4	4	2	2		39	10	17	\$ 87,250,000	1	\$ 2,850,000																	
Public Safety Building		Facilities	\$ 3,000,000		4	Public Works	Staff	Electrical, Bullet-Proofing, Misc	Yes	Yes	Yes	Yes	27	3	3	5	3	3	3	3	2	2		43	9	19	\$ 90,250,000	0	\$ -																	
1947 Center Street - Other		Facilities	\$ 8,500,000		4	Public Works	Staff	Elevators	Yes	Yes	Yes	Yes	21	3	3	4	1	3	3	2	1	1		44	2	25	\$ 98,750,000	0	\$ -																	
Roofs 1001, 1007, 1011 University		Citywide Facilities	\$ 20,000,000		Various	Public Works	Staff	Roof Repair/Replacement Needs at City Buildings	Yes	Yes	Yes	Yes	18	3	3	4	3	3						45	1	28	\$ 118,750,000	0	\$ -																	
1001, 1007, 1011 University		Facilities	\$ 7,900,000		1	Public Works	Staff	General Upgrades	Yes	Yes	Yes	Yes	15	5	5	5								46	2	27	\$ 126,650,000	0	\$ -																	
Fire Station 1		Facilities	\$ 2,100,000		2	Public Works	Staff	General Upgrade	Yes	Yes	Yes	Yes	-	3	3	5	4	3	4	3	3	3		47	0	29	\$ 128,750,000	0	\$ -																	
Fire Station 3		Facilities	\$ 1,700,000		8	Public Works	Staff	Fence, Gate, Leak Repair, Roof	Yes	Yes	Yes	Yes	-	3	3	5	4	3	4	3	3	3		47	0	29	\$ 130,450,000	0	\$ -																	
Fire Station 4*		Facilities	\$ 800,000		5	Public Works	Staff	Leak Repair, Roof, Floor, Pain	Yes	Yes	Yes	Yes	-	3	3	5	4	3	4	3	3	3		47	0	29	\$ 131,250,000	0	\$ -																	
Fire Department Warehouse		Facilities	\$ 800,000		2	Public Works	Staff	General Upgrade	Yes	Yes	Yes	Yes	-	3	3	5	4	3	4	3	3	3		47	0	29	\$ 132,050,000	0	\$ -																	
Civic Center Building		Facilities	\$ 3,200,000		4	Public Works	Staff	Carpets, Windows, HVAC	Yes	Yes	Yes	Yes	-	3	3	5	4	3	4	3	3	3		47	0	29	\$ 135,250,000	0	\$ -																	
830 University, Berkeley Health		Facilities	\$ 2,400,000		2	Public Works	Staff	General Upgrades	Yes	Yes	Yes	Yes	-	3	3	5	4	3	4	3	3	3		47	0	29	\$ 137,650,000	0	\$ -																	
Old City Hall/Veterans, Civic		Facilities	\$ 130,000,000		2	Public Works	Staff	Vision Upgrades	No	Yes	No	Yes	-	3	3	5	4	3	4	3	3	3		47	0	29	\$ 267,650,000	0	\$ -																	
Swipe Access		Citywide Facilities	\$ 2,000,000		Various	Public Works	Staff	Access/Safety Upgrades at City Buildings	Yes	Yes	Yes	Yes	-	3	3	5	2	5	4	5	1	1		47	0	29	\$ 269,650,000	0	\$ -																	
Street Striping		Facilities	\$ -		Various	Public Works	Public	Restripe lane markings & crosswalks. Focus on areas near schools and high pedestrian areas.	Yes	Yes	Yes	Yes	-	3	3	3	2	3	3	3	3	3		47	0	29	\$ 269,650,000	0	\$ -																	
Parks and Non-Departmental Projects																																														
Cazadero Dining Hall & ADA Improvements		Camp	\$ 400,000		Parks	Staff	Energy efficient textures, environmental stewardship	Yes	Yes	NA	Yes	Yes	38	4	4	4	5	3	5	3	5		47	0	29	\$ 269,650,000	0	\$ -																		
Willard Clubhouse/Restroom Replacement		Parks - Buildings	\$ 7,000,000		Parks	Staff	community zoning	Yes	Yes	NA	Yes	Yes	37	4	4	4	5	4	3	3	5		47	0	29	\$ 269,650,000	0	\$ -																		
Tom Bates Restroom/Community Space		Parks - Buildings	\$ 2,900,000		Parks	Staff	Cleaner environment, energy efficient building systems	Yes	Yes	NA	Yes	Yes	37	4	4	4	5	4	3	3	5		47	0	29	\$ 269,650,000	0	\$ -																		
Restrooms in Parks - Harrison Park - Renovation		Parks - Buildings	\$ 450,000		Parks	Staff	Energy efficient textures	Yes	Yes	NA	Yes	Yes	35	5	4	4	5	2	3	3	5		47	0	29	\$ 269,650,000	0	\$ -																		
Restrooms in Parks - Chronicle Park New		Parks - Buildings	\$ 500,000		Parks	Staff	Energy efficient textures	Yes	Yes	NA	Yes	Yes	35	5	4	4	5	2	3	3	5		47	0	29	\$ 269,650,000	0	\$ -																		
Aquatic Park Dreamland- New ADA and 2-12		Structure	\$ 700,000		Parks	Staff	Outdoor recreation, community building	Yes	Yes	NA	Yes	Yes	35	4	5</																															



Parks & Waterfront Commission

To: Honorable Mayor and Members of the City Council

From: Parks and Waterfront Commission

Submitted by: Jim McGrath, Chair, Parks & Waterfront Commission

Subject: Recommended Action on T1 Phase 2 Projects

INTRODUCTION

The Parks and Waterfront Commission appreciates the trust that the City Council and the citizens of Berkeley have given to us to manage a portion of the \$100 million T1 bond. We are nearing completion of over \$40 million in projects throughout the City, and we have leveraged an additional \$20 million in outside funding to begin the important task of repairing our infrastructure and parks.

After a series of focus group and larger area meetings, the Parks and Waterfront Commission has reached a consensus on a recommendation for projects that we recommend for funding under T1 Phase 2. We reached this recommendation after listening carefully and extensively to the public and after a series of discussions with city staff and our colleagues on the Public Works Commission. This recommendation was adopted by the full Parks and Waterfront Commission, on November 19, 2020.

Our recommendation includes a specific list of recommendations for projects under T1, additional recommendations for projects that could be funded with the Parks Tax, and a program to develop project concepts for the future.

BASIS FOR RECOMMENDATION

The Parks and Waterfront Commission used a series of criteria, described below, to help establish these recommendations. The Commission recommendations were also based on input from the public in more than 35 public meetings and hundreds of emails, as well as public comment at Commission meetings. Recommendations were also based on input from staff regarding highest priority unfunded needs.

Recommendations were also informed by our previous efforts at recommending projects for Phase 1 of the T1 bonds, the Final Report of our Sustainability Subcommittee, from September 14, 2016, and the more recent recommendations of the Vision 2050 Task Force. Those efforts recommended that we consider:

- Plan to reduce water consumption

- Modify landscaping to enhance resiliency and reflect more frequent droughts
- Develop natural streetscapes that provide ecosystem services and support urban biodiversity
- Construct complete streets
- Increase the tree canopy to serve these purposes and reduce heating

Thus, part of our orientation in formulating this recommendation is to look to the future conditions of Berkeley, which will be hotter and dryer, as well as considering infrastructure that needs repair. Providing additional improvements in parts of the city that have fewer parks, and in areas that have received less funding over the past decade, and addressing racial equity played a major part in formulating the criteria described below in order to form a recommendation.

CRITERIA

The Parks and Waterfront Commission adopted the following criteria upon which to base project selection for T1 funding. These criteria were decided upon for Phase 1 based on input from the City Council, the Commission, and the community. Criteria were updated in 2020 for Phase 2 as described below.

- Greatest Benefit: Project provides impact to the greatest number of Berkeley residents. For Phase 2, additional consideration is given to creation of a memorable project to inspire a broad spectrum of residents.
- Equity: Consideration of geographic and demographic distribution of projects. For Phase 2, additional consideration of racial equity, gender equity, and equity among users of different age groups and income levels. In addition, our park system should reflect the fact that this was once all land occupied by Native Americans.
- Health, safety, and resilience: Project addresses public health and safety, such as improvements for disaster preparedness or emergency response.
- Environmental Sustainability/Durability: Project which improves water quality, have elements of green infrastructure, or also include energy, climate, or other zero waste goals. Project uses durable elements or technologies that may lower long term cost. For Phase 2, additional consideration given to projects that support climate change resilience.
- Project readiness: Considering projects that are underway or already shovel-ready.
- Leveraging other funds: Project utilizes other funding sources.
- Feasibility: Consideration of
 - the ability to complete a project/sequencing: project does not have any known barriers that will substantially delay or prevent completion.
 - renovating infrastructure before end of useful life to avoid larger expense or closure of amenity.

While individual projects may not all meet all criteria, most projects should meet most criteria in order to merit recommendation by the Commission.

I. PROJECTS THAT WE RECOMMEND BE FUNDED WITH T1 FUNDS

Projects listed below have been recommended for funding with T1 Phase 2 funds. For each project, the rationale, as determined by the criteria listed above, is provided.

Project	Cost	Rationale/Primary Criteria
MLK Jr. Youth Services Center	\$7,000,000	<p>Greatest Benefit: Providing free programming to youth who benefit from its programs and who are predominantly youth of color and low income. These programs have an impact on youth throughout their lives as testified in public comment.</p> <p>Equity: Youth that benefit from programs are predominantly youth of color and low-income, provides free programming.</p> <p>Health/Safety/Resilience: Disaster preparedness of a community building. Health and safety of after-school programming is increasingly important in pandemic context.</p> <p>Sustainability/Durability: Disaster preparedness/electrification/ efficient building systems for a community building that serves youth. Care and Shelter facility.</p> <p>Leveraging other funds: \$1.4m FEMA grant application pending</p>
South Berkeley Senior Center	\$3,000,000	<p>Equity: Benefits for seniors including people of color, low-income. Provides investment in historically under-invested South Berkeley community resources.</p> <p>Health/Safety/Resilience: Programming to support public health among seniors. Seismic safety and resilience critical for disaster preparedness in a community building.</p> <p>Sustainability/Durability: Ensure building durability in case of earthquake. Care and Shelter facility.</p>
African American Holistic Resource Center	\$7,000,000	<p>Equity: Center with mission to eliminate inequities and provide culturally responsive services for African American community in Berkeley.</p> <p>Health/Safety/Resilience: Center will address social determinants of health and mental health among African American community.</p> <p>Sustainability/Durability: Project includes electrification, energy-efficient building systems</p> <p>Leveraging Other Funds: \$250k available for planning</p>

Project	Cost	Rationale/Primary Criteria
Restrooms in the ROW (2)	\$1,350,000	<p>Greatest Benefit: Benefit all in the community</p> <p>Equity: Support human dignity across economic inequities</p> <p>Health/Safety/Resilience: Support human health and public safety</p> <p>Sustainability/Durability: Reduce environmental impacts of human waste. Energy-efficient fixtures.</p> <p>Project Readiness: Community process completed to identify sites and other priorities.</p> <p>Leveraging other funds: Funds already supported study and community process.</p>
Cazadero Camp Dining Hall & ADA Improvements	\$400,000	<p>Equity: Cazadero camp provides a camp experience for a wide spectrum of Berkeley children. ADA improvements are critical to allow camp access for all children.</p> <p>Health/Safety/Resilience: Dining hall improvements and ADA improvements are necessary to maintain a safe camp environment for Berkeley children.</p> <p>Leveraging other funds: The camp tenant pays a significant portion of funds for facility maintenance, therefore T1 spending leverages private camp funding to maintain and improve the camp.</p>
Willard Clubhouse/ Restroom Replacement	\$7,000,000	<p>Greatest Benefit: Willard park draws users from the surrounding neighborhood and, due to the after school and youth recreation programs provided, draws users from across the City</p> <p>Equity: The project supports racial and economic equity as the Clubhouse is a location for heavily used youth after-school programs. The project also supports geographic equity, as the southeast quadrant of the city contains fewer city parks and less park land than other quadrants of Berkeley.</p> <p>Health/Safety/Resilience: Provision of a new restroom supports public health and safety.</p> <p>Project Readiness: An extensive community process and conceptual design for the project has already been completed.</p> <p>Leveraging Other Funds: Planning for this project was funded through T1 Phase 1, therefore completion of the project takes advantage of the funds already allocated.</p>

Project	Cost	Rationale/Primary Criteria
Tom Bates Restroom/ Community Space	\$2,900,000	<p>Greatest Benefit: The Tom Bates fields draw users from across the City and therefore provides benefit to a high number of Berkeley residents.</p> <p>Health/Safety/Resilience: Restrooms support public health, safety, and human dignity, as well as environmental health.</p> <p>Environmental Sustainability/Durability: Restrooms support a clean environment. Building systems will be energy efficient.</p> <p>Project Readiness: Public input, planning and conceptual design were completed in Phase 1.</p> <p>Leveraging Other Funds: Phase 1 funds were allocated to planning and design, therefore completion of the project takes advantage of previously-allocated funds.</p>
Harrison Park Restroom Renovation	\$450,000	<p>Greatest Benefit: Harrison Park has both a neighborhood draw as well as a citywide draw for users of the skate park and sports field, therefore facilities in this park have a wide public benefit.</p> <p>Health/Safety/Resilience: Provision of restrooms support public health, environmental safety, and human dignity.</p> <p>Environmental Sustainability/Durability: Energy efficient fixtures proposed.</p> <p>Project Readiness: Public input received in citywide restroom study.</p>
Ohlone Park New Restroom	\$500,000	<p>Greatest Benefit: Ohlone Park has both a neighborhood draw as well as a citywide draw for users of the sports field, dog park and bike/walking paths, including access to the North Berkeley BART station and the North Berkeley Senior Center, therefore facilities in this park have a wide public benefit.</p> <p>Health/Safety/Resilience: Provision of restrooms support public health, environmental safety, and human dignity.</p> <p>Environmental Sustainability/Durability: Energy efficient fixtures proposed.</p> <p>Project Readiness: Public input received in citywide restroom study. Project supported by active volunteer group.</p>

Project	Cost	Rationale/Primary Criteria
Ohlone Park Lighting	\$700,000	<p>Greatest Benefit: Ohlone Park draws use from neighboring residents, as well as citywide users who use the park for recreational purposes or to access North Berkeley BART or the North Berkeley Senior Center.</p> <p>Equity: Park lighting, especially on well-traveled access paths, supports gender equity, facilitating safe access at nighttime. Lighting also facilitates equitable use among diverse age groups, including those seeking to access the North Berkeley Senior Center or adjacent public transit.</p> <p>Health/Safety/Resilience: Adequate lighting promotes safe use of the park.</p>
Ohlone Park (Milvia) 2-5 playground, 5-12 playground, Garden Mural, Exercise Equipment	\$500,000	<p>Greatest Benefit: Playgrounds Ohlone Park draw neighborhood as well as citywide use. Garden mural provides cultural and artistic benefit to the many citywide residents who use or pass through the park. Exercise equipment would benefit neighborhood and citywide users.</p> <p>Health/Safety/Resilience: New playground equipment is critical to child safety. Exercise equipment provides a public health benefit, particularly in the current pandemic context when outdoor exercise is encouraged.</p> <p>Equity: The very name of the park evokes the Native American heritage of the area, and this park received no funding in phase 1.</p> <p>Project Readiness: Conceptual design in progress.</p> <p>Leveraging Other Funds: \$600k allocated from FY21 parks tax.</p>
John Hinkel Lower 2-12 playground, picnic, parking	\$400,000	<p>Health/Safety/Resilience: New playground equipment is critical to child safety.</p> <p>Project Readiness: Final design in progress.</p> <p>Leveraging Other Funds: \$800k allocated from FY21 parks tax.</p>
Grove Park 2-5 playground, 5-12 playground	\$700,000	<p>Equity: This project allocates funding to historically under-invested South Berkeley.</p> <p>Health/Safety/Resilience: New playground equipment is critical to child safety.</p> <p>Leveraging Other Funds: This project could be leveraged with a possible Proposition 68 State parks</p>

Project	Cost	Rationale/Primary Criteria
		grant.
Aquatic Park Tide Tubes Clean out, Phase 1B	\$500,000	<p>Environmental Sustainability/Durability: Must sleeve the tubes to prevent further damage and remove dredged material to protect water quality. Improved water quality in the Aquatic Park lagoon, improved lagoon ecology.</p> <p>Project Readiness: Final design complete.</p> <p>Leveraging Other Funds: Possible planning grant for Measure AA funding from the Bay Restoration Authority.</p> <p>Feasibility: Important infrastructure renovation before end of useful life to avoid larger expense or further environmental detriment to the lagoon.</p>
Civic Center Park - Turtle Island Monument	\$300,000	<p>Greatest Benefit: The Turtle Island Monument is a vital component of Civic Center Park - District 4's sole neighborhood park - and a central feature drawing all Berkeley residents & visitors alike. The project's enhanced design, including increased biodiversity and sustainable pollinator plantings, will beautify and benefit the entire Berkeley community.</p> <p>Equity: Will honor the cultural heritage, community, and ongoing contributions of the Ohlone plus other Native Peoples.</p> <p>Health/Safety/Resilience: The current derelict fountain remains a serious public health risk; the new design addresses and resolves these safety risks.</p> <p>Project Readiness: Conceptual design in progress.</p> <p>Feasibility: Renovating this park feature will prevent immense and increasing ongoing maintenance costs that are created by the current context.</p>
King Pool tile and plaster	\$350,000	<p>Greatest Benefit: The King pool is used and enjoyed by residents from across the city. Berkeley has limited pools, and maintaining the pools that we do have is critical to provide the benefit of public pools to Berkeley residents.</p> <p>Health/Safety/Resilience: In the current pandemic context, outdoor exercise and recreation provided by pools is a benefit to public health.</p> <p>Feasibility: This project competes an important renovation before the end of the useful life of the pool to avoid larger expense or pool closure.</p>

Project	Cost	Rationale/Primary Criteria
Marina Pilings Replacement	\$1,200,000	<p>Greatest Benefit: The marina is a destination for many in the city, including those who do not own boats. It is essential to replace many of the original pilings before they fail catastrophically and damage tenants and jeopardize revenue.</p> <p>Project Readiness: Design currently underway</p> <p>Resilience:</p>
D and E Dock Replacement	\$500,000	<p>Leveraging Other Funds: This project would leverage a \$5.5 million State loan.</p> <p>Project Readiness: Design currently underway.</p>
K Dock Restroom Renovation	\$400,000	<p>Greatest Benefit: Improvements to the utility of the docks provide a wide and important benefit.</p> <p>Health/Safety/Resilience: Provision of restrooms support public health, environmental safety, and human dignity.</p>
Cesar Chavez Park Restroom (on Spinnaker)	\$350,000	<p>Greatest Benefit: Cesar Chavez Park is an incredibly unique park that allows all Berkeley residents to take advantage of limited shoreline land for recreational use, and as such, improvements to the utility of the park provide a wide benefit.</p> <p>Health/Safety/Resilience: Provision of restrooms support public health, environmental safety, and human dignity.</p> <p>Leveraging Other Funds: Utility hook-ups as part of Marina Streets project</p>

II. PROJECTS THAT WE RECOMMEND BE FUNDED WITH PARKS TAX THROUGH THE BUDGET PROCESS

The ongoing theme of all public outreach associated with the T1 process is that there are many more worthy projects than can be funded through the T1 Phase 2 funding pool. Therefore it is worth considering the upcoming allocation of Parks Tax dollars through the budget process, and the priority projects that might be included.

These projects do not require bond funding, and are currently proposed by staff as a direct result of the listening sessions associated with T1.

FY22 Capital Expenditures:

- Aquatic Park Pathways and Parking Lot Paving
- King School Park 2-5, 5-12 Play Structures
- West Campus Filters
- John Hinkel Hut

FY23 Capital Expenditures:

- *Bicycle Park
- Glendale LaLoma 2-5 Play structure
- *Pickleball Courts
- Skate Park Fencing
- West Campus Plaster Replacement
- A public process is necessary for these projects

III. PLANNING FOR THE FUTURE

A. GREENING BERKELEY

We received extensive public comment that, where possible, pavement should be removed and landscaping should be added to provide benefits to flood control, pollinators, water quality, and the urban heat island. This recommendation is consistent with the recommendations of the Vision 2050 report that recommended planting additional trees in the flatter portions of Berkeley. It is also consistent with the “Adopt-a-Spot” program that the Council referred to the Commission to develop a recommendation. There are a number of streets such as Sacramento Street where landscaping could be modified over time to have higher habitat value, and possibly to create community gathering spots. There are other streets that may have more pavement than is now needed, particularly those that once carried Red Cars, and others where bollards have restricted through-traffic.

These recommendations, considered as a whole, offer an innovative approach to infrastructure in Berkeley over the long term. Reducing areas of pavement where feasible, continue to prioritize the preservation of trees in all infrastructure project, increasing our tree canopy, and the habitat value of new plantings are at the heart of previous efforts on sustainability and the Vision 2050 report. However, we believe that more work is needed to identify the specific projects and funding mechanisms. For example, while using Sacramento Street to slow water flow has great appeal, it is not clear how such a project can be implemented without damaging the existing trees, or what underground utilities may pose challenges in pursuing this concept. Therefore, we intend to establish a subcommittee to consider these issues, along with the direction we have received from East Bay Municipal Utility District to reduce water consumption in our parks and avoid irrigation of turf in street medians. This effort is one of the first steps we must take to bring the recommendations of the Vision 2050 report into fruition. This

recommendation includes \$150,000 for removing street diversion bollards and replacing them with planting areas as a pilot for the larger, long term effort.

Some funding for this program can come from the Parks Tax and the Clean Water Fund over time if a program is developed.

B. WE RECOMMEND CONTINUED WORK ON THE FOLLOWING PROJECTS THAT ARE HIGH PRIORITY BUT EXCEED THE RESOURCES AVAILABLE UNDER T1 PHASE 2

- Frances Albrier/San Pablo Park Community Center and Pool
- Replace Berkeley Pier either as a City project or cooperatively with a new ferry service
- Renovate King Pool
- Enhance Aquatic Park, including making it more resilient to sea level rise, improving pathways on the west side, and developing new areas for active recreation.
- Develop a vision for how Berkeley can adapt to sea level rise and still retain access to its waterfront.

Many on our Commission were strongly in support of investing in Frances Albrier Center to create an inspirational community center, and those who participated in the planning effort were strongly in favor of the vision they created, which included a community pool. It is not possible to renovate or rebuild Willard Pool, and we fear that many children in our city will not have an opportunity to learn to swim. We have already seen the climate warm, and people have begun to swim in the bay, some swimming nearly daily, so the need for a new pool is apparent.

We also heard strong support for rebuilding the Berkeley Pier, and a willingness to consider sharing a new pier with a new Ferry facility with the Water Emergency Transit Authority (WETA). Reconstruction of the pier by Berkeley acting alone is clearly beyond the funding available in T1, and the City has begun to update its specific plan for the Berkeley Marina. We don't anticipate that project reaching construction for several years, but we plan to continue that work.

King Pool remains an important facility, and we believe it is more important to renovate it with a comprehensive project rather than make a series of small repairs that would only extend its useful life for a limited period. That being said, the single small repair proposed as part of Measure T1 Phase 2 funding allocations is critical in the immediate term to extend the life of the pool as we prepare for a more comprehensive renovation.

Aquatic Park is one of Berkeley's largest parks, and has benefited from the rehabilitation of the tide tubes, improvements on the North end, and volunteer efforts like those of Untrash East Bay. We considered reconstruction of Dreamland, but decided not to recommend that because the existing structure is unique in Berkeley, and because we think it is time to completely revision Aquatic Park. The City has

applied for grants from the San Francisco Bay Restoration Authority, and we anticipate that the City will eventually receive grants. We also understand that reconstruction of the Ashby interchange will involve elimination of the on-ramp at Potter, providing an opportunity to make changes at the southern end of the lagoon and improve habitat, increase water circulation while mitigating flood risk. We think patience and further work in developing a more comprehensive vision for Aquatic Park will be rewarded by allowing us to improve the park as a signature park and habitat that will be resilient for decades.

While it is clear that the funds in T1 will not allow construction of any of these projects at this time, it is vital that city staff, city Commissions, and the interested public continue to refine these ideas. We remain hopeful that a new Congress will see the need to invest in infrastructure as a way to respond to the economic damage done by the pandemic. We want to make sure that Berkeley is well positioned to move forward with one of these projects if Federal or State funding is made available.

C. MAINTENANCE

Members of the Parks and Waterfront and Public Works Commission and the public are concerned that the projects that will be built using T1 funds must be properly maintained over time to fulfill their promise to the people of the City. The restrooms proposed within parks here replace existing port-a-potties, and will save those costs and make maintaining clean facilities easier and cheaper. However, we have also concurred in the staff recommendation for two restrooms in the right of way. In these areas, the city also maintains port-a-potties, so the increased costs of maintaining new restrooms will be partially offset by reducing those costs. City staff has estimated that maintaining these new facilities will cost approximately \$180,000 per year. We certainly think those costs are warranted for the water quality and quality of life benefits of reducing human waste in our city. To make sure that these costs are properly budgeted, and to carry out one of the recommendations of the Vision 2050 report, we recommend that the City evolve its budgetary approach to public facilities to include asset management for all facilities that require maintenance over time. We recommend that asset management become an element of the city's budget process.

ATTACHMENT 4
 Measure T1, Phase 2
 Phasing and Funding of 2A and 2B

Project Area	Site Description	Total Cost	Notes	Status	Sustainability/Resilience	Phase 2a Apr 2021 to Mar 2024	Phase 2b Nov 2022 to Oct 2025	Total
Care and Shelter and Non-Departmental Citywide Facilities	MLK Jr. Youth Services Center	\$7,000,000	\$1.4M FEMA Grant App. Pending	Not started	Disaster preparedness, electrification, energy efficient building systems, community building	\$ 1,000,000	\$ 6,000,000	\$7,000,000
	South Berkeley Senior Center	\$3,000,000	Renovation 5 yrs ago; needs seismic	Not started	Disaster preparedness, electrification, energy efficient building systems, community building	\$ 300,000	\$ 2,700,000	\$3,000,000
	African American Holistic Resource Center	\$7,000,000	\$250k available for planning	Not started	Disaster preparedness, electrification, energy efficient building systems, community building	\$ 1,000,000	\$ 6,000,000	\$7,000,000
	Restrooms in the ROW (2-3)	\$1,350,000	Sites identified in study	Not started	Cleaner environment, energy efficient fixtures	\$ 250,000	\$ 1,100,000	\$1,350,000
	Subtotal	\$18,350,000				\$ 2,550,000	\$ 15,800,000	\$18,350,000

Camps	Cazadero Dining Hall & ADA Improvements	\$400,000	Total Project \$1.2M/CPAC Supplement \$800k	Not started	Energy efficient fixtures, environmental stewardship	\$ 400,000		\$400,000
Buildings in Parks	Willard Clubhouse/Restroom Replacement	\$7,000,000	Planning in Phase 1	Conceptual design complete	Electrification, energy efficient building systems, community building	\$ 1,000,000	\$ 6,000,000	\$7,000,000
	Tom Bates Restroom/ Community Space	\$2,900,000	Planning in Phase 1	Conceptual design complete	Cleaner environment, energy efficient building systems	\$ 250,000	\$ 2,650,000	\$2,900,000
	Restrooms in Parks:							
	Harrison Park - Restroom Renovation	\$450,000		Not started	Energy efficient fixtures	\$ 100,000	\$ 350,000	\$450,000
	Ohlone Park - New Restroom	\$500,000		Not started	Energy efficient fixtures	\$ 500,000		\$500,000
Parks -Play Structures	Ohlone (Milvia) Ages 2-5, 5-12, Garden Mural, Exercise	\$500,000	\$1.1M Total Project/\$600k in FY 21 PT-Gap \$500k	Conceptual design in progress	Outdoor recreation, community building	\$ 500,000		\$500,000
	John Hinkel Lower Ages 2-12, picnic, parking	\$400,000	\$1.2M Total Project/\$800k in FY 21 PT- Gap \$400k	Final design in progress	Outdoor recreation, community building	\$ 400,000		\$400,000
	Grove Park Ages 2-5, 5-12	\$700,000	Possible Prop 68 Grant	Not started	Outdoor recreation, community building	\$ 700,000		\$700,000
Parks	Aquatic Park Tide Tubes Clean out, Phase 1B	\$500,000	Possible Dev. Funding	Final Design Complete	Cleaner environment, improved lagoon ecology, outdoor recreation	\$ 500,000		\$500,000
	Ohlone Park Lighting	\$700,000		Not started	Energy efficient fixtures, safety	\$ 200,000	\$ 500,000	\$700,000

Project Area	Site Description	Total Cost	Notes	Status	Sustainability/Resilience	Phase 2a Apr 2021 to Mar 2024	Phase 2b Nov 2022 to Oct 2025	Total
Parks	Civic Center Park – Turtle Garden	\$300,000		Conceptual design in progress	Outdoor recreation, community building	\$ 300,000		\$300,000
Pools	King Pool Tile and Plaster Replacement	\$350,000		Not started	Outdoor recreation and fitness, community building	\$ 350,000		\$350,000
Waterfront	Piling Replacements	\$1,200,000	\$2.5M Total Project/ This would replace worst	Design underway	Marina safety, outdoor recreation	\$ 1,200,000		\$1,200,000
	D and E Dock Replacement	\$500,000	\$6M Total Project/ \$5.5M in State Loan	Not Started	Energy efficient upgrades, Marina safety, outdoor recreation	\$ 500,000	\$ -	\$500,000
	K Dock Restroom Renovation	\$400,000		Not Started	Energy efficient fixtures	\$ 75,000	\$ 325,000	\$400,000
	Cesar Chavez Park - New Restroom (on Spinnaker)	\$350,000	Utility hook ups as part of Marina Streets Project	Not Started	Cleaner environment, energy efficient fixtures	\$ 50,000	\$ 300,000	\$350,000
	Subtotal - PRW	\$17,150,000				\$ 7,025,000	\$ 10,125,000	\$17,150,000

Streets	T1 Streets Contribution to Annual Street Paving: Street Reconstruction of Arterials/Collectors and Vision Zero, Bus Network, and Bike/Ped Plan Improvements	\$6,750,000	Accelerate Paving Improvements Citywide	Need coordination with TC, PWC and bike groups	Bus and bike network	\$ 3,750,000	\$ 3,000,000	\$ 6,750,000
	Bollard Conversion to Landscaping	\$150,000	Conversion of Bollards to Planter/Garden Boxes		Community building	\$ 150,000		\$ 150,000
Sidewalks	Sidewalks Maintenance & Safety Repairs	\$1,850,000	Accelerate Sidewalk Improvements Citywide	50/50 list	Pedestrian access	\$ 1,500,000	\$ 350,000	\$ 1,850,000
Pathways	Pathway Repairs/Improvements	\$200,000	Repairs and improvements to pathways, including handrails	Coordinate with Path Wanderers	Pedestrian access, Disaster preparedness	\$ 200,000		\$ 200,000
Storm	Stormwater Infrastructure Repairs/Replacement	\$600,000	Repair and Replacement of failed storm drains at various locations		Water quality	\$ 600,000		\$ 600,000
Facilities	1947 Center Street Improvements: Seismic Upgrade Design HVAC/Electrical, Control Upgrades	\$1,800,000	<i>Safe, Sustainable and Resilient Improvements</i> 1947 Center St	Design \$150,000 COVID critical	Disaster preparedness, energy efficient building systems, air quality	\$ 1,800,000		\$ 1,800,000
	Fire Stations FS2 - HVAC, Electrical, Bedrooms, Security, Solar, Roof FS6 - Windows, Energy Efficiency	\$1,450,000 \$1,300,000	<i>Emergency Response</i> Fire Station 2 Fire Station 6		Community safety, energy efficient building systems	\$ 200,000	\$ 2,550,000	\$ 2,750,000

Project Area	Site Description	Total Cost	Notes	Status	Sustainability/Resilience	Phase 2a Apr 2021 to Mar 2024	Phase 2b Nov 2022 to Oct 2025	Total
Facilities	PW Corp Yard Facility Assessment Gate, Paving, Parking, Fuel Island Wash Station Compliance Green Room Lockers, Bathroom, Training Room, Floor, Cabinets Storage Room - Roof Repair Generator Upgrades	\$2,850,000	Safe, Sustainable and Resilient Improvements City Corp Yard	Design \$200,000 Assessment needed first	Community safety, energy efficient building systems, electric vehicle charging	\$ 1,300,000	\$ 1,550,000	\$ 2,850,000
	Oxford & Telegraph Channing Garage Restrooms	\$300,000	Added by PWC	TCG will coincide with elevator replacement		\$ 300,000		\$ 300,000
	Emergency Power Supply Solar Batteries	\$500,000	Added per PWC	Need assessments, designs/redesigns	Energy Efficient Building Systems	\$ 100,000	\$ 400,000	\$ 500,000
	Subtotal - PW	\$17,750,000				\$ 9,900,000	\$ 7,850,000	\$ 17,750,000
Total		\$53,250,000				\$19,475,000	\$33,775,000	\$53,250,000

Revenue	
Bonds sold	65,000,000
Interest	2,000,000
	67,000,000

Expenditures	Phase 2a	Phase 2b	Total
Projects	\$19,475,000	\$33,775,000	\$53,250,000
Staff/FESS	\$4,260,000	\$2,840,000	\$7,100,000
Art	\$300,000	\$350,000	\$650,000
Phase 1	\$6,000,000		\$6,000,000
Total	30,035,000	36,965,000	\$67,000,000

Bond sale	Phase 2a	Phase 2b	Total
Interest (est.)	896,567	1,103,433	2,000,000
Bonds needed (est.)	29,138,433	35,861,567	65,000,000



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Public Works
 Subject: Federal Emergency Management Agency Hazard Mitigation Grant Application for Seismic Retrofit of the South Berkeley Senior Center

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to submit a grant application to the Federal Emergency Management Agency for funds in the amount of \$1,875,000 for the seismic retrofit of the South Berkeley Senior Center; authorizing the City Manager to accept the grant; to execute any resultant revenue agreement and amendments; authorizing an amount of \$625,000 in local matching funds, and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.

FISCAL IMPACTS OF RECOMMENDATION

The Federal Emergency Management Agency (FEMA) grant of \$1,875,000 covers 75% of the total project cost, and requires a 25% City match; an amount of \$625,000, for a total project cost of \$2,500,000. The local City match for the FEMA grant application will be recommended for appropriation as part of the FY 2022 & 2023 Biennial Budget Process from either the Capital Improvement Fund (Fund 501) and/or Measure T1 Fund (Fund 511).

CURRENT SITUATION AND ITS EFFECTS

As a result of a major disaster declaration by the President of the United States, the State of California is eligible for Hazard Mitigation Grant Program (HMGP) funding for hazard mitigation activities aimed at reducing or eliminating damages to life and improved property. Activities include cost effective hazard mitigation projects, and hazard mitigation planning activities approvable by the Federal Emergency Management Agency (FEMA).

Based on a seismic evaluation of the South Berkeley Senior Center prepared by an independent engineering firm, the City submitted a Notice of Interest (NOI) to FEMA for a seismic retrofit and renovation of the building. After FEMA's review of the NOI, the City was invited to submit a full application to compete for HMGP funding. This funding will cover the seismic mitigation work identified in the seismic evaluation, which will reduce the chance of building collapse and loss of life, and allow for the building's immediate

occupancy for use as an emergency shelter in the event of a moderate or major earthquake.

Applying to this grant supports the City's Strategic Plan goals of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities and creating a resilient, safe, connected, and prepared City.

BACKGROUND

Built in 1979, the South Berkeley Senior Center is located at 2939 Ellis Street. The building is approximately 17,150 square feet on two levels and houses senior programs and public events during evenings and on weekends. The Center has been designated as a care and shelter site in the event of a major natural disaster.

ENVIRONMENTAL SUSTAINABILITY

The City's Resilience Strategy outlines a plan to upgrade City community and senior centers, which serve as care and shelter sites in the event of a disaster. These upgrades involve improvements for greater savings and efficiencies in the use of utilities, which make the facility more resilient to disasters, safer, and greener.

RATIONALE FOR RECOMMENDATION

This project supports a key mitigation strategy identified in the City 2019 Local Hazard Mitigation Plan to strengthen critical City buildings to ensure that the community can be served adequately after a disaster.

ALTERNATIVE ACTIONS CONSIDERED

The alternative action of not applying for these funds would delay project until alternate funding is available.

CONTACT PERSON

Liam Garland, Director, Public Works, (510) 981-6303.
Elmar Kapfer, Supervising Civil Engineer, (510) 981-6435

Attachment:

1: Resolution

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

REVENUE GRANT: AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO FEDERAL EMERGENCY MANAGEMENT AGENCY FOR FUNDS IN THE AMOUNT OF \$1,875,000 FOR THE SOUTH BERKELEY SENIOR CENTER SEISMIC RETROFIT PROJECT

WHEREAS, as the result of a major disaster declaration by the President of the United States, the State of California is eligible for Hazard Mitigation Grand Program (HMGP) funding for hazard mitigation activities aimed at reducing or eliminating damages to life and improved property. Activities include cost effective hazard mitigation projects, and hazard mitigation planning activities approvable by the Federal Emergency Management Agency (FEMA); and

WHEREAS, certain federal financial assistance is available under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act; and

WHEREAS, the HMGP grant requires a minimum of 25% local match funds for the project, and the matching funds must be from a non-federal source and must be committed by the authorized agent on agency letterhead at the time of application submittal; and

WHEREAS, the FEMA grant in the amount of \$1,875,000 covers 75% of the total project cost, and requires a 25% City match in the amount of \$625,000, for a total project cost of \$2,500,000; and

WHEREAS, FY2022 Capital Improvement funds and/or Measure T1 funds will be recommended for appropriation as part of the FY 2022/2023 budget process as the source of matching City funds, are eligible to be used for capital improvements, and will be prioritized to provide the required \$625,000 local match funds for the FEMA grant.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a grant application for FEMA funds in the amount of \$1,875,000 for the South Berkeley Senior Center Seismic Retrofit Project; to accept the grant; to execute any resultant revenue agreements and amendments; to provide a Letter of Local Match Commitment; to provide a Letter of Maintenance Commitment; to provide for all matters pertaining to such state disaster assistance the assurances and agreements required; and the City Council authorizes an amount of \$625,000 in FY2022 Capital Improvement funds and/or Measure T1 funds as local match, and authorizes the implementation of the project and appropriation of the funding for related expenses, subject to securing the grant.

BE IT FURTHER RESOLVED THAT a record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Department of Public Works
 Subject: Receipt of and Funding Agreement Authorization for the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to accept \$100,914 in grant funds from the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program (Project #19RFG23) and to enter into a Funding Agreement in order to support the electrification of the City's fleet vehicles.

FISCAL IMPACTS OF RECOMMENDATION

Adopting this Resolution would add \$100,914 to the Bay Area Air Quality Management District Fund (Fund 338). If accepted, these funds will be used for the purchase of new electric vehicles and the corresponding charging infrastructure and will be added to the FY 2021 baseline budget. A local funding match is available in the CIP Fund 501 pending appropriation via the Second Amendment to the Annual Appropriations Ordinance. Ordinance.

CURRENT SITUATION AND ITS EFFECTS

City staff applied for the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program and the Air District's Board of Directors has approved awarding up to \$67,214 in Reformulated Gasoline Settlement and up to \$33,700 in Transportation Fund for Clean Air to support the purchase of electric vehicles and the corresponding charging infrastructure.

BACKGROUND

To help support the transition to electric vehicles, Public Works' staff is pursuing grant opportunities when they arise.

The City of Berkeley Municipal Fleet Electrification Assessment Plan (Fleet EV Plan)¹, estimates that transitioning light-duty fleet vehicles to electric vehicles (EVs) over the next ten years will have significant costs, due primarily to expenses associated with needed charging infrastructure. Light-duty EV fleet replacement is estimated at \$9.76

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_26_Referral_Response_An_Action_Plan.aspx

million over the next ten years, compared with \$8.34 million for gasoline/hybrid vehicles. The differential is primarily due to the high costs associated with charging infrastructure including procurement, installation at the multiple locations where Berkeley fleet vehicles are domiciled, and electrical upgrades required to support charging.

ENVIRONMENTAL SUSTAINABILITY

Driving an EV instead of a conventional gasoline or diesel-fueled combustion engine vehicle eliminates tailpipe emissions. The associated GHG emissions, when charging is powered by onsite solar PV or by EBCE's 100% carbon-free product (Brilliant 100, which is currently used by municipal accounts), are also completely eliminated. Widespread electric mobility is an essential component of reaching the State's carbon neutrality (zero net carbon) by 2045, and becoming a Fossil Fuel Free City as soon as possible. This resolution supports the transition to an electric light-duty fleet.

RATIONALE FOR RECOMMENDATION

The funding is critical in supporting the City's transition to moving vehicles from fossil fuels to electric powered.

ALTERNATIVE ACTIONS CONSIDERED

The City could chose to forego accepting this grant funding, however, no alternative funding sources has been identified to provide the increase funding.

CONTACT PERSON

Elmar Kapfer, Supervising Civil Engineer, Public Works, 510-981-6435

Attachments:

- 1: Resolution
- 2: BAAQMD Award Letter

RESOLUTION NO. -N.S.

GRANT ACCEPTANCE AND FUNDING AUTHORIZATION: BAY AREA AIR QUALITY
MANAGEMENT DISTRICT TRANSPORTATION FUND FOR CLEAN AIR

WHEREAS, funding for fleet electrification has been awarded by the Bay Area Air Quality Management District; and

WHEREAS, the City has made a commitment to promoting projects that meet the City's Climate Action Plan; and

WHEREAS, the grant funds in the amount of \$100,914 will be placed in the City's Bay Area Air Quality District Fund (Fund 338).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to accept grant funds from the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program (Project #19RFG23), enter into a Funding Agreement in order to support the electrification of the City's fleet vehicles, and execute any resultant agreements and amendments.



**BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT**

ALAMEDA COUNTY
John J. Bauters
Pauline Russo Cutter
Scott Haggerty
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
Karen Mitchoff
(Secretary)
Mark Ross

MARIN COUNTY
Katie Rice

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
VACANT
Shamann Walton
Tyron Jue
(SF Mayor's Appointee)

SAN MATEO COUNTY
David J. Canepa
Carole Groom
Davina Hurt

SANTA CLARA COUNTY
Margaret Abe-Koga
Cindy Chavez
(Vice Chair)
Liz Kniss
Rod G. Sinks
(Chair)

SOLANO COUNTY
James Sperring
Lori Wilson

SONOMA COUNTY
Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:



July 14, 2020

Elmar Kapfer
City of Berkeley
1947 Center Street, 5th Floor
Berkeley, CA 94704

Dear Elmar,

Congratulations! We are writing to notify you that the Bay Area Air Quality Management District (Air District) has completed a review of the City of Berkeley's application and **the Air District's Board of Directors has approved** awarding up to \$67,214 in Reformulated Gasoline Settlement funds and up to \$33,700 in Transportation Fund for Clean Air funds for the project detailed below.

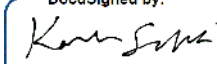
<u>Project #</u>	<u>Project Title</u>	<u>Total Award Amount</u>
19RFG23	City of Berkeley Electric Vehicles Project	\$100,914

To accept the award, a Funding Agreement between the Bay Area Air Quality Management District and the City of Berkeley must be fully executed. The Air District is currently preparing the proposed Funding Agreement, which will be emailed to you within 30 days.

Please note that this letter is not the Notice to Proceed. The Notice to Proceed will be issued only after the Funding Agreement has been fully executed (i.e., signed by both the Air District and the Project Sponsor). **Projects that commence (e.g., pre-order equipment, begin construction) prior to receiving the Notice to Proceed will be disqualified from receiving grant funding.**

We commend your efforts to help reduce air pollution. If you have any questions, please contact Amy Dao at adao@baaqmd.gov or (415) 749- 4933.

Sincerely,

DocuSigned by:

294F9AF63BB849B...

Karen Schkolnick
Director, Strategic Incentives Division

CC (Cover):

John J. Bauters, Council Member, City of Emeryville
Pauline Russo Cutter, Mayor, City of San Leandro
Scott Haggerty, Supervisor, Alameda County
Nate Miley, Supervisor, Alameda County



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Department of Public Works
 Subject: Grant Application: COVID-19 Rapid Response Bicycle and Pedestrian Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to submit a grant application for up to \$52,000 to the Alameda County Transportation Commission COVID-19 Rapid Response Bicycle and Pedestrian Grant Program for the Berkeley Healthy Streets project, and accept the grant awarded, and execute any resultant agreements and amendments.

FISCAL IMPACTS OF RECOMMENDATION

If awarded, this grant would bring in a total of up to \$52,000 of competitive grant revenue to the Alameda County Discretionary Transportation Grants Fund (Fund 307) for traffic safety improvements on Berkeley's existing and planned bike boulevards.

The total estimated cost of the project is \$104,000. The grant program requires a 1:1 funding local match. The required \$52,000 in local matching funds is available as follows: \$20,000 from Alameda County Measure BB Local Streets and Roads Direct Local Distribution funding (Fund 134) and \$32,000 from Capital Improvement Program funding (Fund 501).

CURRENT SITUATION AND ITS EFFECTS

The scope of the Berkeley Healthy Streets project consists of the installation of temporary traffic barricades and signage in order to reduce the traffic volume and speeds on designated streets. The purpose of the Healthy Streets project is to provide opportunities for Berkeley residents to walk and bike for accessing local businesses and services, commuting to work to provide needed services, and getting outdoor physical exercise while social distancing per COVID-19 safety protocols to reduce the spread of the virus.

The Healthy Streets project is consistent with the July 7, 2020 City Council adoption of a resolution requesting the temporary closure of designated Healthy Streets, and that the closures be adequately marked with (1) diverters and/or semi-diverters positioned and secured to encourage alternative routes for motor vehicle traffic, and (2) durable reflective signage that indicates the presence of a temporary street closure. Access to all

addresses on each block of each participating street will be maintained by way of at least one vehicular entry point to each block.

The selected participating streets consist of the City's existing and planned Bike Boulevards, as shown in the adopted 2017 Berkeley Bicycle Plan. Three Bike Boulevard street segments have already received barricades and signage as the first set of participating Healthy Streets. They are Addison Street between Sacramento and Grant Streets, Ninth Street between Hearst Avenue and Dwight Way, and Russell Street between Mabel and Milvia Streets. The map in Attachment 2 shows the Bike Boulevard segments eligible for inclusion in the Healthy Streets project using the COVID-19 Rapid Response Bicycle and Pedestrian Grant Program funding. If awarded, the grant funding must be expended by March 31, 2021, as the grant program is intended for near-term, rapidly installed projects in response to the immediate bicycle and pedestrian transportation needs presented in Alameda County by the COVID-19 pandemic.

BACKGROUND

In January, the City's Emergency Operations Center was activated to respond to and manage the public health emergency. On March 3, 2020, the City Manager declared a local emergency after a City resident tested positive for COVID-19.

On March 16, 2020, the City of Berkeley Health Officer along with the health officers of Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties, announced a legal order directing their respective residents to shelter at home for three weeks beginning March 17. The order limited activity, travel and business functions to only the most essential needs. The guidance came after substantial input from the U.S. Centers for Disease Control and Prevention (CDC) and best practices from other health officials around the world. Scientific evidence shows physical distancing (more commonly called "social distancing") is one of the most effective approaches to slow the transmission of communicable disease. Limiting physical contact with other people is a necessary step to slow the spread of COVID-19 and preserve critical health care capacity across the region.

The original March 16th Order was extended to May 3, 2020, and then to May 31, 2020, before being extended indefinitely. These extensions included adjustments to restrictions on businesses and activities. Subsequent orders have allowed a phased reopening of specified types of businesses and service providers, with certain restrictions and requirements.

On April 17, 2020, the City of Berkeley Health Officer issued an Order mandating the use of face coverings at businesses, when seeking health care, and when using or waiting in line for shared transportation, so that infected people without symptoms do not unintentionally spread COVID-19. This was followed by an Order by the Berkeley Health Officer on June 5, 2020, requiring people in Berkeley over the age of twelve to visibly carry a face covering when outside their home, and wear it over their nose and mouth when within 30 feet of others. A similar order issued by the State, which overrules the Berkeley Order, requires people age two years and older to wear a face covering over the nose and mouth when within 30 feet of others. Masks are an

important tool in combatting COVID-19, which spreads easily through the air among people in close proximity. People infected by the virus can be contagious before they show symptoms or without ever showing symptoms.

ENVIRONMENTAL SUSTAINABILITY

The Healthy Streets project is designed to improve traffic safety for people walking and riding bicycles for transportation, consistent with the 2009 Berkeley Climate Action Plan Policy 5.a that calls for expanding and improving Berkeley's bicycle and pedestrian infrastructure. The Plan sets targets of reducing transportation emissions 33% below year 2000 levels by 2020, and 80% below year 2000 levels by 2050. The Plan further states that transportation modes, such as public transit, walking, and bicycling, must become the primary means of fulfilling the City's mobility needs in order to meet these targets.

RATIONALE FOR RECOMMENDATION

The COVID-19 Rapid Response Bicycle and Pedestrian Grant funding will allow the City to expand the Healthy Streets project to the existing and planned Bike Boulevards shown in Attachment 2 and identified in the 2017 Berkeley Bicycle Plan (Resolution No. 67,945-N.S.). This expansion will provide opportunities for Berkeley residents to walk and bike for accessing local businesses and services, commuting to work to provide needed services, and getting outdoor physical exercise while social distancing per COVID-19 safety protocols. Not applying would mean foregoing \$52,000 in potential grant funding.

ALTERNATIVE ACTIONS CONSIDERED

The City could choose not to apply for these funds. However, no alternative funding source has been identified to expand the Healthy Streets project.

CONTACT PERSON

Farid Javandel, Transportation Division Manager, Public Works, 981-7061
Beth Thomas, Principal Planner, Public Works, 981-7068
Ryan P. Murray, Associate Planner, Public Works, 981-7062

Attachments:

- 1: Resolution
- 2: Healthy Streets Map

RESOLUTION NO. -N.S.

GRANT APPLICATION: COVID-19 RAPID RESPONSE
BICYCLE AND PEDESTRIAN PROGRAM

WHEREAS, the Berkeley City Manager has declared a local emergency in response to the COVID-19 pandemic; and

WHEREAS, the COVID-19 pandemic has necessitated that the Berkeley Health Officer issue various orders mandating social distancing to protect the Berkeley public; and

WHEREAS, the Berkeley 2017 Bicycle Plan has designated existing and planned Bicycle Boulevards within the City where bicycling as a form of transportation and recreation is prioritized and encouraged; and

WHEREAS, designation of Bicycle Boulevards as Healthy Streets, through the strategic placement of barricades and signage to discourage motor vehicle through-traffic, can create space for walking and biking to access services, to commute, and to get physical exercise while social distancing; and

WHEREAS, the Council of the City of Berkeley adopted a resolution on July 7, 2020, requesting the temporary closure of designated Healthy Streets pursuant to California Vehicle Code § 21101(e), which authorizes local resolution of street closures for the “safety and protection” of persons using such streets;

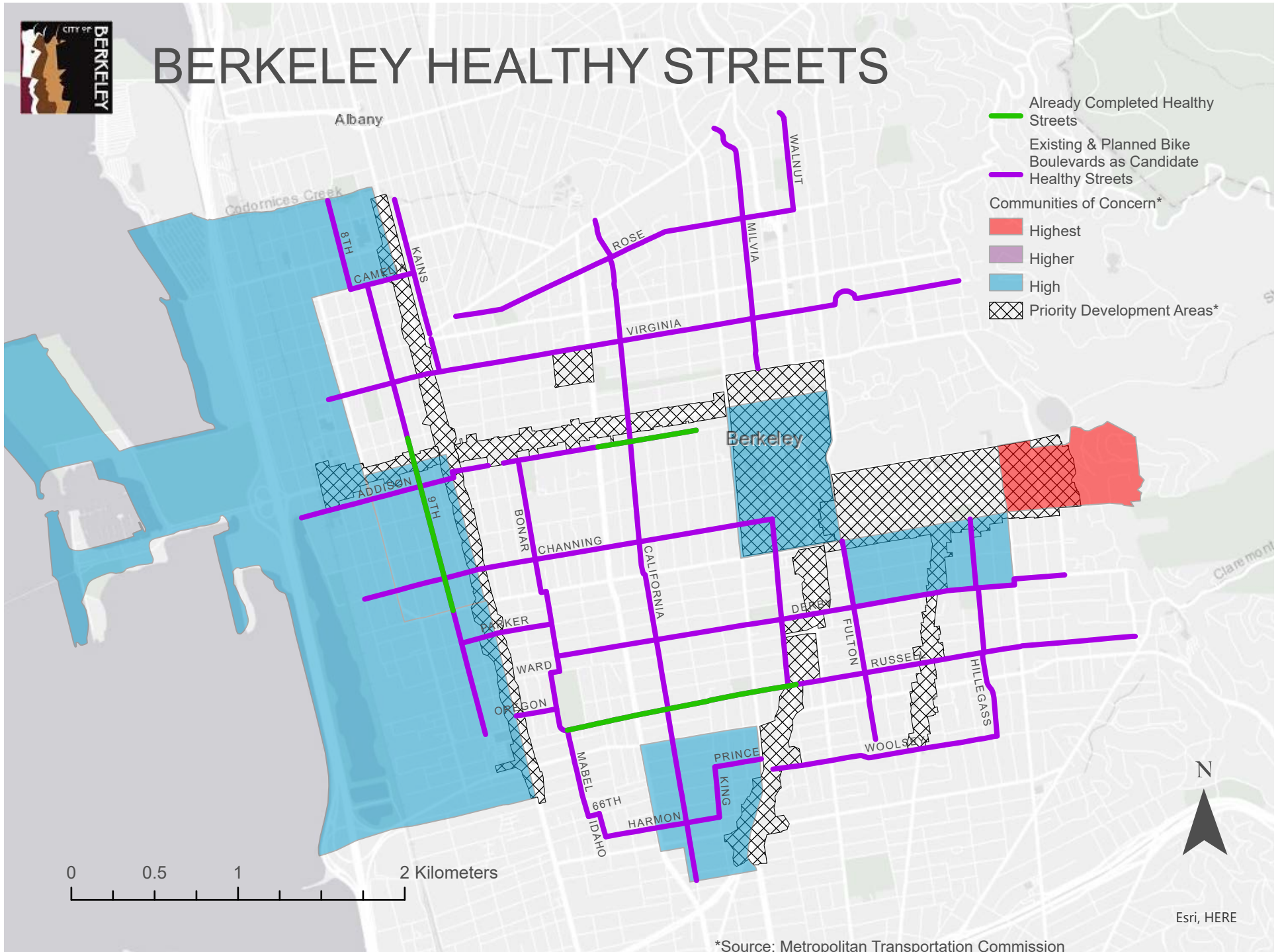
WHEREAS, the Alameda County Transportation Commission has created the COVID-19 Rapid Response Bicycle and Pedestrian Grant Program to provide grant funding to member agencies in Alameda County for near-term projects to facilitate walking and biking while protecting public health; and

WHEREAS, if awarded, the grant funds will be placed in the Alameda County Discretionary Transportation Grants Fund (Fund 307) starting in FY 2021.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to submit a grant application for up to \$52,000 to the Alameda County Transportation Commission COVID-19 Rapid Response Bicycle and Pedestrian Grant Program for the Berkeley Healthy Streets project, and accept the grant awarded, and execute any resultant agreements.



BERKELEY HEALTHY STREETS



*Source: Metropolitan Transportation Commission



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Department of Public Works
 Subject: Extending the Community Workforce Agreement with Building & Construction Trades Council, et al, for Construction Projects Over \$500,000.

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract amendment to the Community Workforce Agreement with the Alameda County Building & Construction Trades Council, and twenty-two labor organizations on City capital improvement projects with an estimated value in excess of \$500,000 to extend the agreement through June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

The impact of a Community Workforce Agreement (CWA) on construction costs is difficult to ascertain. While construction costs have increased in the last several years, those increases are likely attributable to the high demand for construction services, not necessarily the existing CWA.

Staff within the Employment Programs division of the Health, Housing & Community Services Department provide administrative oversight of the CWA. Because the item proposes continuing the existing terms of the CWA, staffing levels would not need to increase to maintain oversight and administration of the program.

CURRENT SITUATION AND ITS EFFECTS

The CWA's purpose is to support the City's efforts to increase training and employment opportunities for Berkeley residents, including youths, for placement on covered capital improvement projects valued at \$500,000 and above. The CWA provides for peaceful resolution of labor disputes and grievances without work stoppages. Construction contracts remain subject to the competitive bidding process, and to the requirement to pay prevailing wages. Further, the City retains the absolute right to select the lowest responsive and responsible bidder. This agreement shall be effective until June 30, 2023, and apply to all covered projects. Staff have been in contact with the Building and Construction Trades Council of Alameda County (Building Trades), and the Building Trades support this contract amendment.

Local Jobs Creation

The CWA local workforce hiring goal is 20% of total craft hours worked, on a craft by craft basis for all covered projects. The Agreement does not require counting of workers or number of jobs created. In order to measure effectiveness of the CWA's impact on local jobs created, however, it is important to note the actual numbers of Berkeley residents who have worked on the projects. The CWA requires all contractors subject to the program to make good faith efforts to connect with pre-apprentice training programs, obliges the Alameda County Building Trades unions to attempt to find eligible Berkeley residents to work on covered capital improvement projects, and encourages new apprenticeships in order to create pathways for career entry into the building trades.

Impact on Construction Costs

The financial impact of adopting a CWA is challenging to ascertain as it is difficult to attribute project cost impact—positive or negative—solely to the presence of a CWA. Construction costs have been higher than anticipated, but those increases are likely attributable to the high demand for construction services, not necessarily the existing CWA.

CWA compliance to commence construction necessitates approximately 1-3 weeks of additional time to obtain CWA documentation and schedule/attend the CWA mandatory pre-job meeting with all the relevant trades representative, city staff and all contractors and subcontractors. This additional time varies depending on the discussion between the contractor and union regarding the contractor's hiring plan.

Efforts to Improve Outcomes

In an effort to increase the number of Berkeley residents hired for construction projects, coordinating referrals with the trades and workforce development programs has been a priority. One practical aspect of this coordination is reliance on locally funded training programs for appropriate referrals. Through the community agency funding process, the City funds the construction-related Green Energy Training Services (GETS) program of Rising Sun Energy Center with CDBG funds to provide training for Berkeley residents. This program has become a primary referral source to the trades for these projects, and was recently approved to utilize the Multi-Craft Core Curriculum (MC3), a nationally-recognized pre-apprenticeship curriculum developed by the National Building and Construction Trades Council. Completion of the 120-hour MC3 certification prepares individuals for entry into building trades apprenticeships. The CWA includes apprenticeship as a priority for Berkeley residents.

This Council action supports the City's Strategic Plan Priorities of attracting and retaining a talented and diverse local workforce, while supporting the construction of state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

The CWA was originally authorized on January 18, 2011 with Resolution No. 65,157–N.S authorizing the City Manager to execute a Community Workforce Agreement (CWA) with

the Alameda County Building and Construction Trades Council, AFL-CIO and twenty-two labor organizations regarding the provision of union labor to City Capital improvement projects.

On January 23, 2018, Council approved Resolution No. 68,299-N.S. maintaining the \$500,000 threshold based on the engineer's estimate and authorizing the City Manager to extend the CWA for until June 30, 2020.

The CWA's purpose is to support the City's efforts to increase employment opportunities for workers who reside in Berkeley by:

1. Increasing training and employment opportunities for the City's residents in the construction trades through apprenticeship and pre-apprentice programs,
2. Promoting efficiency of construction operations performed for and within the City of Berkeley, and
3. Providing for peaceful settlement of labor disputes and grievances without strikes or lockouts, thus promoting the public interest in assuring the timely and economical completion of the projects.

ENVIRONMENTAL SUSTAINABILITY

Supporting the hire of local area workers for construction projects may result in increased use of alternative transportation modes, and shorter distances traveled by those workers to job sites, which may in turn effect an accompanying reduction in the level of greenhouse gases generated per worker per trip. Reduction in the level of greenhouse gases is a goal of the City's 2009 Climate Action Plan.

RATIONALE FOR RECOMMENDATION

Since its original January 2011 adoption, the City has operated under the guidelines of the CWA, which has continued to enhance local hiring efforts by ensuring local workers in the building trades are given an opportunity to work on City capital improvement projects valued at \$500,000 or more. CWA guidelines also ensure City projects will not be affected by work stoppages due to labor issues. The new Agreement continues those efforts, and extends the current agreement through June 30, 2023.

ALTERNATIVE ACTIONS CONSIDERED

The CWA has been, and continues to be important to the City's building and trades industry. No alternative actions are considered.

CONTACT PERSON

Liam Garland, Director, Department of Public Works (510) 981- 6303

Nathan Dahl, Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5405

Attachments:

1. Resolution
2. Community Workforce Agreement

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

CONTRACT AMENDMENT: COMMUNITY WORKFORCE AGREEMENT EXTENSION WITH BUILDING AND CONSTRUCTION TRADES COUNCIL ET.AL FOR CONSTRUCTION PROJECT AT OR ABOVE \$500,000

WHEREAS, since its January 18, 2011 adoption, the Community Workforce Agreement (hereafter CWA) has incorporated community interests by providing Berkeley residents access to quality union jobs with better standards for pay and benefits; and

WHEREAS, by Resolution No. 65,157-N.S. on January 18, 2011, Council approved the CWA for a term of three years and authorized the City Manager to execute the Agreement with the Alameda County Building and Construction Trades Council, AFL-CIO and twenty-two labor organizations regarding the provision of union labor to City construction projects in excess of \$1 million dollars; and

WHEREAS, on May 15, 2012, Council approved the City Manager's recommendation to maintain the CWA's \$1 million dollar threshold for publicly-funded construction projects for an additional twelve months; and

WHEREAS, on June 23, 2015, Council approved Resolution No. 67,111-N.S. reducing the threshold from \$1 million to \$500,000, with that threshold continuing to be based on the engineer's estimate and authorizing the City Manager to extend the then-current CWA for three years; and

WHEREAS, on January 23, 2018, Council approved Resolution No. 68,299-N.S. maintaining the \$500,000 threshold based on the engineer's estimate and authorizing the City Manager to extend the then-current CWA for two years; and

WHEREAS, the CWA will support the efforts of the City to increase employment opportunities for Berkeley residents, including youth, through apprenticeship and pre-apprenticeship programs; and

WHEREAS, the CWA helps to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thus promoting the public interest in assuring the timely and economical completion of the projects; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract amendment with the Building Trades Council and twenty-two labor organizations regarding the provision of labor to construction projects in Berkeley with an estimated value in excess of \$500,000 for a three-year term that will expire June 30, 2023.

CITY OF BERKELEY
COMMUNITY WORKFORCE AGREEMENT

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Signatures

Agreement to be Bound

COMMUNITY WORKFORCE AGREEMENT
For the
City of Berkeley

This Agreement is made and entered into this July 1st, ~~2015~~-2020 by and between the City of Berkeley (“City”) together with other contractors and/or sub-contractors, who shall become parties to this Agreement by signing the “Agreement to be Bound” (Attachment A), and the Local Unions signatory hereto and the Alameda County Building & Construction Trades Council (“Council”) and its affiliated local unions who have executed this Agreement.

PURPOSE

The purpose of this Agreement is to support the efforts of the City to increase employment opportunities for workers who reside in Berkeley, to help increase training and employment opportunities for Berkeley residents in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the City's schools, to promote efficiency of construction operations performed for and within the City of Berkeley and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the projects.

RECITALS

WHEREAS, the successful completion of the City's construction projects is of the utmost importance to the City of Berkeley; and

WHEREAS, the interests of the general public, the City, the Unions and Contractor(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractor(s) and the Unions desire to mutually establish and stabilize wages, hours and calendar conditions for the workers employed on construction work for and within the City of Berkeley by the Contractor(s), and further, to encourage close cooperation among the Contractor(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, contracts for construction work within the City of Berkeley will be awarded in accordance with the applicable provisions of the Charter of the City of Berkeley, the California State Public Contract Code and the Labor Code, including but not limited to requiring competitive bidding and prevailing wages; and

WHEREAS, the City of Berkeley has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contracts on the Projects; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Projects;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE 1
DEFINITIONS

1.1 "Agreement" means this Community Workforce Agreement.

1.2 "Berkeley Resident" means any individual who is a current resident of Berkeley can certify through a utility bill, or other similar means acceptable to the parties to this Agreement, that the individual resides within the boundaries of the Berkeley City Limits.

1.4 "City" means the City of Berkeley.

1.5 "Completion" means that point at which the City accepts a project at issue by filing a Notice of Completion, or as otherwise provided by applicable state law. "Punch list" items and any other work within the scope of this Agreement not completed prior to commencement of revenue service shall nonetheless be included within the scope of this Agreement. It is understood by the parties that portions of the Projects may be completed in phases and Completion of any such phase may occur prior to Completion of the Projects.

1.6 "Contractor(s)" and/or "Subcontractor(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract with the City or any of its contractors or subcontractors of any tier, with respect to the construction work necessary for any part of the Projects. This shall include subcontractors not required to be listed in the bid documents. As applicable depending on its context, "Contractor" shall refer to Contractor or Contractor and Subcontractor.

1.7 "Construction Contract(s)" means all of the contract(s) for construction of any of the Projects.

1.8 "Council" means the Alameda County Building and Construction Trades Council, AFL-CIO.

1.9 "New Apprentice" is a Berkeley Resident who is enrolled in a State of California approved apprenticeship program that is a joint labor management apprentice program for no more than twenty-four months

1.11 "Projects" mean any construction project of the City whose value as estimated by the City meets or exceeds \$500,000 (Five hundred thousand) dollars.

1.12 "Union" or "Unions" means the Council and any other labor organization signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

1.13 "Project Manager" means the person or persons or business entity designated by the City to oversee all phases of construction on the Projects.

1.14 "Master Labor Agreement" or "MLA" shall mean the collective bargaining agreement of each craft Union that is Signatory to this Agreement

1.15 "Calendar Day" shall mean any day, relating to any day of the week including Saturday, Sunday and public holidays.

1.16 "Apprenticeship Program" -Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor(s)/Employer(s) shall employ apprentices of a California State-approved Joint Apprenticeship Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

The apprentice ratios will be in compliance with the applicable provisions of the applicable "Master Labor Agreement".

ARTICLE 2

SCOPE OF AGREEMENT

2.1 Parties: This Agreement shall apply and is limited to all Contractors and subcontractors performing Construction Contracts necessary for the Projects, the City, the Council and any other labor organization signatory to this Agreement, acting in their own behalf and behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

2.2 Project Description: This Agreement shall govern the award of all of the Construction Contracts identified by the City as part of the Projects. The City has the absolute right to combine, change, consolidate, suspend or cancel Construction Contract(s) or portions of Construction Contract(s) identified as part of the Projects. Should the City suspend or remove any contract from the Projects and thereafter authorize that construction work be commenced on such contract, then such contract shall be performed under the terms of this Agreement. Once a Construction Contract is completed it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work or modifications required by its

Construction Contract with the City. For the purposes of this Agreement, a Construction Contract shall be considered Completed as set forth in Section 1.5 of this Agreement.

2.3 Covered work:

2.3.1 This Agreement covers, without limitation, all on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other works and related activities for the Projects that is within the craft jurisdiction of one of the Unions and that is part of the Projects, including, without limitation, pipelines, site preparation, survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.3.2 The Projects include work necessary for the Projects and/or in temporary yards or areas adjacent to and dedicated to the Projects, and at any on-site batch plant(s) constructed solely to supply materials to the Projects, when those sites are dedicated exclusively to the Projects. This Agreement covers all on-site fabrication work over which the City, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Projects in any temporary yard or area established for the Projects.)

2.3.3 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations. Employers, including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) calendar days of written request or as required by bid specifications.

2.4 Exclusions: The following shall be excluded from the scope of this Agreement:

2.4.1 This Agreement is not intended to, and shall not affect or govern the award of public works contracts by the City which are outside the identified scope of work of the Projects.

2.4.2 This Agreement is not intended to, and shall not affect the current or anticipated operation, maintenance, access or use of any of the City's buildings or facilities, whether or not such facilities are identified in Section 1.7 above.

2.4.3 This Agreement shall not apply to a Contractor or subcontractor's executives, managerial employees, engineering employees, design employees, supervisors (except

those covered by existing building and construction trades collective bargaining agreements), office and clerical employees.

2.4.4 This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county or other governmental bodies or their contractors; or by public or private utilities or their contractors; or by the City or its contractors for work not part of the scope of the Projects. Parties performing work shall notify in writing, The Council and The District of any work being performed near or leading to the site work that is not covered by this agreement. Further, this Agreement shall not be construed to prohibit or restrict the City or its employees from performing work on or around the Project construction sites or from entering the sites for any purposes deemed necessary or appropriate by the City.

2.4.5 This Agreement shall not apply to the off-site maintenance of leased equipment or the on-site supervision of such work.

2.4.6 This Agreement shall not apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion.

2.5 Termination, Suspension and/or Delay of Work: It is understood and agreed that the City, at its sole option, may change, terminate, delay and/or suspend any and all portions of the covered work at any time. Further, the City may prohibit some or all work on certain days or during certain hours of the day to comply with applicable codes, laws or regulations, permits or to accommodate the ongoing operations of the City's facilities and/or to mitigate the effect of the ongoing Projects' work on the businesses and residents in the neighborhood of the Project sites; and/or require such other operational or schedule changes that it may be deemed necessary, in its sole judgment, to effectively maintain the primary purpose of the City's facilities and to remain a good neighbor to the residents and businesses in the area of any Projects. In order to permit the Contractors and Unions to make appropriate scheduling plans, the City will provide the affected Contractor and Union(s) with reasonable notice of any changes it requires pursuant to this Section.

2.6 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles 4, 8, 12 and 13 of this Agreement shall apply to such work.

ARTICLE 3
EFFECT OF AGREEMENT/SUBCONTRACTORS

3.1 By executing this Agreement, the Unions and the City agree to be bound by each and every provision of this Agreement.

3.2 By accepting the award of a Construction Contract for the Projects, whether as contractor or subcontractor at any tier, the Contractor/Subcontractor agrees to be bound by each and every provision of this Agreement.

3.3 This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any other party.

3.4 It is understood that this Agreement, together with the referenced MLA , constitute an integrated, self-contained, stand-alone agreement, and that by virtue of having become bound to this Agreement, the Contractor will not be obligated to sign any other local, area, or national agreement as a condition of performing work within the scope of this Agreement. In addition, it is understood and agreed that all grievances and disputes involving the interpretation or application of this Agreement, including the MLA, shall be resolved according to the procedures set forth in Article 12 of this Agreement; provided, however, that should a dispute involve a single MLA and a Contractor signatory thereto, and not involve interpretation or application of this Agreement, then such dispute shall be processed and resolved pursuant to the grievance provisions of that MLA. Should there be a dispute in the first instance as to whether the provisions of Article 12 of this Agreement or the grievance procedures of a MLA apply, the dispute shall be presented initially to arbitrator Judge William Cahill or, if unavailable, arbitrator Earnest Brown, for resolution as to the applicable procedure. Such referral of a dispute as to the applicable procedures shall be done by an immediate conference call among the parties and the arbitrator, and heard and decided within three (3) calendar days. Should the arbitrator hold that Article 12 applies, the parties may, by mutual agreement, submit the issue to the same arbitrator pursuant to the provisions of Article 12, or, absent mutual agreement, commence processing the dispute at Step 1 of that Article.

3.5 Subcontractors. At the time that any Contractor enters into a subcontract with any subcontractor of any tier for the performance of construction or construction trucking work within the scope of this Agreement, the Contractor shall provide a copy of this Agreement, as it may from time to time be modified by the negotiating parties, to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree to be bound by each and every provision of the Agreement prior to the commencement of work.

3.5.1 Each Contractor and Subcontractor shall evidence their agreement to be bound to this Agreement by executing the Agreement To Be Bound form attached hereto as Appendix A. A copy of the Agreement To Be Bound executed by the Contractors and Subcontractors shall be submitted to the Union(s) prior to both the commencement of work and the Pre-Job Conference and will be a required submittal within the City's bid packages. If the Contractor or Subcontractor refuses to execute the Agreement To Be

Bound, then such Contractor or Subcontractor shall not be awarded a Construction Contract to perform work on the Projects. A Contractor or Subcontractor who executes the Agreement to Be Bound shall be considered a signatory party to this Agreement.

3.6 It is understood that the liability of each Contractor and Subcontractor and the liability of each Union under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employment status between or among the City and/or any Contractor or Subcontractor.

3.7 With regard to any Contractor or subcontractor that is independently signed to any MLA, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such MLA, except as specifically set forth in section 3.7.1 of this Agreement. Any such subcontracting clause in a MLA shall remain and be fully enforceable between each craft union and its signatory employers and no provision of this Agreement shall be interpreted and/or applied in any manner that would give this Agreement precedence over subcontracting obligations and restrictions that exist between craft Unions and their respective signatory employers under a MLA, except as specifically set forth in section 3.7.1 in this Agreement. To the extent that the provisions of this Agreement are inconsistent with any other provisions contained in a MLA, the provisions of this Agreement shall prevail

3.7.1 If a craft Union (“Aggrieved Union”) believes that an assignment of work on this Project has been made improperly by a Contractor or subcontractor, even if that assignment was as a result of another craft Union’s successful enforcement of the subcontracting clause in its MLA, as permitted by section 3.7 of this Agreement, the Aggrieved Union may submit a claim under the jurisdictional dispute resolution procedure contained in Article 13 of this Agreement and the decision rendered as part of that process shall be enforceable to require the Contractor or subcontractor that made the work assignment to assign that work prospectively to the Aggrieved Union. An award made to a craft Union under the subcontracting clause of its MLA, as permitted under section 3.7 of this Agreement, shall be valid and fully enforceable by that craft Union unless it conflicts with a jurisdictional award made pursuant to Article 12 of this Agreement. If the award made under MLA conflicts with the jurisdictional award, the award of any damages under the former shall be null and void *ab initio*.

ARTICLE 4
WORK STOPPAGES, STRIKES, SYMPATHY STRIKES, JURISDICTIONAL
DISPUTES AND LOCKOUTS

4.1 The Unions, City and Contractor agree that for the duration of the Projects:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand-billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or construction persons employed on the Projects, at a job site of the Projects or at any other facility of the City because of a dispute on the Projects. Nor shall the Unions or construction persons employed on the Projects participate in any strikes, sympathy strikes, work stoppages, picketing, hand billing,

slowdowns, or otherwise advising the public that a labor dispute exists at a Project jobsite because of a dispute between Unions and Contractor(s) on any other project.

4.1.2 As to construction persons employed on the Projects, there shall be no lockout of any kind by a Contractor covered by this Agreement. It shall not be a violation of this Article if a Contractor or Subcontractor (1) suspends or terminates a portion of the Project work or (2) discharges an employee for just cause.

4.1.3 If a MLA between a Contractor and the Union expires before the Contractor completes the performance of a Construction Contract and the Union or Contractor gives notice of demand for a new or modified MLA, the Union agrees that it will not strike, picket, hand-bill, slowdown or engage in any other disruptive activity against the Contractor and the Contractor will not lockout construction persons of the Union on said Construction Contract for work covered under this Agreement and the Union and the Contractor agree that the expired MLA shall continue in full force and effect for work covered under this Agreement until a new or modified MLA is reached between the Union and Contractor. If the new or modified MLA reached between the Union and Contractor provides that any terms of the new MLA shall be retroactive, the Contractor agrees to comply with any retroactive terms of the new or modified MLA which are applicable to construction persons employed on the Projects within seven (7) calendar days.

4.2 A party to this Agreement shall institute the following procedure, prior to invoking any other action at law or equity when a breach of this Article 4 is alleged to have occurred:

4.2.1 A party invoking this procedure shall notify, by the most expeditious means available, with notice by facsimile, electronic mail or telephone to the City, to the party alleged to be in violation, to the Council and to the involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the City will contact the designated permanent arbitrator, Judge William Cahill, or if unavailable, his alternate Ernest Brown, who shall attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The Arbitrator shall notify the parties by facsimile, electronic mail or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Article 4, Section 4.1 of this Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to

award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article 4 and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.

4.2.5 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2.4 of this Article 4, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligations under this article.

4.3 Liquidated Damages. If the arbitrator determines that a violation of Section 4.1 has occurred, the breaching party shall, within eight (8) hours of the issuance of the decision take all steps necessary to immediately cease such activities and return to work. If the breaching party involved does not cease such activities by the beginning of the next regularly scheduled shift following the expiration of the eight (8) hour period after the arbitrator's issuance of the decision, then the breaching party shall pay the sum of ten thousand dollars (\$10,000) as liquidated damages to the City per shift until the breach is remedied. The arbitrator shall retain jurisdiction for the sole purpose of determining compliance with this obligation and determining the amount of liquidated damages, if any; but such retention shall not prevent the moving party from seeking judicial enforcement of the initial decision.

ARTICLE 5

PRE-JOB CONFERENCE

5.1 A mandatory pre-job conference shall be held prior to the commencement of each Construction Contract. Such conference shall be attended by a representative each from the participating Contractor(s) and Union(s) and the Project Manager. All efforts will be made to hold the pre-job conference in sufficient time to ensure all parties the ability to properly raise and resolve any issue that may arise out of such meeting, with a

goal that such conferences will be held at least 21 work days before the work commences.

ARTICLE 6
NO DISCRIMINATION

6.1 The Contractors and Unions agree not to engage in any form of discrimination on the ground of or because of race, color, creed, national origin, ancestry, age, religious or political affiliation, gender, sexual orientation or disability against any person, or applicant for employment on the Projects.

ARTICLE 7
UNION SECURITY

7.1 The Contractors recognize the Union(s) as the sole bargaining representative of all construction persons working within the scope of this Agreement.

7.2 All construction persons who are employed by the Contractor(s) shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on the Projects, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the applicable local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union construction persons from joining the local union.

ARTICLE 8
REFERRAL AND LOCAL HIRE PROGRAM

8.1 Referral

8.1.1 Contractor (s) performing construction work on the Projects described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto ("Job Referral System"). Such Job Referral System will be operated in a non-discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those which require equal employment opportunities and nondiscrimination.

8.1.2 The Contractor(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.1.3 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Unions(s).

8.1.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s) for employees within a seventy-two (72) hour period after

such requisition is made by the Contractor(s), the Contractor(s) shall be free to obtain employees from any source. Contractor(s) shall promptly notify the Union(s) of any applicants hired from other sources. This provision does NOT affect core employees as defined below.

8.1.5 Unions shall exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor(s).

8.1.6 Core Employees

All parties agree to make a good faith effort to refer on a priority basis, consistent with the non-discriminatory referral procedures of the hall, qualified and available, and bona-fide Berkeley Residents for Project work.

8.1.7 The parties also recognize and support the City's commitment to provide opportunities for participation on the Projects to Berkeley Residents who are regular, experienced employees ("Core" employees) of contractors and subcontractors awarded work on the Projects and who do not traditionally work under a local collective bargaining agreement(s). In furtherance of this commitment, the parties agree that such contractors and subcontractors awarded work on the Projects may request by name, and the local will honor, referral of persons who have applied to the local union for Project work and who demonstrate the following qualifications:

- (1) Possess any license required by state or federal law for the Project work to be performed;
- (2) Have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
- (3) Were on the Contractor's active payroll for at least sixty (60) out of the one hundred and eighty (180) calendar days prior to the contract award;
- (4) Have the ability to perform safely the basic functions of the applicable trade, and
- (5) Are Berkeley residents.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work the ratio shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

8.1.8 The Contractor shall notify the appropriate Union of the name and social security number of each direct hire and each direct hire shall register with the Union's hiring hall before commencing Project work. If there is any question regarding an employee's eligibility under this Subsection 8.2.1, the City Representative, at a Union's request, shall obtain satisfactory proof of such from the Contractor.

8.2 Local Hire

8.2.1 To the extent allowed by law and consistent with the non-discriminatory referral procedures of the Union hiring halls, the Parties agree to a goal that Berkeley Residents will perform a minimum of 20% of the hours worked, on a craft by craft basis for the Projects. The Contractor(s) shall make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. The Unions shall exercise their best efforts in their recruiting and training of Berkeley Resident workers and in their hiring hall procedures to facilitate this 20% goal on the Projects. In the event that referral facilities maintained by the Union(s) are unable to fulfill the 20% local hire requirement, paragraph 8.2.2 of this Article shall not apply. Contractors shall document all efforts to hire locally and provide such documents to the City of Berkeley. The Council will provide an annual census of Berkeley residents, in each of the crafts party to this agreement, to the City of Berkeley. This report will be provided by August 1 of each year of this agreement.

8.2.2 Should any of the contractors performing work on the Projects fail to meet this 20% goal and fail to demonstrate efforts to do so, through a specific submittal process to be included in their contractual requirements and enforced by the grievance procedure. The contract's 10% retention will be held until such time that this failure is remedied, but not longer than sixty (60) calendar days after the date of substantial completion of the Projects or as required by law, in addition to the breach of contract remedies available to the parties for non-performance under this Agreement.

8.2.3 Apprenticeship & Workforce Development

A) Consistent with the requirements of California Labor Code §§ 1776, 1777.5 and 1777.6, Contractor(s) will be required to hire 1 New Apprentice Berkeley resident as for every \$500,000 dollars or more of total construction bid amount. The New Apprentice(s) must work a minimum of 10% of the projects work hours. The contractor may deploy the apprentice to work on another concurrent project in order to meet the minimum hours, and those hours will be counted towards the total hours of the craft on the Berkeley project. Certified Payroll must reflect the hours worked.

Contractor must fully document efforts to hire a New Apprentice, through the following steps: 1) requesting New Apprentices through the Union dispatch procedure, 2) contacting a minimum of three MC3-approved pre-apprenticeship training programs for referral of Berkeley residents. Unions shall provide written documentation to the contractor in response to dispatch requests to fulfill the New Apprentice requirement, the next tier of residents will come from the Green Corridor.

B) There can be no more than 1 entry-level New Apprentices for each craft, provided said crafts have apprenticeship openings and the general contractor will be able to include New Apprentices hired by their subcontractor to meet this requirement. Unions will agree to cooperate with Contractor(s) in furnishing apprentices as requested and the hiring of the apprentices will be in accordance to the Apprenticeship provisions listed in the Master Agreements and or the union agreements with the division of apprenticeship standards, and the apprentices shall be properly supervised and paid in accordance with provisions contained within the MLA'S. The Unions and Contractors will agree to cooperate with local pre-apprenticeship programs to ensure Berkeley residents have the opportunity to apply for and enter the into the apprenticeship programs.

C) The intent of this provision is to utilize Berkeley Resident New Apprentices to the fullest extent permissible by state law and the MLA. Failure of Contractor(s) and their subcontractors to maintain qualified apprentices on the job will be subject to further penalties as determined by the Grievance Committee as identified in Article 12.

8.11 Enforcement, Compliance & Reporting.

Contractors will be required to submit Certified Weekly Payrolls to the City along with monthly workforce utilization reports documenting the Contractor's compliance with the requirements described in this article. At a minimum the monthly reports must include 1) data on Berkeley Resident's work hour utilization on a craft by craft basis, 2) number of New Apprentices hired and the hours they have worked, 3) documentation showing any requests made to the union dispatchers for Berkeley Residents and the Union's response to the request. Enforcement of this article shall be according to the Grievance and Arbitration procedure outlined in Article 12.

ARTICLE 9 **HELMETS TO HARDHATS**

9.1 The parties recognize a desire to facilitate the entry into the Building and Construction Trade Union(s) of Veterans who are interested in careers in the building and construction industry. The parties agree to utilize the services of the Center for Military Recruitment, Assessment and Veteran's Employment ("Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

9.2 The Union(s) and Contractor(s) agree to coordinate with the Center to participate in an integrated database of Veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Union(s) will give credit to such Veterans for bona fide, provable past experience.

ARTICLE 10
GRIEVANCE PROCEDURE

10.1 Any Contractor which is not otherwise bound through an agreement with a Union to a grievance procedure which confers jurisdiction to consider and resolve disputes over the imposition of discipline or dismissal of its construction persons working on this Project shall be bound to the arbitration procedure contained in the MLA of the craft representing the employee(s) involved in the dispute. For the purposes of this Article, such grievance procedure shall be limited to disputes regarding the imposition of discipline or dismissal arising from work covered by the Agreement. Such Contractor shall not impose discipline or dismissal on its construction persons covered by this Agreement without just cause.

ARTICLE 11
JOINT ADMINISTRATIVE COMMITTEE

11.1 The parties to this Agreement shall establish a five (5) person Joint Administrative Committee comprised of at least one and up to two (2) representatives representing the City; two (2) representatives of the signatory Unions and The Council; and one industry representative, mutually selected by the City and The Council. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

11.2 The Joint Administrative Committee shall meet at the request of either party, but not less than once each quarter, to review the implementation of the Agreement and the progress of the Projects including, but not limited to, compliance with Article 8, prevailing wage, safety, Workforce development and Industry trends. Requests for certified payroll made by a Joint Labor/Management Committee to which the Union(s) signatory to this Agreement are a party shall be provided as allowed by law.

ARTICLE 12
GRIEVANCE ARBITRATION PROCEDURE

12.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party provides notice in writing to the signatory party with whom it has a dispute within seven (7) calendar days after becoming aware of the dispute, but in no event more than thirty (30) calendar days after it reasonably should have become aware of the event giving to the dispute. The time limits in this Article 12 may be extended by mutual written agreement of the parties.

12.2 Grievances shall be settled according to the following procedures:

Step 1: Within seven (7) calendar days after the receipt of the written notice of grievance, the Business Representative of the involved Local Union, the City's

authorized representative, representative of the construction person, and the representative of the involved Contractor shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within seven (7) calendar days after its referral to Step 1, either involved party may submit it within three (3) calendar days to Grievance Committee. The Grievance Committee shall consist of one (1) person selected by the City and one (1) person selected by the Council, which shall meet within seven (7) calendar days after such referral (or such longer time as mutually agreed upon by all representatives of the subcommittee), to confer in an attempt to resolve the grievance. The decision of the Grievance Committee shall be legal, final and binding. If the dispute is not resolved within such time seven (7) calendar days after its referral or such longer time as mutually agreed upon) it may be referred within seven (7) calendar days by either party to Step 3.

Step 3: Within seven (7) seven calendar days after referral of a dispute to Step 3, the representatives shall submit the matter to the designated permanent Arbitrator, Judge William Cahill.

12.3 In the event that Judge Cahill is unavailable, the arbitrator shall be Earnest Brown.

12.4 The Arbitrator shall arrange for a hearing no later than fourteen days (14) calendar days after the matter has been submitted to arbitration. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the Arbitrator. The time limits specified in any step of the Grievance Procedure set forth in Section 12.1 may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without the request for an extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

12.5 The decision of the Arbitrator shall be binding by all parties. The Arbitrator shall not have authority to change, amend, add, or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties.

12.6 In order to encourage the resolution of disputes and grievances at Step 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent-setting.

ARTICLE 13
JURISDICTIONAL DISPUTES

13.1 The assignment of Covered Work will be solely the responsibility of the Contractor/Employer(s) performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

13.2 All jurisdictional disputes on this Project between or among the Union(s) and the Contractor/Employer(s), parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department, or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractor/Employer(s) and Union(s) parties to this Agreement.

13.2.1 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within fourteen (14) calendar days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

13.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor/Employer(s)' assignment shall be adhered to until the dispute is resolved. Individuals violating this Section shall be subject to immediate discharge.

13.4 Each Contractor/Employer(s) shall conduct a Pre-Job Conference with the Council prior to commencing Covered Work. The Primary Employer, Coordinator and the District will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Contractor(s) may be held together.

ARTICLE 14
APPRENTICES

14.1 Recognizing the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry, the Contractor (s) shall employ apprentices in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

14.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

14.3 There shall be no restrictions on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

14.4 All Apprentices will come from a State approved Labor Management Apprenticeship program.

ARTICLE 15 **MANAGEMENT RIGHTS**

15.1 The Contractor shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion with regard to the following: the hiring, promotion, transfer, layoff, corrective action or discharge for just cause of its employees (in accordance with Article 9); the determination of the number of employees needed for the Project work; the selection/hiring of foremen and supervisors; the assignment and schedule of work; the requirement of overtime work, the determination of when it will be worked, and the number of employees engaged in such work, except as otherwise limited by the terms of this Agreement and/or the MLA. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of construction persons except that the lawful manning provisions of the MLA shall be recognized.

ARTICLE 16 **WAGES/BENEFITS**

16.1 **Wages.** All construction persons covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in the applicable MLA for such craft work and in compliance with the applicable prevailing wage rate determination.

16.2 **Benefits.** Contractor agrees to pay contributions into established construction person benefit funds in the amounts designated in the appropriate MLA; provided, however, that each Contractor and Union agree that only such bona fide construction person benefits as included in the prevailing wage determination shall be included in this requirement and required to be paid by the Contractor under this Agreement; provided further, however, that this provision does not relieve Contractors signatory to a local collective bargaining agreement with a signatory Union which would be applicable to the Projects from making any other fund contributions (including, but not limited to, those for contract administration), required by such local agreement. Contractor shall not be required to pay contributions to any other trust funds to satisfy their obligation under this Article. By signing this Agreement, the Contractors adopt and agree to be bound by the written terms of the legally established Trust Agreements, specifying the detailed basis on which the payments are to be made into, and the benefits paid out of, such Trust Funds.

16.3 **Compliance.** It shall be the responsibility of the Contractor(s) and Unions to investigate and monitor compliance with the provisions of the agreement contained in Article 15. Nothing in this agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractors on the Project.

ARTICLE 17
MODIFIED MASTER LABOR AGREEMENTS

17.1 Certain Provisions Shall Not Apply. Provisions negotiated into the new or modified MLA which are less favorable to the Contractor than those uniformly required of employers for construction work normally covered by those agreements or which may be construed to apply exclusively or predominately to work covered by this Agreement shall not apply to work covered by this Agreement. Any disagreement between the parties regarding the application of the provisions of any new or modified collective bargaining agreement to work covered by this Agreement shall be resolved under the dispute and grievance arbitration procedures set forth in Article 12 hereof.

ARTICLE 18
DRUG and ALCOHOL TESTING

18.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

18.2 Employer shall be allowed to utilize employment drug screens. All personnel are subject to random alcohol and drug/alcohol testing at any time, except, the following changes will apply. Employer shall follow said Unions Master Labor Agreement drug polices, regulations and limits. Body fluid tests will utilize urine and saliva specimens. Employer may also selectively require an employee to undergo alcohol or drug/alcohol testing if Employer has reasonable cause to believe that an employee's ability to work safely may be impaired. All requirements and activities of the Employer with regard to drug/alcohol testing shall comply with the provisions of State law.

ARTICLE 19
SAVINGS CLAUSE

19.1 The parties agree that in the event any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by the court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

19.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of this Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

ARTICLE 20 **ENTIRE AGREEMENT**

20.1 This Agreement represents the complete understanding of the parties. The provisions of this Agreement, including the MLA, shall apply to the work covered by this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a MLA, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a MLA and is not covered by this Agreement, the provisions of the MLA shall prevail. Nothing contained in a MLA, working rule, by-laws, constitution or other similar document of the Unions shall in any way affect, modify or add to this Agreement unless otherwise specifically set forth in this Agreement or mutually agreed to in writing executed by the parties.

20.2 The parties agree that this Agreement covers all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the parties will not be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the parties.

20.3 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed the equivalent to original signatures.

ARTICLE 21 **TERM**

21.1 The Agreement shall be included as a condition of the award of the Construction Contracts.

21.2 The Agreement shall continue in full force and effect for a term of three years from the Effective Date of June 30, 2020 through June 30, 2023 and shall be applicable to all Projects until completion that are advertised for bidding during the term.

21.3 This Agreement shall continue in full force and effect until Completion of the Project. The parties may mutually agree to extend and/or amend this Agreement.

SIGNATURES

City of Berkeley

By: _____

Title:

Date: _____

Alameda County Building & Construction Trades Council, AFL-CIO

By: _____ Date: _____

Signatory Unions

Asbestos Workers, Local 16 Boilermakers, Local 549

By: _____ By: _____

Bricklayers & Allied Craftsmen, Local 3 Cement Masons, Local 300

By: _____ By: _____

Electrical Workers, Local 595 Elevator Constructors, Local 8

By: _____ By: _____

Hod Carriers, Local 166 Iron Workers, Local 378

By: _____ By: _____

Laborers, Local 67 Laborers, Local 304

By: _____ By: _____

Operating Engineers, Local 3 Plasterers, Local 66

By: _____ By: _____

Roofers, Local 81 Sheet Metal Workers, Local 104

By: _____ By: _____

Sign Display, Local 510 Sprinkler Fitters, Local 483

By: _____ By: _____

Teamsters, Local 853 United Association of Journeymen and Apprentices Fitting Industry, Underground Utility & Landscape, Local 355

By: _____ By: _____

United Association of Steamfitters, Ironworkers City and the RDA Council of Pipefitters, Plumbers, & Gas California Fitters, Local 342

By: _____ By: _____

Council No. 16 Northern California

International Union of Laborers Painters & Allied Trades (On behalf of Painters, Local 3; Carpet & Linoleum Layers, Local 12; Glass Workers, Local 169; Auto& Marine Painters, Local 1176)

By: _____ By: _____

Northern California Carpenters Regional Council (on behalf of Carpenters, Local 713; Carpenters, Local 2236; Lathers, Local 68L; Millwrights, Local 102; Pile Drivers, Local 34)

By: _____

AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor ("Contractor") on a City Project ("Project"), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the mutual promises made in the Project's Community Workforce Agreement ("Agreement"), a copy of which was received and is acknowledged, hereby:

1. Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made to said Agreement.
2. Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said Agreement;
3. Agrees to secure from any Contractor (as defined in said Agreement) which is or becomes a subcontractor (of any tier) to it, and from any successors, a duly executed Agreement to be bound in form identical to this document.
4. Contractor agrees that it shall be bound by all applicable trust agreements and plans for the provision of such fringe benefits as accrue to the direct benefit of the construction persons, including Health and Welfare, Pension, Training, Vacation, and/or other direct benefits provided pursuant to the appropriate craft agreement contained in Schedule "A" of Agreement.

Date: _____

Company Name: _____

Name of Prime Contractor or Higher Level Subcontractor:

Name of Project: _____

Signature: _____

Print Name: _____

Title: _____

Contractor's License #: _____

Motor Carrier Permit (CA) #: _____



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Public Works
 Subject: Sole Source Contract Negotiations – Community Conservation Center, Inc. and Ecology Center, Inc.

RECOMMENDATION

Adopt a resolution for the City Manager to continue sole source negotiations with Ecology Center, Inc. and Community Conservation Centers, Inc.

FISCAL IMPACTS OF RECOMMENDATION

There are no impacts to the General Fund (Fund 011). The Zero Waste Fund derives revenue primarily from rate charges to residential and commercial customers. As costs increase or decrease, rates may increase or decrease.

CURRENT SITUATION AND ITS EFFECTS

The City has been in contract with the Ecology Center, Inc. (EC) and Community Conservation Centers, Inc. (CCC) for many decades. For single family and multi-family residences (9 units or less), EC collects 8,000+ tons of residential curbside recycling annually, and delivers these dual-stream, separated materials to Berkeley Recycling.

As the operator of Berkeley Recycling, CCC sorts and markets 15,000+ tons of curbside collected recyclable materials delivered by both EC and the City's Zero Waste Division, the latter serving commercial businesses and multi-family building with 10+ units. As part of Berkeley Recycling, CCC also provides residents' drop-off and California Redemption Value containers buy-back recycling services. Both EC and CCC are nonprofit community based organizations. CCC's and EC's current one-year contracts expire on June 30, 2021.

Staff are recommending negotiation of sole source contracts with EC and CCC. The process will be assisted by a third party customer survey of services provided by Public Works' Zero Waste Division, EC, and CCC, and a third-party review of these nonprofits' financials and program expenses. Staff will return to City Council in May with recommendations on both contracts, including terms, length, and services, and the results of the customer survey.

The contracted services provided by EC and CCC advance the City's Strategic Plan's goals to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities; be a global leader in addressing climate change, advancing environmental justice, and protecting the environment; and be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

BACKGROUND

Sole source negotiations for multi-year contracts with EC and CCC should enable the City to provide consistent recycling services at reasonable costs. While it may appear that a full competitive procurement with a request for proposals would result in the best rates and services being obtained by the City, procurement results from other San Francisco Bay Area cities suggest otherwise. Given the current turmoil in the marketplace for commodity pricing, some cities have concluded competitive procurements with steep rate increases, while others faced litigation regarding the process and results. Even if successful, these competitive procurements are costly and time consuming often lasting 18-24 months. In addition, a full competitive procurement may fail to attract respondents because of the unique type of Berkeley's services, including our dual-stream recyclables collection system and high-quality, processed recyclables. These respondents also would be assuming significant risk in taking over these services during a global pandemic and as the process to replace the Transfer Station is underway.

Perhaps most importantly, sole source negotiations recognize the unique nature of EC and CCC. Both are Berkeley-based nonprofits, whereas common providers of these services in other cities are for-profit companies with out-of-state home offices. EC and CCC have grown and advanced the City's zero waste services over the course of five decades and provide other well-known community benefits such as farmers markets.

ENVIRONMENTAL SUSTAINABILITY

Both EC's residential curbside recycling collection services and CCC's sorting and marketing of all recyclables are consistent with various state and county goals, and our City's 2009 Climate Action Plan, 2005 Zero Waste Goal, and long-standing commitment to protect the environment.

RATIONALE FOR RECOMMENDATION

EC's and CCC's contracts expire on June 30, 2021. Because of the unique nature of these entities, sole source negotiations are the best approach to delivering these essential zero waste services seamlessly and continuously at reasonable cost and value.

ALTERNATIVE ACTIONS CONSIDERED

Instead of sole source negotiations, the City could release an open, competitive request for proposal. Doing so would be very challenging given the unique services we seek

and amidst the uncertainty caused by the global pandemic, a troubled recyclables market, and a July 1, 2021 deadline to have a contractor in place.

CONTACT PERSON

Liam Garland, Director, Public Works, 510-981-6303

Greg Apa, Solid Waste and Recycling Manager, Public Works, 510-981-6359

Attachment:

1: Resolution

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

AUTHORIZATION OF SOLE SOURCE CONTRACT NEGOTIATIONS – COMMUNITY
CONSERVATION CENTER, INC. AND ECOLOGY CENTER, INC.

WHEREAS, the City has been in contract with the Ecology Center, Inc. (EC) and Community Conservation Centers, Inc. (CCC) for many decades and their current contracts expire on June 30, 2021; and

WHEREAS, sole source negotiations for multi-year contracts with EC and CCC should enable the City to provide consistent recycling services at reasonable costs; and

WHEREAS, the EC and CCC have successfully provided consistent and continuous residential curbside recycling collection and sorting services for many years.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to continue sole source negotiations with Ecology Center, Inc. and Community Conservation Centers, Inc.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Contract: Alameda-Contra Costa County Transit District (AC Transit) for EasyPass Program 2021 to 2025

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Alameda-Contra Costa County Transit District (AC Transit) for the EasyPass bus transit pass program for City of Berkeley employees in an amount not to exceed \$774,453 for the five-year period commencing January 1, 2021 through December 31, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Total projected five-year cost of the EasyPass program is \$774,453. Funds for calendar year 2021 are available in the Payroll Deduction Trust Fund (Fund 013), and future fiscal years funding is subject to appropriation in those annual budgets. Based upon the current estimated minimum pool of 1,402 passes (one pass per employee), the City will remit payment to AC Transit over the life of the contract as projected here:

Contract Period	Minimum Employee Pool	Annual Cost Per Pass	Total Annual Contract Costs¹
1/1/2021 - 12/31/2021	1,402	\$106.15	\$148,826
1/1/2021 - 12/31/2022	1,402	\$106.15	\$148,826
1/1/2022 - 12/31/2023	1,402	\$110.48	\$154,891
1/1/2023 - 12/31/2024	1,402	\$114.80	\$160,955
1/1/2024 - 12/31/2025	1,402	\$114.80	\$160,955
Total			\$774,453

¹ Calculation of total annual contract costs is based upon AC Transit's level of service score allocated to every COB worksite (approximately 30 as of October 2020), combined into a weighted average that is then multiplied by minimum pool of participants.

Due to system responses to the COVID19 pandemic, AC Transit has generally experienced a significant reduction in ridership since March 2020, and City employee ridership has similarly declined. Further, the City may purchase additional passes as needed above the projected minimum employee pool amount for reduced individual rates during the life of the contract, including any amendments or extensions.

CURRENT SITUATION AND ITS EFFECTS

Commencing in 2002, the City of Berkeley has participated continuously in AC Transit's EasyPass Program that offers our employees unlimited usage passes for all AC Transit local and Transbay buses. This EasyPass is embedded in a Clipper® card, a reloadable contactless smart card used for electronic transit fare payment for travel on twenty-two other Bay Area transit agency systems.² EasyPass/Clipper card holders may separately load additional monies or other fare media onto the cards, thus allowing mass transit users to automatically access transfers and discounts they otherwise would not be able to capture. Further, commencing August 2019, BART discontinued acceptance of paper tickets, and instituted Clipper card only admission to that transit system. Having the EasyPass attached to a free Clipper card (new adult Clipper cards cost \$3 each) is another bonus for City employees participating in the EasyPass program. Additionally, because the EasyPass/Clipper is a contactless smart card, it supports safety protocols implemented to stop the spread of COVID19 infections.

AC Transit's pricing structure for employer pass programs calculates each contract based upon the level of bus service available at work sites, and on the number of employees reporting to each site. For the City of Berkeley, the cost per participant reflects an average of costs for each of the City's thirty work sites, the number of eligible employees per site, and anticipated future fare increases on the AC Transit system.

Terms of the previous contract were extended and are in place through December 31, 2020. Due to COVID 19 impacts, and to new administrative procedures in place at AC Transit, the City and AC Transit recently completed negotiation discussions and have finalized the new contract prior to expiration of that extension. AC Transit is a committed City of Berkeley business partner, and has continued to honor the contract providing uninterrupted service for all Berkeley employees. All terms and pricing of the new contract are favorable and advantageous to the City, particularly as a five-year contract reduces the administrative costs associated with annual renewals, and contract negotiations.

² Clipper Cards are also accepted on Dumbarton Express, Bay Area Rapid Transit (BART), Caltrain, County Connection Golden Gate Bridge, Highway and Transportation District (Golden Gate Transit and Golden Gate Ferry), Marin Transit, Petaluma Transit, SamTrans, San Francisco Municipal Railway (Muni), Santa Clara Valley Transportation Authority (VTA), Santa Rosa CityBus, San Francisco Bay Ferry (except for seasonal and Oracle Park service), Sonoma County Transit, Sonoma–Marin Area Rail Transit (SMART), Tri-Delta Transit, VINE, WestCAT WHEELS, SolTrans, FAST, Union City Transit, Vacaville City Coach.

Starting in 2002, the City successfully executed a series of two-year contracts, and most recently a five-year contract with AC Transit for this program. Staff expects no major changes in program operations or costs during the recommended five-year period. Moreover, a five-year contract period is beneficial as it insulates the City against substantial price increases during the contract term.

Renewal of this City-funded voluntary employee transit program advances the Strategic Plan Priority Project goals of attracting and retaining a talented and diverse City government workforce by providing employees a travel perquisite; and addressing climate change, advancing environmental justice, and protecting the environment by encouraging more than 1,400 City employees to use mass transit.

BACKGROUND

In January 2002 the City and AC Transit formed a partnership to establish an employee transit pass program to provide all eligible City employees unlimited rides on all AC Transit buses. Council approved extensions of the EasyPass (then called EcoPass) program each year beginning in 2003, and then in two-year cycles from 2006 onward. The current contract began in 2015, expired December 31, 2019, and has been extended through December 31, 2020.³

Participating City employees receive an EasyPass embedded in a Clipper card that is valid for the duration of their employment with the City. EasyPasses are renewed electronically on an annual basis. City staff administer program enrollment and pass distribution; process replacement of lost and damaged cards; and termination of employees from the program upon separation from City service. Evaluation of EasyPass effectiveness shows a steady increase of employee participation and usage through February 2020, when COVID19-related safety measures instituted by AC Transit, and City of Berkeley took effect and ridership in all Bay Area transit systems declined.

ENVIRONMENTAL SUSTAINABILITY

The EasyPass program encourages use of public transit for City employees and contributes to reduction in the use of single occupancy vehicles for work and recreational travel. This in turn, reduces carbon emissions especially greenhouse gasses, which is a goal of the Berkeley Climate Action Plan. Use of mass transit also reduces vehicle traffic, parking demand and congestion near City offices and work sites.

RATIONALE FOR RECOMMENDATION

The EasyPass program is a proven and popular benefit widely used by City employees for commuting and recreational travel. By continuing to provide this employee benefit program, the City remains a model employer for Berkeley

³ By Council Resolution No. 66,888-N.S., authorized 12/16/2014. Contract No. 9976, NTE \$570,000.

Contract: Alameda-Contra Costa County
Transit District (AC Transit) for EasyPass Program
FY2021 to FY2025

CONSENT CALENDAR
December 15, 2020

businesses required to offer a Commuter Benefit Program (Berkeley Municipal Code 9.88) or Trip Reduction Information Program (BMC 14.92) to their employees.

ALTERNATIVE ACTIONS CONSIDERED

Council may opt to authorize a contract with a shorter term. Staff do not recommend a shorter term because the administrative process utilized by AC Transit for new contracts has changed, and is now quite extensive with considerable time needed for completion.

CONTACT PERSON

Leisl Griffith Redmond, Senior Management Analyst, Department of Public Works, (510) 981-6304

Attachments:
1: Resolution

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

ALAMEDA-CONTRA COSTA COUNTY TRANSIT DISTRICT (AC TRANSIT) FOR
EASYPASS PROGRAM 2021 TO 2025

WHEREAS, in January 2002 the City and AC Transit formed a partnership to establish an employee transit pass program to provide all eligible City employees unlimited rides on all AC Transit buses.; and

WHEREAS, the concentration of public bus service in Berkeley and the size of the City's workforce support an employee pass program with the Alameda-Contra Costa Transit District (AC Transit); and

WHEREAS, the EasyPass program is a proven and popular benefit encouraging use of public transit for City employees, and contributing to reduction in the use of single occupancy vehicles for work and recreational travel; and

WHEREAS, by continuing to provide this employee benefit program, the City remains a model employer for Berkeley businesses required to offer a Commuter Benefit Program (Berkeley Municipal Code 9.88) or Trip Reduction Information Program; and

WHEREAS, since forming a partnership in 2002 to establish the EasyPass (then EcoPass) Program, the City of Berkeley and AC Transit has offered employees unlimited usage passes for all AC Transit local and Transbay buses.; and

WHEREAS, the Council has approved extension of the program since its inception in 2002, and most recently in 2015 (Resolution No. 66,888-N.S.); and

WHEREAS, funds for the EasyPass program for calendar year 2021 are available in the Payroll Deduction Trust Fund (Fund 930), with funding subject to appropriation in future fiscal years' annual budgets.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with the Alameda-Contra Costa County Transit District (AC Transit) for the continuation of the EasyPass annual bus transit pass program for City of Berkeley employees in an amount not to exceed \$774,453 for the 5-year period January 1, 2021 through December 31, 2025.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Contract: Benefit Resource, Inc. for Third-Party Administrator of the Employee Commute Benefit Program; Contract No. 8746A Amendment: Edenred USA

RECOMMENDATION

Adopt two Resolutions authorizing the City Manager to:

1. Execute a contract and any amendments with Benefit Resource, Inc., (BRI) to provide third-party administrator services for the City of Berkeley's Employee Commute Benefit Program for an amount not to exceed \$28,974 for the period of March 1, 2021 through February 28, 2023; and
2. Amend Contract No. 8746A with the City's current third-party administrator, Edenred Commuter Benefit Solutions, a subsidiary of Edenred USA, increasing the contract amount by \$6,000 for a total amount not to exceed \$276,000, and extending the contract period three months through March 31, 2021 to ensure a seamless transition to BRI, the new third-party administrator.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the Commute Benefit Program is budgeted annually in the Payroll Deduction Fund (Fund 013). Annual program administration costs of \$14,487 are based upon monthly fees as noted below. These dollar amounts are not anticipated to increase for the period of March 1, 2021 through February 28, 2023.

Monthly Pretax Fee	\$3.00	# of Participants	142	Annual Pretax Fee	\$426
Monthly Subsidy Fee	\$1.25	# of Participants	625	Annual Monthly Fee	\$781.25
Annual Program Administrative Costs					\$14,487

Staff expect to complete transition of the administration of the Employee Commute Benefit Program to BRI no later than March 31, 2021. Staff recommend extending the contract with the City's current third-party administrator through March 31, 2021, and increasing that contract amount by \$6,000. There are sufficient funds in the Payroll Deduction Trust Fund (930) to cover this cost. This extension is needed to provide sufficient time to inform and educate employee participants, while introducing them to BRI's new digital platforms, and program features. BRI has assured staff they will work diligently with staff before, during and after the transition to ensure seamless customer-facing and back-office operations.

CURRENT SITUATION AND ITS EFFECTS

The City received five responses to a Request for Proposals for a Third-Party Administrator for Commute Benefits issued in September 2020 (Specification No. 20-11404-C). We received strong applications in a very competitive process from many vendors experienced in the provision of third-party administration services for Transit Accounts. Proposals were reviewed by a staff committee drawn from Department of Public Works Administration and Transportation Divisions; Human Resources Department; and Finance Department Payroll Audit Division. The panel evaluated the proposals, vendor qualifications, and submittal packages. BRI's scores and interview ultimately proved it the most responsive and responsible proposer. Thus, staff recommends partnering with BRI in a professional services contract to help the City meet a pivotal business need, and provide a key service to our employees.

The proposed BRI Commute Benefits contract supports the City's Strategic Plan Priorities by encouraging employee use of mass transit, which advances the City's goals of becoming a global leader in addressing climate change and protecting the environment, and also supports our goal of attracting and retaining a talented and diverse City government workforce.

BACKGROUND

The City of Berkeley's Employee Commute Benefit Program has been extant since its establishment in 1993. It incentivizes eligible City of Berkeley employees' use of mass transit and bicycles to commute to work. This program is consistent with the City's General Plan: Transportation Element Policy T-10,¹ which calls for increased transit use and alternative travel modes.

In October 2009, the Berkeley City Council adopted Ordinance No. 7,113-N.S.1, Tax Relief Action to Cut Commuter Carbon (TRACCC), which added BMC Chapter 9.88 mandating an employer-provided Commuter Benefit Program. This regulation requires employers in the City of Berkeley with a total of 10 or more employees in all their

¹ Policy T-10 Trip Reduction. "To reduce automobile traffic and congestion and *increase transit use and alternative modes in Berkeley, support, and when appropriate require, programs to encourage Berkeley citizens and commuters to reduce automobile trips*, such as: ... 2. Participation in the Commuter Check Program. 3. Carpooling and provision of carpool parking and other necessary facilities."

locations, including those outside of Berkeley, to offer commuter benefits to their employees.²

Benefited employees may opt to deduct pre-tax dollars from each paycheck in any amount up to a monthly maximum of \$270, as allowed by the Internal Revenue Code Section 132(f).³ Employees may also receive a \$20 monthly post-tax bicycle benefit subsidy.⁴

ENVIRONMENTAL SUSTAINABILITY

The Commute Benefit program encourages use of mass transit, shared ride vehicles, and bicycles for City employees commuting to and from work locations. It directly contributes to reductions in the use of single occupancy vehicles for work and recreational travel. This in turn, reduces carbon emissions, and especially greenhouse gasses, which is a goal of the Berkeley Climate Action Plan. Use of mass transit also reduces vehicle traffic, parking demand and congestion near City offices and work sites.

RATIONALE FOR RECOMMENDATION

Benefit Resource (BRI) provides administration of tax-free benefits programs including Commuter Benefit Plans. The company was founded in 1993, and is headquartered in Rochester, New York with additional offices and dedicated support throughout the country. Most importantly, BRI will provide the City a dedicated Bay area customer service team that includes an account manager, implementation specialist and dedicated client services specialist to provide us with one-on-one client care through a dedicated, and robust customer support system.

BRI is well positioned to provide the City of Berkeley comprehensive specialized participant, and backroom operations support for enrollments, education and program design. The company also offers made-to-order marketing materials for more effective participant outreach, and customized reports on demand for more agile program management, participant enrollment and increased digital platform accessibility.

BRI has its own proprietary technology and can accommodate design changes and improvements as requested by clients. The company pioneered multi-purse

² "Coordinated Enforcement of Berkeley's Tax Relief Action to Cut Commuter Carbon Ordinance with the Bay Area Commuter Benefits Program." Berkeley City Council Agenda - Consent Calendar, April 29, 2014.

³ The 2020 monthly limit on parking benefits under IRC Section 132(f)(2)(B) is \$270, up from \$265 in 2019. The 2020 aggregate monthly limit for transportation in a commuter highway vehicle and any transit pass under IRC Section 132(f)(2)(A) is also \$270, an increase from \$265 in 2019.

⁴ Monthly pretax benefits may be used for train, bus, subway, trolley, water taxi, light rail, ferry, rideshare (Uber Pool, Lyft Shared), vanpool.

Beniversal® Prepaid Mastercard® technology in 1999, and today offers compatibility with the following digital wallets: Apple Pay®, Google Pay®, Samsung Pay®.⁵

BRI offers City of Berkeley employees continued Commute Benefit program excellence, and a more user-friendly digital platform. Employees shall continue to have access to their accounts online, by telephone, and through a mobile application. Participants will be able on demand to view account balances, transactions, and claims information; submit claims/receipts; update login info, contact information, direct deposit, card activation; sign-up for real-time text or email alerts regarding account balance or activity; download forms, plan documents; enroll in the plan; or change their elections.

ALTERNATIVE ACTIONS CONSIDERED

The City Council may reject the RFP outcome, and decline to authorize a contract with BRI. This would require staff to modify and reissue an RFP for Third-Party Administrator of the Employee Commute Benefit Program. Council may also elect to extend the existing contract with Edenred Commuter Benefit Solutions.

CONTACT PERSON

Leisl Griffith Redmond, Senior Management Analyst, Department of Public Works, (510) 981-6304

Attachments:

- 1: Resolution: Contract: Benefit Resources, Inc., for Third-Party Administrator Services for the City of Berkeley's Employee Commute Benefit Program
- 2: Resolution: Contract No. 8746A Amendment: Edenred Commuter Benefit Solutions

⁵ The Beniversal Card allows BRI to continue as one of the only administrators to offer a single card for healthcare and commuter benefits today.

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

CONTRACT: BENEFIT RESOURCE, INC. FOR THIRD-PARTY ADMINISTRATOR OF
THE EMPLOYEE COMMUTE BENEFIT PROGRAM

WHEREAS, the City issued a Request for Proposals for a Third-Party Administrator for Commute Benefits issued in September 2020 (Specification No. 20-11404-C) to meet a pivotal business need, and provide a key service to our employees; and

WHEREAS, the City received five very competitive applications from vendors experienced in the provision of third-party administration services for Transit Accounts, and Benefit Resource, Inc.'s scores and interview proved it the most responsive and responsible proposer; and

WHEREAS, the City's Employee Commute Benefit Program has been extant since its establishment in 1993, incentivizing eligible City of Berkeley employees use of mass transit, and bicycles to commute to work; and

WHEREAS, reductions in the use of single occupancy vehicles for work and recreational travel reduces carbon emissions, and especially greenhouse gasses, which is a goal of the Berkeley Climate Action Plan; and

WHEREAS, annual program administration costs of \$14,487 are based upon monthly fees of \$3.00 per pretax participant and \$1.25 per subsidy participant, and these dollar amounts are not anticipated to increase for the period of March 1, 2021 through February 28, 2023; and

WHEREAS, sufficient funds for the Commute Benefit Program for are available in the Payroll Deduction Trust Fund for the period of March 1, 2021 through February 28, 2023.

WHEREAS, staff expect to complete a seamless transition of the administration of the Employee Commute Benefit Program to the winning bidder, Benefit Resource, Inc. (BRI) no later than March 31, 2021.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Benefit Resource, Inc. for provision of third-party administrator services for the City of Berkeley's Employee Commute Benefit Program for an amount not to exceed \$28,974 for the period March 1, 2021 through February 28, 2023.

December 15, 2020

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

CONTRACT NO. 8746B AMENDMENT: EDENRED COMMUTER BENEFIT SOLUTIONS THIRD-PARTY ADMINISTRATOR EMPLOYEE COMMUTE BENEFIT PROGRAM,

WHEREAS, the City issued a Request for Proposals for a Third-Party Administrator for Commute Benefits issued in September 2020 (Specification No. 20-11404-C) to meet a pivotal business need, and provide a key service to our employees; and

WHEREAS, the City received five very competitive applications from vendors, and based upon its scores and interview, Edenred Commuter Benefit Solutions (Edenred), the City's incumbent Third-Party Administrator for the Employee Commute Benefit Program was not found to be the most responsive and responsible proposer; and

WHEREAS, the extension is critically needed so BRI has sufficient time to inform and educate the City's employee participants as they transition from Edenred's administrative systems to BRI's new program platforms; and

WHEREAS, the City's current contract with Edenred expires December 31, 2020, and staff recommend extending the existing contract with the City's current third-party administrator through March 31, 2021 to support a seamless transition; and

WHEREAS, BRI has assured staff they will work diligently with staff before, during and after the transition to ensure seamless customer-facing, and back office operations.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment with the City's current third-party administrator, Edenred Commuter Benefit Solutions, a subsidiary of Edenred USA, increasing the contract amount by \$6,000 for a total amount not to exceed \$276,000, and extending the contract period three months through March 31, 2021.



Office of the City Manager

CONSENT CALENDAR

December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Purchase Order: TYMCO, Inc. for three Model 600X Regenerative Air Sweeper

RECOMMENDATION

Adopt a Resolution satisfying City Charter Article XI Section 67.2 requirements allowing the City to participate in Houston-Galveston Area Council contact bid procedures, and authorizing the City Manager to execute a purchase order with TYMCO, Inc. for three Model 600X Regenerative Air Sweeper in an amount not to exceed \$962,000.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of three model 600X Regenerative Air Sweeper will not exceed \$962,000 and includes California tire fees and sales tax. Funding for two of the sweepers in the amount of \$641,333 is available in the FY 2021 Baseline Budget Fund for Equipment Replacement, and funding for the third sweeper in the amount of \$320,666 will be funded by Zero Waste Fund.

CURRENT SITUATION AND ITS EFFECTS

This purchase order will replace two existing regenerative air sweepers Equipment # 2718 and 2719 that have reached the end of their useful life. The purchase will also add an additional sweeper to support the street sweeping operations. Public Works needs an additional sweeper in their fleet to fill existing gaps in street sweeping coverage and to prevent any shortfalls when sweepers are taken out of service for preventative maintenance. The street sweepers will be utilized by the Streets Division of the Department of Public Works for residential and commercial street sweeping throughout the city. Regenerative air sweepers deploy a blast and suction (vacuum) effect, which has proven more effective in cleaning the entire coverage areas, thus effectively removing debris. Street sweeping is an integral part of protecting stormwater by removing debris and heavy metals.

Sweepers will be powered by 100% renewable diesel fuel, designed to reduce greenhouse gas emission by up to 80%.

Approval of this item will further the Strategic Plan goal of providing state-of-the-art, well-maintained infrastructure, amenities, facilities.

BACKGROUND

If a purchase request exceeds \$25,000, the Department of Finance, General Services Division solicits bids or “piggybacks” off competitively bid contracts to ensure the City’s departments received the best pricing. In addition, prior to each purchase, General Services performs market research to ensure the City receives the best available pricing. Each City department pays its proportionate share into the Equipment replacement Fund, and those funds are utilized to replace equipment of the end of its useful life.

The City of Berkeley has been a no-cost member of Houston-Galveston Area Council (H-GACBuy), a Cooperative Purchasing Program that has offered inter-local purchasing since 2008¹. HGACBuy provides procurement services that make the government procurement process more efficient by establishing competitively priced contracts for goods and services made available to local governments nationwide.

Products and services offered through HGACBuy have been subjected to a public competitive bid process. On September 8, 2019 HGACBuy released Invitation to Submit Competitive Bid Invitation No. SW04-20 for Sweeping Equipment. The solicitation was nationally advertised for 89 days. Ten bids were submitted and reviewed by the Houston-Galveston Area Council who selected TYMCO, Inc. as one of the best responsive and responsible proposers to meet the specifications, thusly awarding Contract No. SW04-20 to TYMCO, Inc.

H-GACBuy charges an order processing fee paid by the contractor, for each sale successfully completed through their contracts. For this Model 600X Regenerative Air Sweeper purchase, the 1.5% fee will be paid directly to H-GACbuy by TYMCO, Inc. and the cost will not be passed on to the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY

The new TYMCO 600X Regenerative Air Sweeper will be powered by renewable diesel fuel designed to reduce greenhouse gas emission by up to 80%

Consistent with the City Councils recently accepted Municipal Fleet Electrification Assessment, Public Works conducted extensive research to determine the availability of a comparable electric version of a regenerative air sweeper. Staff queried industry manufactures/distributors including; Owens equipment, GCS Environmental, Municipal Maintenance Equipment (MME), and Global Environmental Products whom verified no electric regenerative air sweepers are available at this time.

In an effort to ensure thorough research was conducted, street sweeping staff participated in demonstration of an all-electric powered mechanical street sweeper and found equipment lacking ability to adequately remove debris from the roadway. Staff

¹ <https://www.hgacbuy.org>

concluded the all-electric street sweeper's performance, relatively short run time, and hours required for charging could not adequately meet the demanding needs of our sweeping schedule.

RATIONALE FOR RECOMMENDATION

The 600X model regenerative air sweepers currently in use have reached the end of their economic lifecycle and are due for replacement. Additionally, the requisition of a third asset is needed to meet the increased workload of the Streets division.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachment:

1: Resolution

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

PURCHASE ORDER: TYMCO, INC. FOR ONE MODEL 600X REGENERATIVE AIR STREET SWEEPER

WHEREAS, three model 600X Regenerative Air Street Sweepers are needed by the City of Berkeley Public Works Streets Division to replace two sweeper that have reached the end of their economic lifecycle, and one new additional sweeper to accommodate increased route coverage by staff; and

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

WHEREAS, on September 8, 2019 HGACBuy released Invitation to Submit Competitive Bid No. SW04-20 for Sweeping Equipment. The solicitation was nationally advertised for 89 days. Ten bids were submitted and reviewed by the Houston-Galveston Area Council who selected TYMCO, Inc. as one of the best responsive and responsible proposers to meet the specifications, thusly awarding Contract No. SW04-20 to TYMCO, Inc.; and

WHEREAS, H-GACBuy charges an order processing fee paid by the contractor, for each sale successfully completed through their contracts. For this street sweeper purchase, the 1.5% fee will be paid directly to H-GACBuy by TYMCO, Inc. and the cost will not be passed on to the City of Berkeley; and

WHEREAS, HGACBuy contract bid procedures satisfy the requirement of the City of Berkeley; and

WHEREAS, funds in the amount of \$962,000 are available in the FY 2021 Equipment Replacement Fund 671 and Zero Waste Fund 601.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City Manager is hereby authorized to execute a purchase order for one model 600X Regenerative Air Street Sweeper with TYMCO, Inc. in an amount not to exceed \$962,000.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Department of Public Works
 Subject: Purchase Order: Arata Equipment Company for Eleven Side Loader Collection Trucks

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for eleven (11) Side Loader Collection Trucks with Arata Equipment Company in an amount not to exceed \$4,554,575.16.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of eleven (11) Side Loader Collection Trucks will not exceed \$4,554,575.16 and includes freight, CA tire fees, funds for build incidentals and sales tax. Funding for this purchase is available in the FY 2021 Baseline Budget Fund for Equipment replacement.

CURRENT SITUATION AND ITS EFFECTS

This purchase will replace eleven (11) 25 cubic yard heavy-duty side loader collection trucks that have reached the end of their useful life. The new replacements will be utilized throughout the city to collect refuse, recyclables, and organics from single-family residents, multiple unit properties, and commercial businesses. The existing trucks will be replaced with state-of-the-art automated side arm collection system, enhanced safety features, improved fuel efficiency and maneuverability to better serve the community.

The vehicles being replaced include the following.

Vehicle Unit #s	Year/ Make
6366,6367,6368,6369, 6370,6371,6372,6373, 6374,6375,6376	(1) 2008 Crane Carrier/McNeilus Side Loader. (10) 2012 Crane Carrier/ McNeilus Side Loaders

Electric/Hybrid Electric Evaluation

For every fleet purchase, Public Works Staff research the feasibility and availability of fully electric vehicles and hybrid-electric powertrains to support the City's transition from fossil fuels to renewable energy resources. Staff research found there are multiple

agencies / companies across the nation testing electric collection truck prototypes, including New York City, GreenWaste of Palo Alto Ca, Sacramento County; Seattle and large collection companies, such as Recology and Republic Services. Manufacturers are developing and testing electric collection trucks for commercial application in the coming years. Companies include Nikola motor company, Mack Trucks (AB Volvo), Volvo, Daimler Trucks, and BYD Motors. Nicola Motors has taken orders for production in 2023, while Mack Trucks has, in the last 6 months, deployed test rear loader collection trucks in Hickory Hill, NC, and New York City, NY. Depending on these results of these tests, Mack may begin commercial production in early 2022. The Transfer Station current electrical infrastructure cannot support a charging system without significant and costly improvements.

To electrify the collection fleet (more than 80 vehicles), the City's Solid Waste & Recycling Transfer Station has completed a Feasibility Study and has now commenced the CEQA permitting process for the facilities replacement on its 7.4-acre site to include infrastructure for future electrification of collection trucks. The Solid Waste & Recycling Transfer Station Feasibility Study¹ presented at the November 5, 2019 City Council Work Session, highlighted needed infrastructure to upgrade and meet GHG emission reduction targets as part of the City's 2009 Climate Action Goals. The projected final design and engineering for construction specifications and City permitting are projected for FY2026 / 2027. Public Works is also applying for assistance from Pacific Gas and Electric to provide electric charging infrastructure for future medium and heavy-duty vehicle applications.

These collection vehicle have a projected useful life of 8-10 years. At the end of this useful life, the Transfer Station replacement will be completed and will have installed electrical infrastructure to support the commercially-manufactured electric side loader collection trucks that will be available by then.

Renewable Fuel

The trucks being replaced will be powered by 100% renewable diesel that reduces greenhouse gas emission by as much as 50-80%. Usage of renewable diesel also complies with the City's Fossil Free recommendations. This purchase is in alignment with the 2020 Municipal Fleet Electrification Assessment² that recognized the lack of commercially available and viable heavy-duty vehicles.

This purchase will support the City's Strategic Plan Goal of creating a resilient, safe, connected, and prepared City.

¹ https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/Solid%20Waste%20and%20Recycling%20Transfer%20Station%20Feasibility%20Study%20Report%20to%20Council%2011.5.19%20Part1.pdf

² https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_26_Referral_Response_An_Action_Plan.aspx

BACKGROUND

Throughout the year, each City Department pays its proportionate share into the Equipment Replacement Fund, and those funds are utilized to replace equipment at the end of its useful life. If a vehicle or equipment purchase request exceeds \$25,000, the Department of Finance General Services Division solicits bids or “piggybacks” off competitively bid contracts to ensure City departments receive the best pricing.

The City of Berkeley has been a no-cost member of Sourcewell³ (formerly National Joint Powers Alliance) a municipal contracting agency operating under the legislative authority of Minnesota Statute 123A.21. The original 1978 statute was revised in 1995 allowing government clients to meet their specific needs through participation in a service cooperative, rather than paying the higher cost associated with individual procurement. Sourcewell allows participating municipal agencies to leverage the benefits of cooperative purchasing and reduces procurement costs. Sourcewell serves cooperatively contracted products, equipment and service opportunities to government entities throughout the U.S.

All Sourcewell contracts have been competitively solicited nationwide. On July 11, 2019, Sourcewell released Request for Proposal No. 091219 for Mobile Refuse Collection Vehicles with Related Equipment, Accessories, and Services. The solicitation was released for approximately sixty-four days and nine proposals were submitted. Upon review the Sourcewell Evaluation Committee selected Labrie Enviroquip Group as the best most responsive proposer to meet the specifications thusly awarding Contract No. 091219-LEG.

The Labrie Enviroquip Group exclusive authorized dealer for Northern California is Arata Equipment Company who is the only dealer approved to sell product, parts and provide service. Arata Equipment Company will provide the HD Right Hand Arm/Automizer bodies. The chassis will be provided by Crane Carrier authorized dealer West Truck Parts and Equipment dealer/distributor for Northern CA.

ENVIRONMENTAL SUSTAINABILITY

Public Works Equipment Maintenance endeavors to procure the most fuel-efficient vehicles and equipment that are suitable for the required tasks. At present, the Solid Waste & Recycling Transfer Station is undergoing a redevelopment project that will provide electric charging capabilities that do not exist at this time. Hybrid heavy-duty collection trucks are undergoing development and pilot testing around the nation, and expected to be commercially available when site construction is completed.

³ <http://www.sourcewell-mn.gov/>

Replacement side loading collection trucks will be powered by 100% renewable diesel fuel designed to reduce greenhouse gas emission by 50-80%, and meets the 2018 EPA and California Air Resources Board (CARB) requirements.

RATIONALE FOR RECOMMENDATION

Equipment must be replaced on a reasonable schedule to ensure the Public Works Equipment operators can efficiently, safely, and effectively carry out their duties.

ALTERNATIVE ACTIONS CONSIDERED

None. Keeping equipment longer than its useful life results in higher maintenance costs and excessive downtimes in order to keep it operating in a safe and serviceable manner.

CONTACT PERSON

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

Attachment:

1. Resolution

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

PURCHASE ORDER: ARATA EQUIPMENT COMPANY FOR ELEVEN SIDE LOADER
COLLECTION TRUCKS

WHEREAS, eleven side loader collection trucks are needed by City of Berkeley Zero Waste Division for the commercial and residential collection of refuse, recyclables, and organics; and

WHEREAS, the vehicles to be replaced have reached the end of their useful life; and

WHEREAS, equipment must be replaced on a reasonable schedule that allows equipment operators to efficiently and effectively carry out their work; and

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

WHEREAS, on July 11, 2019 Sourcewell released Request for Proposal No. 091219 for Mobile Refuse Collection Vehicles with Related Equipment, Accessories, and Services. The solicitation was released for approximately sixty-four and nine proposals were submitted. Upon review Labrie Enviroquip Group was selected as the best most responsive proposer to meet the specifications, thusly awarding Contract No. 091219-LEG; and

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

WHEREAS, funds in the amount of \$4,554,575.16 are available in the FY2021 Equipment Replacement Fund (671).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for eleven Side Loader Collection Trucks with Arata Equipment Company in an amount not to exceed \$4,554,575.16.



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Department of Public Works
 Subject: Purchase Order: Owen Equipment Sales for One Vactor Combination Sewer Cleaner Truck

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell (formerly NJPA) contract # 122017-FSC and authorizing the City Manager to execute a purchase order for one Vactor Combination Sewer Cleaner with Owen Equipment Sales in an amount not to exceed \$327,000.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of one (1) Combination Sewer Cleaner will not exceed \$327,000 and includes CA tire fees, training and sales tax. \$230,000 in funding is available in the baseline FY2021 Clean Storm Fund (Fund 616) budget and the remaining \$97,000 is recommended for appropriation from the Sanitary Sewer Operations Fund (Fund 611) in the FY 2021 Second Amendment to the Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

Currently the Sewer Maintenance Division of the Department of Public Works is equipped with two Class 8 Combination Sewer Cleaning Trucks weighing 33,000 (lbs.) with three axles, and the Storm Maintenance Division is equipped with one. The purchase order will be to acquire a new shorter wheelbase Class 6 Combination Sewer Cleaning Truck weighing 26,000 (lbs.) with two axles. This addition will be utilized by both divisions to perform required maintenance and cleaning of catch basins, inlets/outlets and other storm infrastructure, and provide emergency support to the Sewer Division. Its short wheelbase design is ideal for accessing city neighborhoods located in the higher elevations, where roads are far less accessible for our Class 8 vehicles.

Approval of this item will further the Strategic Plan goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities and being a global leader in addressing climate change and protecting the environment.

BACKGROUND

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

The City of Berkeley is a member and participant of Sourcewell¹, formerly National Joint Powers Alliance (NJPA), and a purchasing cooperative that clusters over 50,000 government, education, and nonprofit organizations and performs over \$3 billion in annual purchases through cooperative contracts. Sourcewell provides “Government-to-Government” nationwide procurement services that strive to make the public procurement process leaner and more efficient by establishing competitively priced contracts for goods and services. Products offered through Sourcewell have been subjected to a nationwide public competitive bid process, and then made available to local governments and state agencies through Sourcewell.

On November 16, 2017 Sourcewell released Request for Proposal # 122017 for Sewer Vacuum, Hydro-Excavation, and Street Sweeper Equipment, with Related Accessories and Supplies. The solicitation was published for approximately thirty-five days and thirty proposals were received. Upon their review, the Sourcewell Proposal Evaluation Committee selected Federal Signal Corporation as the best most responsible and responsive proposer to meet the specifications, thusly awarding Contract No. 122017-FSC.

The Federal Signal Corporation authorized dealer for Northern California is Owens Equipment Sales who provides new equipment sales, warranty work, replacement parts and services. Owen Equipment Sales is the primary contact for the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY

The new combination cleaner truck will be powered by renewable diesel fuel designed to reduce greenhouse gas emissions by up to 80%.

Consistent with the City Councils recently accepted Municipal Fleet Electrification Assessment, Public works queried the following distributor/manufacturer representatives for Owens equipment, who confirmed there is no electric versions of the truck available: Municipal Maintenance Equipment, RDO Equipment; Super Products Inc.; Jack Doheny; and Sewer Equipment Co. Further discussions with representatives

¹ <https://www.sourcewell-mn.gov/>

revealed the current available battery technology does not adequately provide the power necessary to operate the sewer cleaning system.

Additionally, having an additional cleaner truck will support the City's compliance with the municipal stormwater permit and help prevent debris and trash from reaching the San Francisco Bay.

RATIONALE FOR RECOMMENDATION

Equipment is needed by the storm and sewer maintenance staff to perform required maintenance and cleaning of catch basins, particularly in areas of the City less accessible by larger equipment.

ALTERNATIVE ACTIONS CONSIDERED

None. The Combination Sewer Cleaner Truck was reviewed and compared to several competitor brands and found to accommodate the needs of division staff.

CONTACT PERSON

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

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

PURCHASE ORDER: OWEN EQUIPMENT SALES FOR ONE COMBINATION SEWER CLEANER

WHEREAS, one Combination Cleaner is needed by the City of Berkeley Sewer Maintenance Division Staff of Department of Public to perform required maintenance and cleaning of 460 sewer Catch Basins, particularly in areas of the city with less accessibility to larger equipment; and

WHEREAS, equipment must be acquired to allow operators to efficiently and effectively carry out their duties; and

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

WHEREAS, on November 16, 2017 Sourcewell (formerly NJPA) released Request for Proposal No. 122017 for Sewer Vacuum, Hydro-Excavation, and Street Sweeper Equipment, with Related Accessories and Supplies. The solicitation was published for approximately thirty-five days and thirty proposals were received. Upon their review, the Sourcewell Proposal Evaluation Committee selected Federal Signal Corporation as the best most responsible and responsive proposer to meet the specifications, thusly awarding Contract No. 122017-FSC; and

WHEREAS, the Federal Signal Corporation authorized dealer for Northern California is Owen Equipment Sales who provides new equipment sales, warranty work, replacement parts and services; and

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

WHEREAS, funds in the amount of \$230,000 are available in the baseline Clean Storm Fund (616) and \$97,000 will be available in the FY 2021 Sanitary Sewer Operations fund (611) pending appropriation via the Second Amendment to the Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for one Combination Sewer Cleaner with Owen Equipment Sales in an amount not to exceed \$327,000.



Community Environmental
Advisory Commission

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Community Environmental Advisory Commission
 Submitted by: Ben Gould, Chairperson, Community Environmental Advisory Commission
 Subject: Prohibition on the Resale of Used Combustion Vehicles in 2040

RECOMMENDATION

Review and refer to the City Attorney for finalization the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040.

POLICY COMMITTEE

On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to refer to the City Manager for review of the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040, to the extent legally possible. Vote: Ayes - Davila, Robinson; Noes – None; Abstain – None; Absent – Harrison.

SUMMARY

Prohibiting the resale of used combustion vehicles is likely to increase the availability of non-combustion alternatives. This policy is important to help address environmental inequities, reduce greenhouse gas emissions, and improve public health; however, it may also raise the price of used vehicles and programs will be required to ensure that low-income and disadvantaged communities are able to benefit. This is an application of local police power which is not preempted by state or federal law.

FISCAL IMPACTS OF RECOMMENDATION

Some staff time for review and finalization of the ordinance. Adoption of the ordinance itself may expose the City to potential fiscal impacts, including risk of a lawsuit and, if ultimately enforced, additional fiscal impacts from impacts to sales, property, and other tax or fee revenues.

CURRENT SITUATION AND ITS EFFECTS

On June 12, 2018, Berkeley City Council unanimously declared a Climate Emergency, which called for “a just citywide emergency mobilization effort to end citywide greenhouse gas emissions as quickly as possible.” Berkeley also set a goal of being a Fossil Fuel Free city and becoming a net carbon sink, as well as becoming carbon neutral by 2045.

Berkeley's Climate Action Plan also sets the goal of an 80% reduction in greenhouse gas emissions by 2050, and Berkeley's Strategic Plan sets the goal of being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

Citywide, transportation powered by internal combustion engines makes up 60% of the city's greenhouse gas emissions. Unfortunately, this share – and total level of emissions – is only expected to grow. In order to achieve its emission reduction goals, Berkeley needs a strategy that will phase out the use of combustion vehicles, including ensuring a wide availability of used non-combustion vehicles for the broader market which cannot afford new vehicles, while ensuring compliance with all applicable state and federal laws.

At a regular meeting on Thursday, November 14, 2019, the Community Environmental Advisory Commission approved a motion to send the *Prohibition of resale of Used Combustion Vehicles on city streets by 2040* recommendation to City Council. (M/S/C) Gould, Hetzel. Ayes: Simmons, Varnhagen, Hetzel, Goldhaber, Gould. Abstained: De Leon. Absent: Ticconi.

BACKGROUND

Berkeley is home to, and a route for, tens of thousands of combustion-powered automobiles, trucks, and other vehicles which annually emit roughly 360,000 metric tons of greenhouse gases (GHGs). There are an estimated 46,000 vehicles registered within the City of Berkeley, of which only about 1,400 (3%) are electric or plug-in hybrid vehicles.

Berkeley has declared a Climate Emergency, set the goal of becoming a fossil-fuel free city, and aims to achieve carbon neutrality by 2045. City staff are working aggressively to develop a comprehensive action-based Electric Vehicle (EV) roadmap to find opportunities to increase equitable access to EV's within Berkeley's diverse community.

Most local, regional, and state efforts around expanding EV uptake is focused on increasing and enabling purchases of new EVs, whether through incentives and support for consumers (such as tax deductions or public chargers) or state- and federal-level mandates for manufacturers to sell clean vehicles.

Since most vehicles eventually break down and reach a point where it is not economic to continue maintaining them, targeting new vehicles can be expected to ultimately drive an eventual transition to non-combustion vehicles. However, even if no new combustion

vehicles were sold in California, it would take roughly 15 years¹ to transition all remaining, existing vehicles to non-combustion alternatives – likely longer.

Regulations on new vehicle emission and fuel economy standards are set by the federal (and state) government under existing federal law, such as the Clean Air Act (CAA) and the Energy Policy Conservation Act (EPCA). The CAA and EPCA expressly preempt local authorities from enacting regulations on new vehicles. However, they deliberately omit any imposition of regulations on existing vehicles, thereby leaving that application of police power to the states and local jurisdictions.

In California, roughly two-thirds of all vehicle sales are used, existing vehicles². The state has not extensively regulated in this market – used vehicles, as all vehicles, are required to meet smog checks certifying the vehicle meets the emission standards it was manufactured to, but no more. As the Legislature appears to have no intent or interest in further regulating used vehicles, it falls to local governments to address used combustion vehicle sales.

In the face of federal inaction on zero-emission mandates, local jurisdictions can and should act to incentivize a timely, equitable, and just transition to zero-emission transportation. This is a matter of municipal concern, because the continued availability of used combustion vehicles adversely effects city's ability to achieve carbon neutrality and meet its greenhouse gas reduction goals.

Prohibiting the resale of used combustion vehicles creates two incentives that support non-combustion alternatives. Firstly, by making it more difficult for consumers to get rid of an unwanted, used combustion vehicle, individuals will be encouraged to choose non-combustion vehicles when purchasing new vehicles. Consumers often plan to keep vehicles for 5, 10, or even 15 years or longer, enacting this policy as soon as possible will ensure it has the greatest possible impact. Because this acts as an indirect incentive on the purchase of new vehicles, and not as any standard or mandate (consumers can still purchase and use combustion vehicles, sell them before January 1st, 2040, resell them outside of Berkeley after January 1st, 2040, or scrap them), it complies with the Clean Air Act.

Secondly, removing combustion vehicles from the resale market effectively constrains the supply of used vehicles, and can be expected to drive up the price of the remaining used vehicles – all non-combustion. This would therefore incentivize existing non-

¹ Based upon DMV data on roughly 30 million registered automobiles and light trucks (<https://www.dmv.ca.gov/portal/wcm/connect/5aa16cd3-39a5-402f-9453-0d353706cc9a/official.pdf?MOD=AJPERES>), and CNCDA data on roughly 2 million new vehicle sales annually (above), the time to replace every vehicle in California is roughly 15 years.

² *California Auto Outlook Covering Second Quarter 2019*, California New Car Dealers Association <https://www.cncda.org/wp-content/uploads/Cal-Covering-2Q-19.pdf>. Accessed September 2019.

combustion vehicle owners to sell their vehicles, expanding the supply of available used non-combustion vehicles.

Unfortunately, this latter incentive acts as a double-edged sword from an equity perspective. While expanding the availability of non-combustion vehicles helps ensure low-income and disadvantaged consumers find alternatives to purchase, which may be particularly necessary if other policies (such as a combustion vehicle operation ban) are enacted, raising the price simultaneously makes it more difficult for these consumers to afford the vehicles they need. In addition, low-income and disadvantaged consumers are most likely to still own or be using combustion vehicles by the time any ban or restrictions would take effect, and would therefore be faced with the greatest burden in getting rid of any such vehicle when they chose to do so.

Local, regional, and state governments will likely need to address this equity issue through non-combustion vehicle purchase incentives and subsidies, and potentially combustion vehicle buyback programs, targeted for low-income households. These programs are already beginning to be enacted for low-income individuals to purchase new EVs, and so it is likely they will continue to be further developed and in place in the time frame proposed in this policy.

While these financial inequities are important and must be planned for and addressed, the proposed policy still addresses several other equity issues which cannot be addressed through any means but with technological change. For decades, our low-income communities have disproportionately borne the brunt of air pollution and noise from the operation of combustion vehicles; the fact that these communities have simultaneously relied upon the oldest, cheapest, and therefore dirtiest vehicles only compounds the issue. In the long run, these communities are also the communities most vulnerable to, and threatened by, climate change. Driving an aggressive transition to non-combustion vehicles may create some short-term economic issues that can and must be planned for and addressed. These issues should not obstruct resolving the greater injustice of air pollution and climate change.

ENVIRONMENTAL SUSTAINABILITY

Banning the resale of used combustion vehicles will ensure they are phased out and will incentivize businesses to further promote the sale of electric vehicles.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed policy is categorically exempt from CEQA under CEQA Guidelines Sections 15307 and 15308.

RATIONALE FOR RECOMMENDATION

Berkeley is extremely unlikely to meet its carbon reduction and fossil-free goals without aggressive action on transportation decarbonization. While working to drive EV uptake helps, CEAC believes that setting dates beyond which combustion vehicles will not be supported under City policy will help further.

Prohibiting the resale of used combustion vehicles will doubly incentivize consumers to choose non-combustion alternatives – for those looking to purchase new vehicles, knowing they must go outside of city limits to resell their vehicle adds an additional barrier and is an incentive to choose a non-combustion alternative. For those purchasing used vehicles, removing combustion vehicles from the used market ensures greater availability and choice of non-combustion alternatives. This may, however, drive up prices for used vehicles, and this must be addressed through additional programs as the police comes into force.

The federal government currently lacks the jurisdiction to prohibit the resale of used combustion vehicles, and there is no evidence the state government will choose to do so. As a result, if the sale of used combustion vehicles is to be restricted, Berkeley must take action.

Setting 2040 as a phase-out date for the sale of used combustion vehicles will help ensure vehicle owners in Berkeley can more readily transition to non-combustion alternatives by 2045, when Berkeley aims to be carbon-neutral.

ALTERNATIVE ACTIONS CONSIDERED

CEAC considered taking no action, but determined that was not an effective approach to addressing Berkeley’s declared Climate Emergency, becoming a fossil fuel free city, or achieving carbon neutrality.

CEAC considered an earlier phase-out date, such as 2030 or 2035, but determined it was unclear that there would be adequate availability of used vehicles by that time. While there may still not be enough in 2040, CEAC determined that there needed to be some transition time to support any 2045 phase-out policies in place.

CEAC considered providing an expanded exemption to allow vehicles which are newer than a certain number of years to be resold. CEAC decided there did not appear to be any compelling reason to do so, and that any potential benefits were likely not to accrue to disadvantaged communities.

CITY MANAGER

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

CONTACT PERSON

Ben Gould, Chair, Community Environmental Advisory Commission, 510-725-9176

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 9 TO PROHIBIT THE SALE OF COMBUSTION VEHICLES.

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

Section 1. That the Berkeley Municipal Code Chapter 9.97 is added to read as follows:

**Chapter 9.97
RESALE OF USED COMBUSTION VEHICLES**

Sections:

9.97.010	Findings
9.97.020	Purpose
9.97.030	Definitions
9.97.040	Prohibition
9.97.050	Exemptions

9.97.010 Findings

A. Berkeley aims to become carbon neutral by 2045, reduce greenhouse gas emissions by 80%, and become a fossil fuel free city.

B. Over 60% of greenhouse gas emissions in Berkeley result from transportation.

C. Transitioning 100% of new vehicle sales to non-combustion vehicles by 2030 would dramatically improve Berkeley's ability to achieve carbon neutrality by 2045.

D. The Clean Air Act and the Energy Policy Conservation Act prohibit states and cities from setting emission or fuel economy standards for new vehicles, without restricting their authority to set regulations for used vehicles.

E. Roughly two-thirds of all vehicle sales in California are in the used car market.

F. Disadvantaged and low-income communities disproportionately rely upon the used car market and are disproportionately impacted by air pollution and climate change driven by used combustion vehicles.

G. Berkeley can support availability of used non-combustion vehicles and nourish a used car market for non-combustion vehicles through restricting the resale of used combustion vehicles and developing programs to support low-income residents in transitioning to non-combustion alternatives.

9.97.020 Purpose

The purpose of this chapter is to promote the health and safety of Berkeley residents and visitors, to address environmental impacts, and to address environmental justice.

9.97.030 Definitions

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

A. "Combustion vehicle" shall mean any on-road land motor vehicle which uses the combustion or oxidation of any carbon-based fuel to provide power or propulsion.

B. "New motor vehicle" shall have the same definition as set forth under the Clean Air Act, 42 US Code § 7550(3).

9.97.040 Prohibition

Beginning January 1st, 2040, it shall be unlawful to sell, resell, trade, or distribute any combustion vehicle with a model year of more than three (3) years old by any means anywhere within the City of Berkeley.

9.97.050 Exemption

This prohibition shall not apply to the sale of new motor vehicles which are subject to regulation under the Clean Air Act.



Sugar-Sweetened Beverage
Product Panel of Experts (SSBPPE)

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Sugar-Sweetened Beverage Product Panel of Experts Commission

Submitted by: Holly Scheider, Chairperson, SSBPPE Commission

Subject: Allocation of \$3 Million Over Two Years, FY22 and FY23, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

RECOMMENDATIONS

Adopt a Resolution allocating \$3 million from the General Fund in FY22 (July 1, 2021 through June 30, 2022) and FY23 (July 1, 2022 through June 30, 2023) that shall be invested in a grant program administered and coordinated by the Berkeley Public Health Division consistent with the SSBPPE's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the effects of SSB consumption. The total of \$3 million will be distributed in two installments of \$1.5 million per year for FY22 and FY23. In each of these years, the funds will be distributed as follows:

- a. Direct the City Manager to award up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding (Attachment 2).
- b. Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants (Attachment 3).
- c. Direct the City Manager to utilize 15% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data from the epidemiologist resulting from the SSBPPE funding program.

Allocation of \$3 Million Over Two Years, FY22 and FY23, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs)

FISCAL IMPACTS OF RECOMMENDATION

Measure D, passed in November of 2014, created two provisions, namely: a) a 1 cent per ounce tax on sugary drinks distributed in Berkeley and b) creation of a Panel of Experts Commission. The collection of this tax commenced in May of 2015 and is being deposited into the City's General Fund. The SSBPPE Commission's recommendation to Council for allocation of \$3 million for FY22 and FY23 is independent of the amount of tax collected from the distribution of SSB in Berkeley. This request will create a liability of \$3 million for the City's General Fund in FY22 and FY23.

BACKGROUND (Ordinance: SUGAR-SWEETENED, 2014)

In addition to a global pandemic, our nation, our state, and our community face a major public health crisis. Diabetes, obesity, and tooth decay have been on the rise for decades. Although no group has escaped these epidemics, children, as well as low income communities and communities of color have been and continue to be disproportionately affected. While there is no single cause for the rise in diabetes, obesity, and tooth decay, there is overwhelming evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, heart disease, and tooth decay.

Sugary drinks such as soft drinks, energy drinks, sweetened teas, and sport drinks offer little or no nutritional value, but massive quantities of added sugar. A single 20-ounce bottle of soda, for instance, typically contains the equivalent of approximately 16 teaspoons of sugar. Before the 1950s, the standard soft-drink bottle was 6.5 ounces. In the 1950s, larger size containers were introduced, including the 12-ounce can, which became widely available in 1960. By the early 1990s, 20-ounce plastic bottles had become the norm. At the same time, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color. In 2006 alone, nearly \$600 million was spent in advertising to children under 18. African American and Latinx children are also aggressively targeted with advertisements to promote sugar-laden drinks.

The resulting impact on consumption should not be surprising. The average American now drinks nearly 50 gallons of sugary drinks a year. Childhood obesity has more than doubled in children and tripled in adolescents in the past 30 years; in 2010, more than one-third of children and adolescents were overweight or obese. The problem is especially acute with children in California. From 1989 to 2008, the percentage of children consuming sugary drinks increased from 79% to 91% and the percentage of total calories obtained from sugary drinks increased by 60% in children ages 6 to 11. This level of consumption has had tragic impacts on community health. Type 2 Diabetes –previously only seen among adults –is now increasing among children. If the current obesity trends are not reversed, it is predicted that one in three children and nearly one-half of Latinx and African American children born in the year 2000 will develop type 2 diabetes in their lifetimes.

Allocation of \$3 Million Over Two Years, FY22 and FY23, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs)

Our community has not been immune to the challenge of unhealthy weight gain and obesity. According to the 2018 City of Berkeley Health Status Report, over a quarter of Berkeley's 5th and 7th grade students (all race/ethnicities) are overweight or obese. Berkeley has a lower proportion of 5th and 7th grade children who are overweight or obese (29.4%) compared to children in Alameda County (35.3%) but has a higher proportion compared to California (26.8%). However, a higher proportion of African-American children are overweight or obese in Berkeley compared to Alameda County or California.

Tooth decay, while not as life threatening as diabetes or obesity, still has a meaningful impact, especially on children. In fact, tooth decay is the most common childhood disease, experienced by over 70% of California's 3rd graders. Children who frequently or excessively consume beverages high in sugar are at increased risk for dental cavities. Dental problems are a major cause of missed school days and poor school performance as well as pain, infection, and tooth loss in California.

COVID-19: CURRENT SITUATION AND ITS EFFECTS

Of relevance today are the jarring statistics on the higher risk and severity of COVID-19 related to the social determinates of health for persons of color. Latinx and Black communities are disproportionately affected by COVID-19. Health disparities, as documented in the Annual Health Reports from the Berkeley Health Department, were an important impetus in the rationale for Measure D as well as the proposed use of revenues from Measure D. SSB consumption is directly related to the health conditions observed with higher rates of COVID-19. The causal link between SSB consumption and diabetes, obesity and heart disease and the relationship of these conditions to increased risk of COVID-19 makes heightens the critical nature of the SSB tax and its revenues to the reduction of health disparities in Berkeley.

A BREIF HISTORY OF MEASURE D

In November of 2014, the Berkeley voters passed Measure D, which requires both the collection of a 1 cent per ounce tax on the distribution of sugary drinks in the City of Berkeley AND the convening of a Panel of Experts (the Sugar Sweetened Beverage Products Panel of Experts--SSBPPE) to recommend investments to both reduce the consumption of sugary drinks as well as to address the health consequences of the consumption of sugary drinks.

Per the SSBPPE's charge, the SSBPPE Commission, on October 22, 2020 approved the recommendation to the Berkeley City Council for allocation of \$3 million for the period FY22 and FY23, to be made available to invest in grants programs to reduce the consumption of sugary drinks as well as a sustainable annual media campaign to address the health consequences of the consumption of sugary drinks and moved to adopt their recommendation to Council as follows:

Allocation of \$3 Million Over Two Years, FY22 and FY23, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs)

The Commission accepts and approves the Council Report and attachments as amended by the SSBPPE Commission on 10/22/2020 requesting a total allocation of \$3 million for the Healthy Berkeley Funding Program for FY 2022 and FY2023 with an annual distribution of \$1.5 million per fiscal year.

M/S/C: Commissioners Namkung / Commissioner Rose

Ayes: Commissioners Crawford, Gallegos-Castillo, Morales, Namkung, Rose, and Scheider

Noes: None

Abstain: None

Recused: None

Absent from vote: Commissioners Browne and Moore

Excused: None

Motion passed. 8:40 P.M.

ENVIRONMENTAL SUSTAINABILITY

When sugary drink consumption decreases due to the direct investments in programs and activities, the SSBPPE expects that there will be a reduction to the City's waste stream.

RATIONALE FOR RECOMMENDATION

This two year grant period supports comprehensive strategies to: a) reduce access to SSBs, b) improve access to water, c) limit marketing of SSBs to children, and d) implement education and awareness campaigns with specific populations. The two year grant period will also indicate the City of Berkeley's commitment to reducing the consumption of SSBs and improving the health of Berkeley residents, particularly those most impacted by obesity, diabetes, tooth decay, and heart disease. The funding will allow grantees to develop interventions that include education, policy, systems and environmental changes with measurable outcome data and evaluation to show the rise in public awareness about the harmful impacts of SSBs, reduce consumption of SSBs over time, and decrease the health risks among residents of Berkeley.

To have the greatest impact, the SSBPPE Commission recommends that the following populations be prioritized:

- a) Children and their families with a particular emphasis on young children who are in the process of forming lifelong habits.
- b) Children and young adults living in households with limited resources.
- c) Groups exhibiting higher than average population levels of type 2 diabetes, obesity, heart disease, and tooth decay rates.
- d) Groups that are disproportionately targeted by the beverage industry marketing.

Allocation of \$3 Million Over Two Years, FY22 and FY23, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs)

CITY MANAGER

The City supports the work of the SSBPPE and the work made possible by its allocation of general funds. The Sugar Sweetened Beverage Tax revenue totaled a net sum of \$2,840,686.22 over the course of FY19 and FY20, \$1,532,053.69 and \$1,308,632.53 respectively. The net sum for these 2 fiscal years excludes the 2% administrative fee from the third party administrator and \$42,000 to fund costs the Finance Department incurs to manage the tax revenue fund. These expenses should have been withheld in prior years but was only implemented in FY19.

Projected revenues for the sugar sweetened beverage tax is expected to decrease in FY21 and FY22 due to the impacts of the COVID-19 pandemic. In the months of FY20 prior to COVID-19 (July through February), the City collected approximately 96% of the amount that was collected in the same time period in FY19. However, in the months where COVID-19 shelter in place began (March through June), the City collected only 64% of the revenue collected in the same period from FY19, a decrease of \$79,445.42. For the first quarter in FY21, the City has collected 70% of the revenue collected in the first quarter of FY20 (pre-pandemic), a decline of \$146,451.56. The latest estimate from the Budget Office indicate that the gross revenue for FY21 is expected to be \$970,794 and \$1,401,278 for FY22. If these estimates are accurate at the end of FY21, the City will have allocated over \$750,000 in general fund in excess of the general fund generated through Measure D.

This is meant to help inform Council's discussion on these important programs; because the commission's request exceeds projected revenue, the issue would benefit from further discussion at the City's Budget and Finance Policy Committee which is recommended.

Measure D was passed as a general tax and the funds collected through this tax was not designed to be completely allocated to any specific program. Given the nature of the general tax, it is important to consider the financial impact COVID-19 has and will continue to have on City-wide operations as well as the programs supported by the allocations to help reduce the consumption of sugar sweetened beverages.

CONTACT PERSON

Dechen Tsering, MPH, Commission Secretary, HHCS, (510) 981-5394

ATTACHMENTS

1. Resolution
2. SSBPPE Commission's Criteria for BUSD Funding
3. SSBPPE Commission's Criteria for Community Agencies Funding

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

ALLOCATION: \$3 MILLION TOTAL FOR SUGAR-SWEETENED BEVERAGE CONSUMPTION AND REDUCTION GRANT PROGRAM IN FY22 AND FY23

WHEREAS, the consumption of sugar-sweetened beverages (“SSB”) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, in FY22 and FY23, the City Council awarded a total of \$3 million upon the recommendation of the SSBPPE Commission to demonstrate the City’s long-term commitment to decreasing the consumption of SSB and mitigate the harmful impacts of SSB on the population of Berkeley; and

WHEREAS, many studies demonstrate that high intake of SSB is associated with risk of Type 2 Diabetes, obesity, tooth decay, and coronary heart disease; and

WHEREAS, the above conditions are all demonstrated to increase both the severity of COVID19 related illness and risk of death; and

WHEREAS Latinx and Black communities are disproportionately affected by COVID-19; and

WHEREAS, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color; and

WHEREAS, an African American resident of Berkeley is 14 times more likely than a White resident to be hospitalized for diabetes; and

WHEREAS, 40% of 9th graders in Berkeley High School are either overweight or obese; and

WHEREAS, tooth decay is the most common childhood disease, experienced by over 70% of California’s 3rd graders; and

WHEREAS, in 2012, a U.S. national research team estimated levying a penny-per-ounce tax on sweetened beverages would prevent nearly 100,000 cases of heart disease, 8,000 strokes, and 26,000 deaths over the next decade and 240,000 cases of diabetes per year nationwide.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to allocate \$3 million from the General Fund to be disbursed in two (2) installments of \$1.5 million in FY22 and \$1.5 million in FY23 and invested as follows:

1. Allocate up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened

beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs for the period, July 1, 2021 to June 30, 2023; and

2. Allocate at least 42.5% of the allocated funds through a RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE's goals to reduce the consumption of SSB and to address the effects of SSB consumption for the period, July 1, 2021 to June 30, 2023; and
3. Allocate 15% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data resulting from the SSBPPE funding program.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.



Sugar-Sweetened Beverage
Product Panel of Experts - (SSBPPE)

The SSBPPE Commission's Criteria for Berkeley Unified School District (BUSD) Funding

The SSBPPE Commission adopts the following recommendations to City Council for a grant proposal process for BUSD. This recommendation is separate from the SSBPPE Community Grants Request for Proposal (RFP) process. Only BUSD is eligible for this funding. A district proposal must conform to the criteria below and must be adopted by the school board.

Definition:

BUSD Schools are defined as any BUSD school or program from early childhood education through high school including out-of-school care programs and family engagement.

The SSBPPE Commission recommends:

- 1. Up to 42.5% of the total allocation of the City Council's funding to reduce the consumption of Sugar-Sweetened Beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The SSBPPE will consider and recommend full or partial funding depending on the proposed outcomes. The SSBPPE recommends two year grants for FY22 and FY23.**
 - a. Priority Areas and Activities:**
 - i. Reducing access to SSBs;
 - ii. Improving access to drinking water;
 - iii. Implementing widespread education and awareness programs at all grade levels to reduce SSB consumption at BUSD. Education may include skills and practical experiences in developing and implementing policy as appropriate for grade level;
 - iv. Assessing current policies that impact student SSB consumption in school and outside of school. Make recommendations for changes to strengthen current policies and implement new policies to reduce SSB consumption inside and outside of school.
 - b. Priority Populations:**
 - i. Children and their families; pre-school through high school;
 - ii. Children and young adults living in households with limited resources;
 - iii. Groups exhibiting higher than average population levels of type 2 diabetes, obesity, heart disease, COVID19, and tooth decay;
 - iv. Groups that are disproportionately targeted by the beverage industry marketing.

A Vibrant and Healthy Berkeley for All

c. The highest priority outcomes that should be tracked and measured for beneficiaries of funded programs include:

- i. Reduced access to SSBs;
- ii. Increased access to drinking water;
- iii. Increased knowledge and awareness of the health risks (oral health, diabetes, and obesity) of consuming sugary drinks. Changes in attitudes reflecting a preference for water or other non-sugary drinks among BUSD students and staff;
- iv. Decreased consumption of sugary drinks among BUSD students and staff;
- v. Development and adoption of new policies to decrease SSB consumption, inside and outside of school, as well as changes to strengthen current policies.

2. The Grant Process: City staff will provide opportunities for technical assistance during the grant application process.

a. Proposal Requirements:

- i. Proposals must reflect approval from the BUSD School Board.
- ii. BUSD will not sell or serve sugar-sweetened beverages (as defined by the SSB tax) at any BUSD schools or campuses.
- iii. Awarded funding will not supplant BUSD FY22 and FY23 General Fund allocations.
- iv. Funded projects will publicly reflect support from Healthy Berkeley Program.
- v. Funded projects and programs will include evaluation of their process and outcomes.
- vi. The proposal timelines and budgets will be specific, measurable, achievable, realistic, and timebound (SMART)

b. Criteria for proposal: The following criteria will be considered, although not exclusively, in determining which proposals are funded. Proposal aims:

- i. Implementing widespread education and awareness programs at all grade levels to reduce SSB consumption at BUSD, including discussion of school policies around SSBs as appropriate for grade level; (20%)
- ii. To decrease access to SSBs and/or improve access to drinking water. (15%)
- iii. To increase or strengthen SSB policies in school and outside of school. (20%)
- iv. To support the annual administration of the Berkeley adapted Youth Behavior Survey to evaluate student's SSB knowledge, consumption, access, and policy perceptions. (20%)
- v. To document how students at all grade levels and in priority populations are included. (15%)
- vi. Proposal budget matches the work plan and is feasible. (10%)



SSBPPE Commission's Funding Criteria for Community Agency Grants

Sugar-Sweetened Beverage
Product Panel of Experts - (SSBPPE)

Recommended actions to reduce Sugar-Sweetened Beverage (SSB) consumption and decrease health disparities.

1. Minimum of 42.5% of the total allocation by the City Council's funding to reduce the consumption of sugar sweetened beverages (SSB's) be invested in grants for community-based programs for FY22 and FY23. A two year commitment will help to stabilize program design and implementation and will result in better outcomes to reduce SSB consumption.

a. The types of interventions that should be prioritized for support include actions to:

- i. Reduce access to SSBs;
- ii. Improve access to water;
- iii. Implement education and awareness campaigns with specific populations, including measurable outcome data;
- iv. Develop and support policies to reduce SSB consumption; and
- v. Address the health effects of the consumption of sugary drinks.

b. Priority populations:

- i. Children and their families with an emphasis on young children who are in the process of forming lifelong habits;
- ii. Children and young adults living in households with limited resources;
- iii. Groups exhibiting higher than average population levels of type 2 diabetes, obesity, heart disease, COVID19, or tooth decay rates;
- iv. Groups that are disproportionately targeted by beverage industry marketing.

c. The highest priority outcomes that should be tracked and measured for beneficiaries of funded programs include:

- i. Increases in knowledge of the health risks of consuming sugary drinks;
- ii. Changes in attitudes reflecting a preference for water or other non-sugary drinks;
- iii. Decreased consumption of sugary drinks; and
- iv. Adoption of new policies, or strengthening of current policies, to reduce consumption of SSBs.

d. Organizations that are prioritized to apply for funding include:

- i. Berkeley-based organizations and service providers serving the population of Berkeley.

- ii. Non-profit (501(c)(3) or groups with a fiscal sponsor.
- iii. Berkeley Unified School District (BUSD) programs will only be able to access BUSD specified funding.

2. The Grant Process:

- i. Every effort should be made to simplify the SSB grant process.
- ii. City staff should make available opportunities for technical assistance for first time applicants.

a. Requirements for receiving a grant:

- i. Funded organizations must have, or agree to adopt, an organizational policy prohibiting the purchase, selling, or serving of SSBs.
- ii. Awarded funding will not supplant any existing funding.
- iii. Funded projects will publicly reflect support from City of Berkeley Healthy Berkeley Program.
- iv. The project will include methods to evaluate its process and outcomes based on SMART objectives (specific, measurable, achievable, realistic and timebound).

b. Criteria for ranking proposals: The following criteria will be considered, although not exclusively, in determining which proposals are funded:

- i. Proposal aims to reduce access to SSBs, improve access to water and/or address the health effects of the consumption of sugary drinks. (20%)
- ii. Proposal includes education and awareness about the health effects of SSBs. (20%)
- iii. Proposal must include developing and implementing policies to decrease consumption of SSBs and/or strengthening current SSB policies. (30%)
- iv. Proposal reaches people and communities in the priority populations. (20%)
- v. Proposal budget matches the work plan and is feasible. (10%)

CONSENT CALENDAR

December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *JW*

Subject: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded

RECOMMENDATION

We recommend City Council request that the City Manager report back by June 15, 2021, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Public Works Department.

CURRENT SITUATION AND ITS EFFECTS

Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase. Continuing with the current level of funding, the Paving Conditions Index (PCI) will move from 59 in 2018 and reach an estimated low of 52 by 2023. In addition, if the City simply maintains the current level of funding, the deferred maintenance costs will increase to an estimated \$328 million by 2023. This estimate represents just the cost for paving streets, it does not include the additional 15-25 percent needed to implement the City's Complete Streets Policy. Our report notes that this is one area of concern as prior paving cost projections have not included Complete Streets costs yet paving funds have been spent to implement Complete Streets. In 2018, a City contractor estimated the City would need an average of \$17.3 million annually to maintain the current PCI or an average of \$27.3 million annually to increase PCI by five points in five years. Revenue decreases from COVID-19 may contribute to further declines in street condition.

The Streets Rehabilitation and Repair Policy has not been updated since 2009. Public Works is no longer following the policy to guide annual updates to the Five-Year paving plan. For example, from 2014 to 2020, on average, collector streets were significantly underfunded according to the policy. Furthermore, Council decisions such as prioritizing bikeways are also not reflected in the current policy. Decision makers must balance a myriad of considerations in making complex decisions about street paving. Equity is currently not defined in the policy. Additionally, the policy is not guided by clear goals or performance measures. Without a clear and updated policy, Public Works and City Council are not able to make fully informed or transparent decisions regarding annual street paving. This may lead to inefficiencies and inequities in street paving.

BACKGROUND

Berkeley streets have an asset replacement value of approximately \$777,567,000, and deferred maintenance needs of streets exceeded \$251 million in 2019. It is the responsibility of the City

to maintain Berkeley's infrastructure for residents, and it is the goal of the Street Rehabilitation Program to maintain a safe street surface for vehicles, bicycles, transit, and pedestrians. Berkeley has the 15th worst Pavement Condition Index (PCI) out of 101 cities in the nine county jurisdiction covered by Metropolitan Transportation Commission (MTC) with a score of 57 in 2017.

ENVIRONMENTAL SUSTAINABILITY

While they are beyond the scope of our audit, there are environmental impacts associated with deteriorating street conditions.

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will increase transparency of how paving decisions are made, and enable decision makers to make efficient, effective, and equitable paving decisions.

CONTACT PERSON

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

Attachments:

- 1: Audit Report: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded

Audit Report
November 19, 2020

Rocky Road: Berkeley Streets at Risk and Significantly Underfunded



BERKELEY CITY AUDITOR



Rocky Road: Berkeley Streets at Risk and Significantly Underfunded

Report Highlights

November 19, 2020



Findings

1. Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase. In 2018, Berkeley had a Pavement Condition Index (PCI) rating of 59 out of 100. Continuing with the current level of funding, the PCI will reach an estimated low of 52 by 2023. In addition, the current level of funding would also increase deferred maintenance costs to an estimated \$328 million by 2023. In 2018, a City contractor estimated the City would need an average of \$17.3 million annually to maintain the current PCI or an average of \$27.3 million annually to increase PCI by five points in five years. Revenue decreases from COVID-19 may contribute to further declines in street condition.
2. The Streets Rehabilitation and Repair Policy has not been updated since 2009. Public Works is no longer following the policy to guide annual updates to the Five-Year Street Rehabilitation Plan and there is no mention of equity in the policy. Additionally, the policy is not guided by clear goals or performance measures. Without a clear and updated policy, Public Works and City Council are not able to make fully informed or transparent decisions regarding annual street paving. This may lead to inefficiencies and inequities in street paving.

Objectives

1. Are there sufficient resources for maintaining Berkeley's streets?
2. Are there clear policies and processes to guide street paving decisions?

Why This Audit Is Important

Berkeley streets have an asset replacement value of approximately \$777.6 million, and deferred maintenance needs of streets exceeded \$251 million in 2019. It is the responsibility of the City to maintain Berkeley's infrastructure for residents, and it is the goal of the Street Rehabilitation Program to maintain a safe street surface for vehicles, bicycles, transit, and pedestrians. Berkeley has the 15th worst Pavement Condition Index (PCI) out of 101 cities in the nine county jurisdiction covered by Metropolitan Transportation Commission in 2017.



Recommendations

We recommend that the Public Works Department regularly calculates how much money is needed to address the goals of the Streets Rehabilitation Program and identify funding sources to meet those goals. We also recommend that the Public Works Department updates the Street Rehabilitation and Repair Policy with goals and performance measures, and an accurate prioritization of funding.



BERKELEY CITY AUDITOR

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

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Page 25	Appendix I — Methodology and Statement of Compliance
Page 27	Appendix II — Recommendations and Management Response

Introduction

We identified the City’s aging infrastructure as an immediate concern to City operations, safety, and strategic planning in our 2020 Audit Plan. Berkeley streets have an asset replacement value of approximately \$777.6 million. The City failed to pave any streets in 2018 after sending out construction bids late, even though the City had set aside \$8.6 million for repairs. The City went out to bid again to complete the 2018 street rehabilitation projects in 2019. The total impact of the delay of paving in 2018 on street condition and deferred maintenance costs is unclear. However, any delay of paving means that the condition of Berkeley’s streets, which are not very good to begin with, will deteriorate further. Ultimately, the longer the City takes to repair streets, the more costly the repairs become. We, therefore, included a performance audit of the City’s Street Rehabilitation Program in our 2020 Audit Plan.

Berkeley streets are used by cars, buses, bicyclists, pedestrians, and others. The deterioration of pavement also has economic costs for users of the road. Potholes can cause damage to car tires, wheels, and suspensions. Hitting a pothole or making a quick decision to avoid a pothole can also lead to a collision resulting in more costly damage, personal injuries, or worse. According to TRIP, a national transportation research group, the additional average annual vehicle operating costs of driving on roads in need of repair in the San Francisco-Oakland area is approximately \$1,049. This includes vehicle repair costs, accelerated vehicle deterioration and depreciation, increased maintenance costs, and additional fuel consumption. Furthermore, people with disabilities often have unique transportation needs and may be more impacted by streets in poor condition. People with disabilities represent 15 percent of Berkeley’s residents and visitors.¹

Objectives, Scope, and Methodology

Our objectives were to determine:

1. Are there sufficient resources for maintaining Berkeley’s streets?
2. Are there clear policies and processes to guide street paving decisions?

¹ In October 2020, the Commission on Disability presented a framework to City Council to guide the City’s decision-making in order to create a fully navigable, inclusive city for people with disabilities. https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-20_Special_Item_01_Proposed_Navigable_Cities_Framework_pdf.aspx

We examined the Berkeley’s Street Rehabilitation Program for fiscal years (FY) 2014 through 2020. We assessed funding levels and pavement condition index (PCI), and evaluated policies and plans. We specifically assessed internal controls relative to the audit objectives. This included a review of selected policies and procedures, as well as interviews with staff from the Public Works Department. In performing our work, we identified concerns about the program’s outdated policies, and insufficient resources, planning, and communication to ensure that Berkeley’s streets are appropriately paved and maintained. While we assessed the fiscal impact of pavement condition, our analysis did not include the external costs on vehicles or safety associated with street condition. For more information, see p. 26.

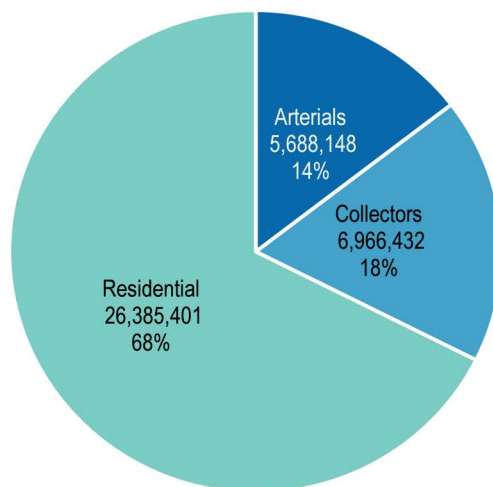
Background

Berkeley maintains approximately 215 centerline miles of paved streets within the city limits, which include:

- **Arterials**, which carry the most car, truck, and bus traffic, and typically provide an outlet onto state highways and freeways; they also function as alternatives to highways and freeways to relieve traffic congestion;
- **Collectors**, which serve to “collect” traffic from the residential streets and deposit them onto arterials; and
- **Residential** streets and roads that run through neighborhoods and carry few buses or trucks, other than refuse vehicles.

Figure 1. Most of Berkeley’s Paved Streets Are Residential

Area of Pavement, by Street Type (square feet)



Source: Pavement Engineering Inc. 2018 Report

Berkeley’s Streets and Utilities Division of the Public Works Department maintains and repairs the City’s streets, curbs, sidewalks, sewers, and storm water infrastructure. The purpose of the Street’s Rehabilitation Program is to maintain a safe street surface for vehicles, bicycles, transit, and pedestrians. Funding for Streets Rehabilitation is allocated as part of the City’s Capital Improvement Program budgeting process.

Pavement Condition Index

The Metropolitan Transportation Commission (MTC) is the federally designated metropolitan planning organization for the nine-county San Francisco Bay Area. MTC and local jurisdictions use the Pavement Condition Index (PCI) as a measure that rates segments of paved roadways on a scale of 0 to 100 with condition categories ranging from a low of “failed” to a high of “excellent”.

Figure 2. Examples of Berkeley Streets by Pavement Condition Index (PCI) Classification

Very Good-Excellent (100-80)	Good (79-70)	Fair (69-60)
<p>Pavements are newly constructed or resurfaced and have few if any signs of distress.</p> <p>Photo: PCI 98, Arterial</p>	<p>Pavements require mostly preventive maintenance and have only low levels of distress, such as minor cracks or spalling, which occurs when the top layer of asphalt begins to peel or flake off as a result of water permeation.</p> <p>Photo: PCI 74, Collector</p>	<p>Pavements at the low end of this range have significant levels of distress and may require a combination of rehabilitation and preventive maintenance to keep them from deteriorating rapidly.</p> <p>Photo: PCI 63, Collector</p>
		
At Risk (59-50)	Poor (49-25)	Failed (24-0)
<p>Pavements are deteriorated and require immediate attention including rehabilitative work. Ride quality is significantly inferior to better pavement categories.</p> <p>Photo: PCI 50, Residential Street</p>	<p>Pavements have extensive amounts of distress and require major rehabilitation or reconstruction. Pavements in this category affect the speed and flow of traffic significantly.</p> <p>Photo: PCI 39, Residential Street</p>	<p>Pavements need reconstruction and are extremely rough and difficult to drive.</p> <p>Photo: PCI 20, Residential/Bike Boulevard</p>
		

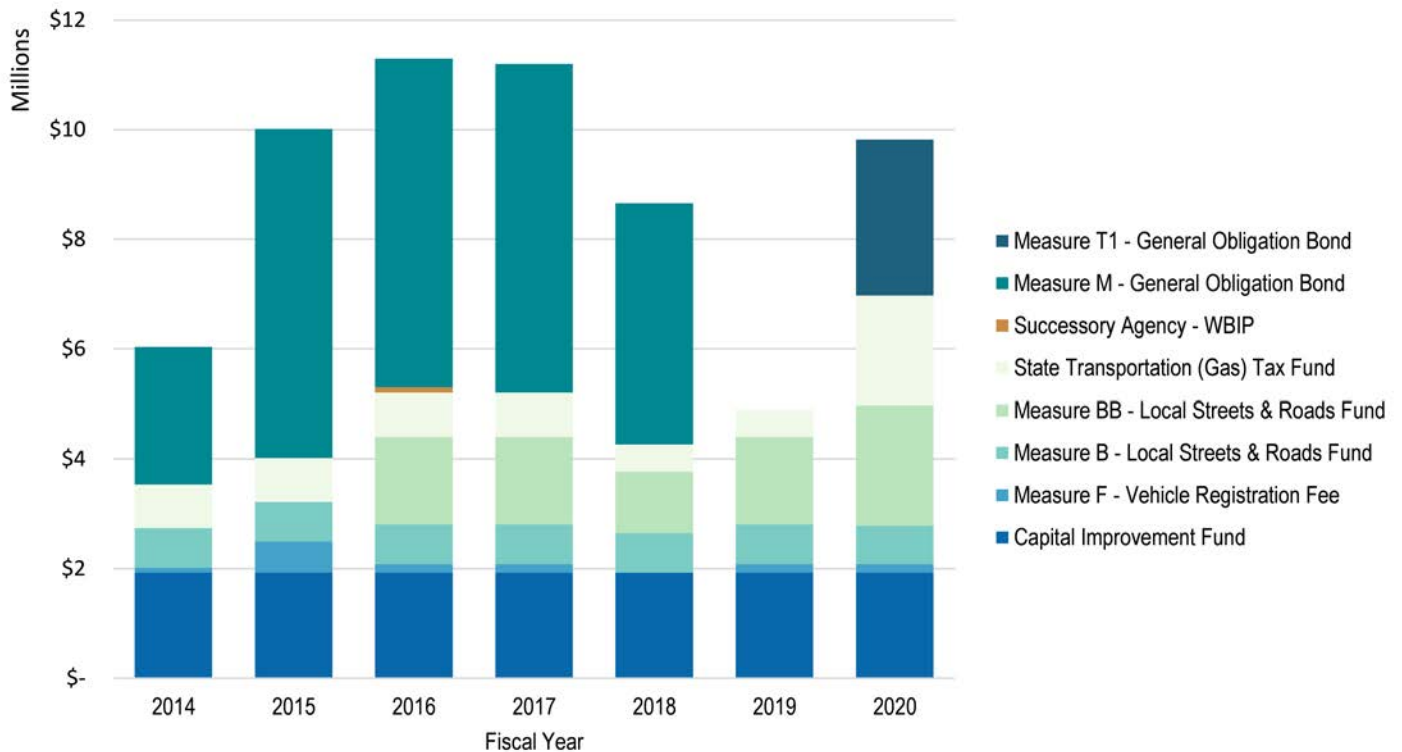
Sources: Metropolitan Transportation Commission and Auditor analysis of StreetSaver data. Photos by audit staff, Anne Pardee (poor condition), and Seena Hawley (failed condition).

Funding

Funding for Berkeley’s Street Rehabilitation Program comes from a combination of federal, state, and local sources. The Street Rehabilitation Program is funded by:

- State Transportation (Gas) Taxes,
- Road Repair and Accountability Act of 2017 (SB1),
- Measure B – Local Streets and Roads Fund,
- Measure BB – Local Streets and Roads Fund,
- Measure F – Vehicle Registration Fee,
- General obligation bonds, and
- The City’s Capital Improvement Fund.²

Figure 3. Berkeley’s Street Rehabilitation Program Funded by State and Local Sources



Source: Berkeley Capital Improvement Programs FY 2014-15, 2016-17, 2018-19, and 2020-21

Note: The Capital Improvement Fund is the City’s General Fund allocation to the Capital Program.

The revenue streams that fund the Street Rehabilitation Program are also used to fund the City’s transportation improvements, traffic calming, Complete Streets projects, signal maintenance and improvements, transit area improvements, sidewalk maintenance and capital improvements, and storm drainage and green infrastructure improvements.

² The Capital Improvement Fund is the City’s allocation of General Fund money to the Capital Program. This funding supports and supplements the capital improvements that do not have other funding sources regularly available.

Policy

The Streets Program is governed by the Streets Rehabilitation and Repair Policy. The policy states that the City must establish a Five-Year Street Rehabilitation Plan (Paving Plan) to be adopted by Council that makes use of available funding and sets priorities for streets in accordance with their use. Additionally, there are other City plans that have objectives related to street use and design including Berkeley's Strategic Transportation Plan, Climate Action Plan, Local Hazard Mitigation Plan, Vision 2050, Vision Zero, and the Pedestrian and Bike Plans that can impact when streets are paved.

Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase.

Berkeley’s street pavement condition is in “at risk” condition with a PCI rating of 59. According to the planned Capital Improvement Program streets budget for FY 2021-2024, the City estimates that recurring funding will remain around \$7 million per year and there will be no increase in Capital Improvement Funding. Continuing with the current level of funding will cause street condition to decline even further, with PCI reaching an estimated low of 52 by 2023. In addition to the continued deterioration of pavement condition, the current level of funding would also increase deferred maintenance costs to an estimated \$328 million by 2023. In 2018, a City contractor estimated the City would need \$17.3 million annually to maintain the current PCI or \$27.3 million annually to increase PCI by five points in five years. Revenue decreases due to COVID-19 may contribute to further declines in street condition.

Berkeley’s pavement condition is well below the regional goal of 75.

According to 2018 updates to StreetSaver, the City’s pavement management system, Berkeley’s overall PCI was 59. Pavement in this condition is past the point where condition can be improved with preventative maintenance and more costly rehabilitation work is needed. As part of the Transportation 2035 Plan, MTC adopted the regional performance objective to maintain a PCI of 75 or greater for local streets and roads. Berkeley has the 15th worst PCI out of the 101 cities in the nine county jurisdiction covered by MTC.³ Over 19 percent of Berkeley’s streets are in a failed condition.

The City has not invested more recurring funding in street paving, even as PCI remains low and deferred maintenance costs increase.

While the City has secured general obligation bonds to improve aging infrastructure throughout Berkeley, the City has not invested more recurring local dollars in street paving. Actions taken by voters in recent

— — — — — “At risk” is a classification of pavement condition

that means pavements are deteriorated and require immediate attention including rehabilitative work. Streets in this classification are past the point where condition can be improved with preventative maintenance. Ride quality is significantly inferior to better pavement categories. (Source: Metropolitan Transportation Commission)

Figure 4. Pavement Condition Index (PCI) of Bay Area Cities Near Berkeley

City	2017 PCI*	Condition
El Cerrito	84	Very Good
Emeryville	77	Good
Alameda	72	Good
San Francisco	70	Good
Richmond	62	Fair
Albany	59	At Risk
Berkeley	57	At Risk
Oakland	55	At Risk

*This is the three-year moving average. Year 2017 is the most recent year available of comparative data.

Source: The Pothole Report: Bay Area Roads at Risk, September 2018 by Metropolitan Transportation Commission (MTC)

³ The nine counties under MTC jurisdiction are Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

years have provided an important short-term boost to the resources available for streets:

- In 2012, Berkeley voters passed Measure M to secure \$30 million in bonds to fund street paving and greening infrastructure projects.
- In 2016, Berkeley voters approved \$100 million in general obligation bonds to improve aging City infrastructure through Measure T1. City Council is ultimately responsible for discussing and approving the T1 project plans presented by staff. As of November 2019, approximately \$36.8 million T1 funds were allocated by Council to projects throughout the City. Approximately \$9.9 million of the \$36.8 million T1 funds allocated went to Complete Streets projects. The remaining funds were spent on improvement to facilities and buildings, citywide safety, and green infrastructure projects.

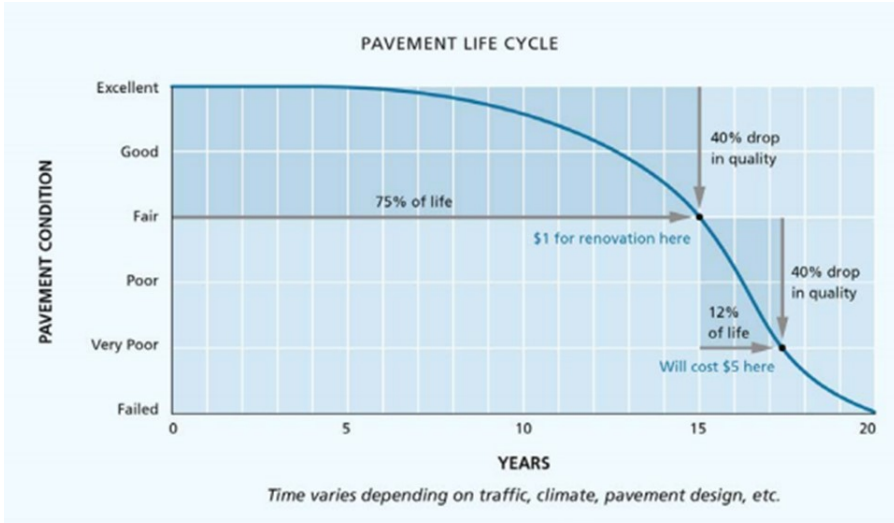
Despite the additional funds from Measure M and T1 going to streets projects, PCI increased only slightly from 58 in 2011 to 59 in 2018 and street infrastructure needs continue to exceed available funds. The minimum deferred maintenance needs in street paving exceeded \$251 million in 2019, up from \$111 million in 2014.⁴ We do not know the exact cause of this increase, however, we do know that regular maintenance of roads is five to ten times cheaper than full rehabilitation of pavement after it has fallen below a certain threshold. Based on what we know about the condition of Berkeley streets and the lack of funding, this likely can explain a portion of this significant increase in deferred maintenance over such a short time frame. A complete audit of that estimate was beyond the scope of this report. What is clear is that significant additional funding is needed to address the growing backlog of deteriorating streets.



Complete Streets is a design approach that Council adopted in December 2012 in which improvements to the entire street, from sidewalk to sidewalk, are considered for any transportation project. While there is no standard template for applying this approach, common elements typically include bike lanes, sidewalk bike racks, transit stops, pedestrian signals, street trees, and curb ramps.

⁴ According to Pavement Engineering Inc.'s (PEI) 2018 report, an initial investment of \$252 million in 2019 and an average of \$3 million in the following 4 years would have eliminated deferred maintenance and increased the PCI from 59 to 84.

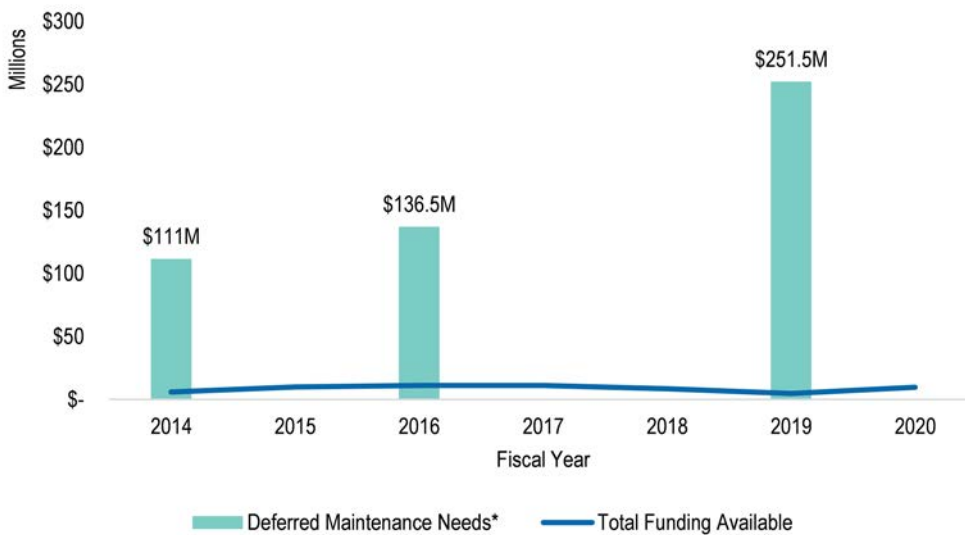
Figure 5. It is Much Cheaper to Maintain Streets than to Rehabilitate Failed Streets



Source: Metropolitan Transportation Commission Pothole Report III 2018

According to MTC, the most cost-effective way to maintain a street is to address cracks in the pavement surface as soon as they appear. Regular maintenance of roads is five to ten times cheaper than allowing roads to fail and then paying for the necessary rehabilitation. Jurisdictions that spend most of their paving budget to fix a few failed streets, instead of proactively maintaining a larger percentage of the street network that is in good condition, are practicing a “worst first” strategy. This approach is cost prohibitive and will allow deferred maintenance on good roads to lead to more costly repairs later on.

Figure 6. Deferred Maintenance Has Grown to Over \$250 Million as Annual Funding Remains Insufficient



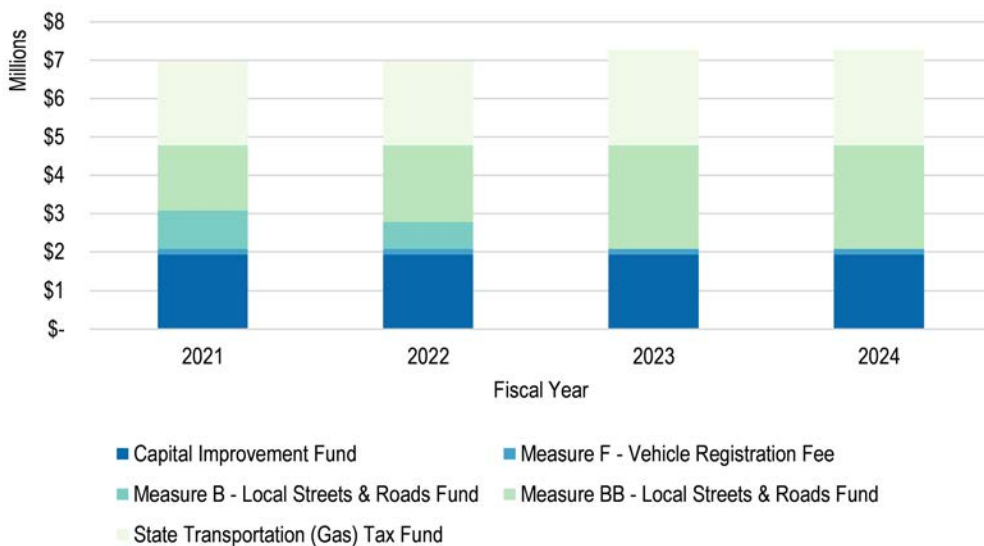
*Represents the budget required based on the “needs” of the system and assumes all pavements are treated at their optimum timing.

Sources: City of Berkeley Capital Budgets and Pavement Management Certifications

Note: Deferred maintenance needs calculation was not available for all years.

According to the Fiscal Year 2020 Capital Improvement Program, the City estimates that the amount of recurring funding available for the Streets Rehabilitation Program will remain around \$7 million per year, and there will be no increase in Capital Improvement Fund contributions. The City’s contributions of Capital Improvement Funds, which comes from the General Fund, to Street Rehabilitation has remained stagnant at \$1.925 million per year since 2014. This number has not kept pace with inflation. To achieve the same amount of paving in 2020 as 2014, the City would need to have invested \$2.123 million.⁵

Figure 7. Recurring Streets Funding Will Remain Around \$7 Million per Year Through 2024



Source: City of Berkeley Capital Budget FY 2020

Note: This does not include T1 funding.

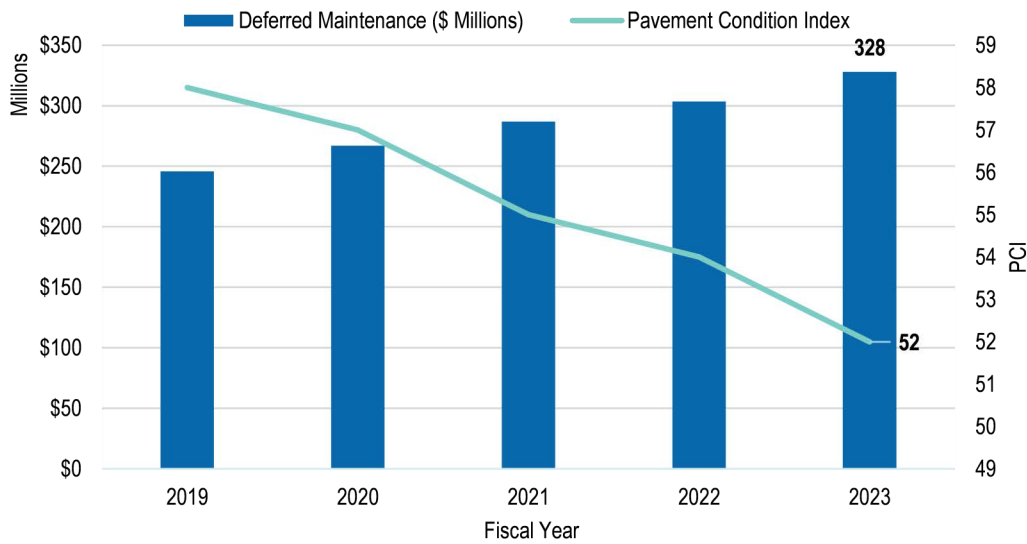
At the current level of funding, streets will continue to deteriorate and the backlog of maintenance will continue to grow. Deferred maintenance of street paving is on track to reach an estimated \$328 million by 2023, and the City’s PCI is estimated to decline to 52.

The City’s contributions of Capital Improvement Funds, which come from the General Fund, to the entire Capital budget decreased from \$5.8 million in FY 2014 to only \$5 million in FY 2020. Due to additional funding sources, the overall Capital budget increased from \$26.3 million in FY 2014 to \$111.3 million in FY 2020.⁶ However, there is still a huge funding shortfall to address the City’s infrastructure needs. The City’s Vision 2050 Initiative Report includes an action item for the City Manager to identify resources to double the City’s capital investment.

⁵This calculation was made using the Bureau of Labor Statistics CPI inflation calculator. https://www.bls.gov/data/inflation_calculator.htm#

⁶The FY 2020 Capital budget includes a \$49.8 million allocation for Tuolumne Camp.

Figure 8. Pavement Condition Index Will Decline and Deferred Maintenance Costs Will Increase at Current Funding Levels



Source: Pavement Engineering Inc. Report September 2018

Note: Deferred Maintenance represents the budget required based on the "needs" of the pavement system. Assumes all pavements are treated at their optimum timing and does not include the costs to conduct Complete Streets projects.

Streets Rehabilitation Program funding is spent on more than just paving costs.

According to the Public Works Department, approximately 15-20 percent of project funds are spent on personnel and consultant costs for design, project management, and survey. Even though individual paving projects appear in one year on the Five-Year Paving Plan, they actually run on a two year timeline. In the first year, a paving project is designed, and in the second year, the actual construction happens. A significant portion of the construction budget is spent on other street improvements. Between FY 2014-2019, only about 70 percent of construction costs for Annual Street Paving projects were spent directly on paving. The remaining 30 percent was spent on the construction of storm drain and green infrastructure, ADA and traffic-related improvements, retaining walls, and concrete (curbs, gutters, and sidewalks).

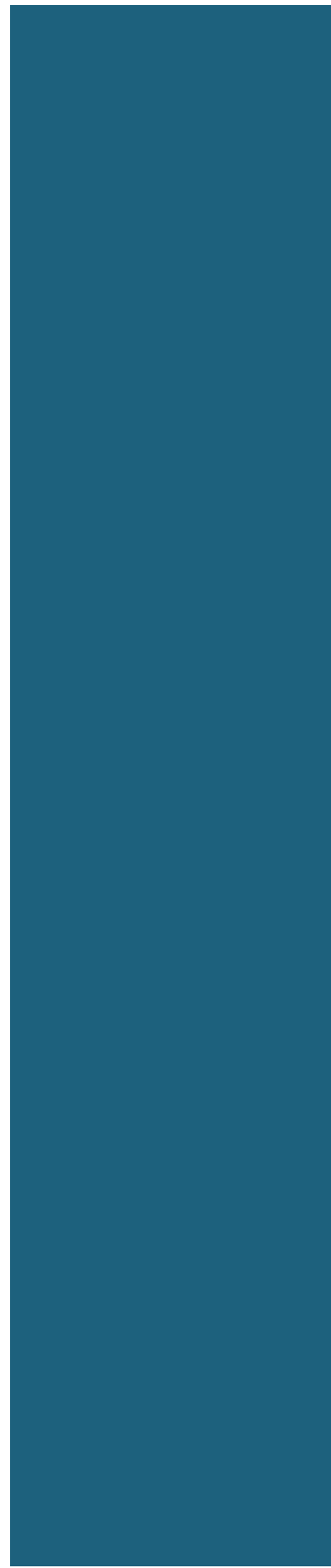
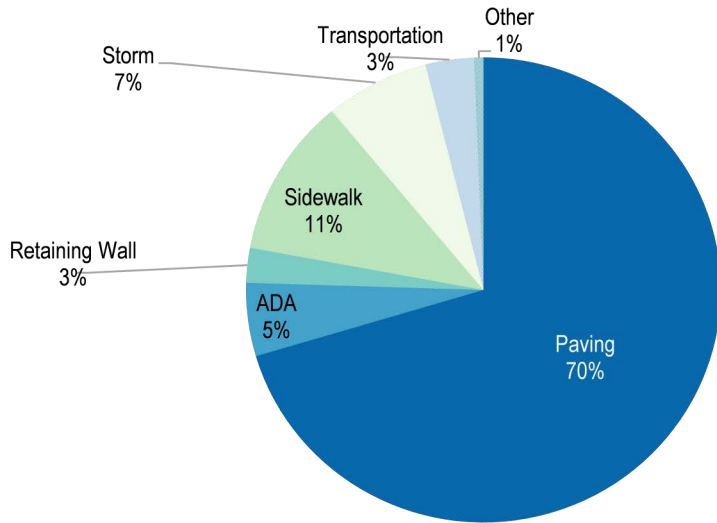


Figure 9. Not All Construction Costs Spent on Paving



Source: Auditor analysis

Berkeley adopted a Complete Streets policy in December 2012. According to the policy, Complete Streets infrastructure should be incorporated into all planning, funding, design, approval, and implementation processes for any streets projects. MTC estimates that a Complete Streets project can average additional costs of 15-25 percent, including pavement and non-pavement costs. The City did not contribute additional Capital Improvement Fund dollars to implement the Complete Streets Policy. In fact, Capital Improvement Fund contributions to streets capital declined from \$2.8 million in FY 2013 to \$1.9 million in FY 2014 and has remained below FY 2013 levels since.

In 2018, an MTC contractor estimated \$136.5 million were needed to increase PCI by five points.

If the City wants to address the deferred maintenance needs while also improving the condition of the streets, Pavement Engineering Inc. (PEI) estimated that the City would need to secure Street Rehabilitation Program funding at \$27.3 million per year over five years. With an average investment of \$27.3 million per year, PEI estimated that in five years the City could raise the PCI from 59 to 64 and decrease deferred maintenance by \$16.6 million.⁷

Why was Measure M not enough to fix our streets?

The City asked voters in 2012 for \$30 million in general obligation bonds to address paving needs as well as storm water and green infrastructure improvements. Only a portion of Measure M funds were spent directly on paving costs. It is unclear why the City only went out for \$30 million.

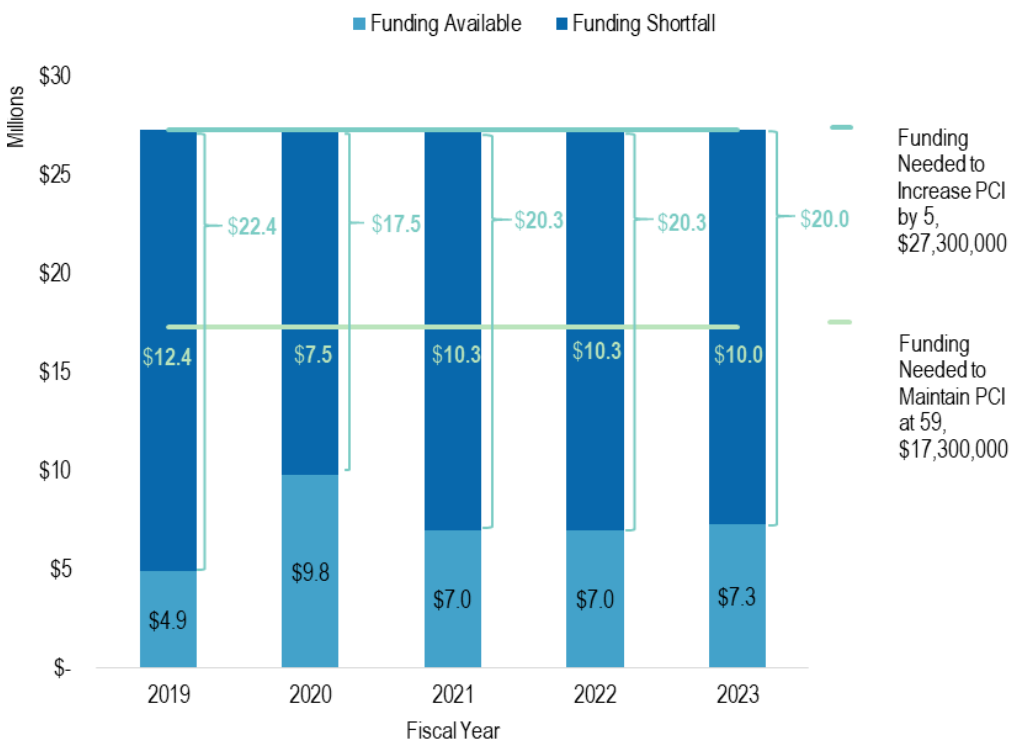
In our 2011 audit of streets, we found that the City needed \$54 million to spend just on paving to improve Berkeley's average street condition from a PCI of 58 to a PCI of 75. This audit work was conducted prior to the adoption of the Complete Streets policy and did not take into account the additional project costs that come with the Complete Streets approach. In addition to the \$54 million, the City would have also needed approximately 15-25 percent or \$8.1-\$13.5 million more to account for Complete Streets project costs. The Auditor warned that the funding of the bond measure along with other available funding would not improve the PCI and the most deteriorated streets would be left to fail.

⁷ This does not include the cost to conduct Complete Street projects.

PEI’s budget analysis was based on maintenance and rehabilitation strategies developed by City staff, available funding, and base construction unit prices adjusted to include the financial impact of design, construction management, contingencies, and other relevant construction costs (e.g., ADA ramps, curb and gutters, striping, etc.). This analysis was conducted in 2018 and the estimates would need to be adjusted for any changes that have occurred since then, to provide a more accurate estimate based on current and future needs, funding, and strategies.

To maintain the PCI at 59, PEI estimated that that City will need an average of \$17.3 million in annual funding over five years. Even with \$17.3 million in dedicated funding, streets that are not maintained will continue to deteriorate and the deferred maintenance costs will continue to grow.

Figure 10. An Estimated Additional \$10 Million Needed per Year to Maintain Pavement Condition Index



Source: Auditor analysis of data from City of Berkeley Capital Budgets FY 2014-2020 and Pavement Engineering Inc. Report, September 2018

A lack of sufficient funding is not unique to Berkeley, but other jurisdictions are doing better.

MTC reported in 2018, that as Bay Area roads have continued to age and the need for maintenance grows, available funding has decreased, leading to more deferred maintenance and more costly repairs. Money for street rehabilitation

PEI is an MTC consulting partner that was responsible for updating Berkeley’s Pavement Management System, StreetSaver, and identifying maintenance and rehabilitation needs and costs in 2018. The purpose of StreetSaver is to track inventory, store pavement condition history, and produce budget estimates to optimize funding for improving pavement condition. While this tool is useful, it does have limitations. StreetSaver helps the City identify candidate streets for maintenance and repair. It cannot provide detailed designs for street improvements. Additional analysis on a project level can help further optimize the City’s Street Rehabilitation funds.

and maintenance traditionally comes from a range of sources, including state gas tax, county sales tax, and local sources.

In 2017, the state Legislature passed Senate Bill 1 (SB1) establishing a transportation funding package estimated to generate more than \$52 billion for statewide improvements. Half of these funds are dedicated to fixing local streets and transportation infrastructure, and the other half is dedicated to state highway and transportation infrastructure.

This has shown the State’s commitment to improving infrastructure for transportation and specifically the investment in improving roads, after decades of disinvestment. Even with the passage of SB1 in 2017, California’s gas tax has seen a 46 percent drop in purchasing power since 1963. More funding is necessary to reach the MTC goal of “good” PCI, and lack of sufficient funding remains a challenge for MTC and local governments.

While every city in MTC’s jurisdiction has faced the same challenges with funding from the State, some cities have been more successful in securing adequate local funding to improve street condition. El Cerrito, Moraga, and Orinda have all secured additional sales tax revenue through ballot measures to finance street repair and rehabilitation. Since sales taxes disproportionately impact lower income residents, a sales tax may not be the best solution for Berkeley. However, the City does need to secure additional stable funding sources for streets. El Cerrito was able to improve PCI from 48 to 85 in less than five years. Moraga’s three-year moving average PCI score increased 10 points from 58 for 2012-2014 to 68 for 2015-2017. Orinda was able to improve their three-year PCI score from 49 to 60 over the same period.

COVID-19 will impact available funding for street paving.

Due to COVID-19 economic impacts, the City is facing a decrease in revenue. Public Works predicts a decrease of \$1.13 million in FY 2020 and \$1.06 million in Fiscal Year 2021 in street funding from state transportation tax, SB1, Measure B, and Measure BB funds. This could impact the Five-Year Paving Plan by decreasing the size of planned rehabilitation projects. However, Public Works will be able to maintain street maintenance operations at the current level.

In 2006, El Cerrito’s streets were in poor condition with a PCI of 48 and deferred maintenance costs of over \$21 million. In less than five years, the city had boosted its PCI to 85. They were able to improve the pavement conditions so much and so quickly with bond proceeds, sales tax revenue, and grant funds. In 2008, voters passed a half-cent sales tax measure to boost the funding of the Street Improvement Program. The biggest impact on the future of El Cerrito’s streets was the city’s ability to reduce deferred maintenance and secure a direct, recurring, local source of revenue through the new sales tax.

Recommendations

To ensure there are sufficient resources to maintain Berkeley streets, we recommend that the Public Works Department:

- 1.1 Annually, conduct a budget analysis, based on the deferred maintenance needs at that point in time, to determine what level of funding is necessary to achieve the desired goals of the Street Rehabilitation Program. Report findings to City Council. This information will be helpful during updates to the Five-Year Street Rehabilitation Plan and during the budgeting process.
- 1.2 Identify funding sources to achieve and maintain the goals of the Street Rehabilitation Program.

The Streets Rehabilitation and Repair Policy is out-of-date and Public Works is not following it.

The Streets Rehabilitation and Repair Policy has not been updated since 2009. Public Works is no longer following the policy to guide annual updates to the Five-Year Paving Plan and there is no mention of equity in the policy. Additionally, the policy is not guided by clear goals or performance measures. Without a clear and updated policy, Public Works and City Council are not able to make fully informed or transparent decisions regarding annual street paving. This may lead to inefficiencies and inequities in street paving.

The Policy has not been updated since 2009.

The Street Rehabilitation and Repair Policy establishes that the City shall have a Five-Year Paving Plan that is adopted by Council. Both the policy and the Five-Year Paving Plan are to be reviewed and updated annually to ensure that they are consistent with each other and with the City's General Plan and Area Plan policies. It is unclear who is responsible for updating the policy. Public Works staff and the Public Works Commission acknowledged that the policy is outdated and expressed the need for updates to help guide the planning process and promote transparency. The Public Works Commission has taken action to begin updating it.

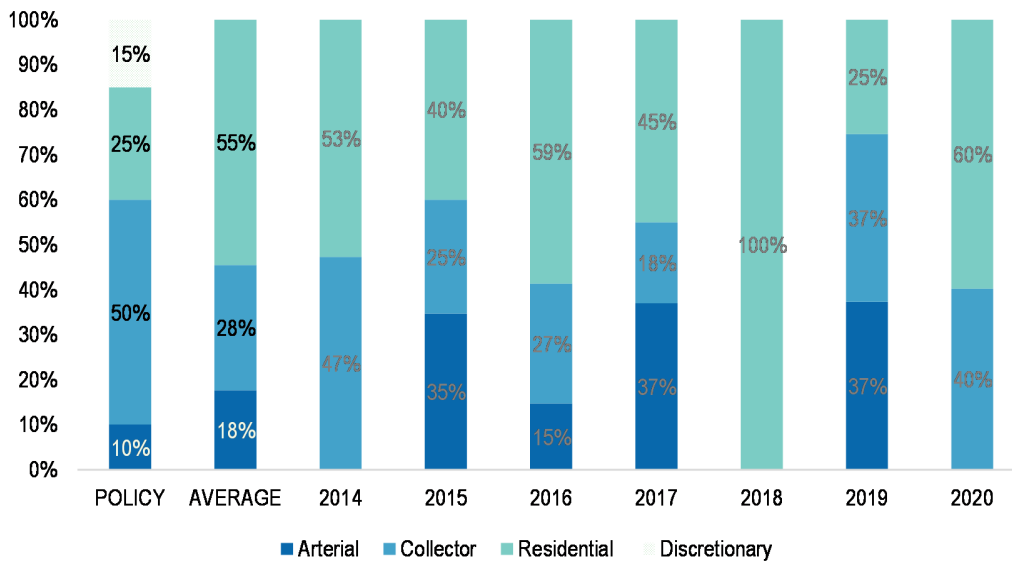
The City has not allocated funding for paving in accordance with the Policy.

Between fiscal years 2014 to 2020, the planned paving projects did not align with the funding prioritization based on street use established by the City's Street Rehabilitation and Repair Policy. The policy states that the City should prioritize and use all available funding for the rehabilitation of streets in accordance with their use. There are three types of streets according to the policy – arterials, collectors, and residential. All Berkeley Measure B Sales Tax, and new and current gas tax funds shall be used as follows:

- 10 percent for arterials
- 50 percent for collectors
- 25 percent for residential
- 15 percent for discretionary/demonstration projects

Over the course of the seven years, collector streets were significantly underfunded, receiving on average 28 percent of the annual funding when according to the policy, collectors should be funded at 50 percent annually. Residential streets were funded above the minimum funding level every year. In FY 2018, paving projects on residential streets received 100 percent of the annual funding. According to Council reports from Public Works staff and Commission, the redirection of funds towards residential streets was an attempt to address immediate improvement in the citywide PCI. Council only approved the first year of the FY 2018 five year paving plan as recommended by the Public Works Commission.

Figure 11. A Majority of Funds Spent on Residential Streets, Not Aligned With Policy



Source: Auditor analysis

Additionally, Council decisions that directly impact how streets funds are spent have not been incorporated into the policy. For example, in October 2019, Council passed a recommendation to direct the City Manager to establish a paving pilot program to prioritize bikeways and Vision Zero pedestrian high-injury streets. This initiative requires the City to allocate at least 50 percent of the paving budget towards such streets. This new prioritization and allocation of streets funding should be reflected in the policy.

Public Works staff consider many factors when updating the Paving Plan.

As the City is determining which street repairs to prioritize, decision makers consider the PCI of streets, plus Council priorities, the volume of traffic,

other scheduled work on streets, the funding available, and the distribution of projects across council districts, bikeways, and street types. The policy states that updates should be made annually to the Five-Year Paving Plan. Between 2014 and 2020, the City made updates annually, except in 2017.

Figure 12. Process for Updating the Five-Year Paving Plan



Source: Public Works

First, Public Works staff create a preliminary list to determine where repairs or more basic maintenance are needed throughout the City based on available funding. One challenge the City can face is having to coordinate with another major project in the area. This could be a City initiated project, or a project from another agency, such as utility companies (e.g., Pacific Gas & Electric and East Bay Municipal Utility District). Public Works staff have told us they would likely wait until a conflicting project is finished before doing repair and maintenance work. That can mean some street paving is delayed. Berkeley established a five-year moratorium on pavement cuts following the paving of streets, but unplanned, emergency issues can also complicate matters and lead to newly repaired streets being dug up.

Then, staff determine what street segments should be on the list based on the cost effectiveness of treatment, volume of traffic, where they can pave contiguous blocks, and the distribution of paving throughout Council districts, to come up with a draft plan. According to MTC, it is more cost effective to maintain streets in good condition and keep them from falling into lower categories, than to spend limited funds on more invasive full rehabilitation of streets that have already fallen into disrepair. This can explain why some roads that do not seem in most need of repairs are on the

paving list. Additionally, it can be more cost effective to pave contiguous street segments.

Decision-makers must balance pavement management best practices with competing interests, and with limited streets funding. In recent years, the City has focused more resources on residential streets in direct response to public complaints. The Public Works Commission and City Council have been in support of this decision, even though it is in contradiction to the policy. The draft plan is presented to the Public Works and Transportation Commissions. Finally, the plan is presented to Council. The presentation is usually accompanied with a recommendation from the City Manager and a separate recommendation from the Public Works Commission. Council may choose to adopt either recommendation, or propose changes to the plan before voting to approve the final plan.

Equity is not defined in the policy.

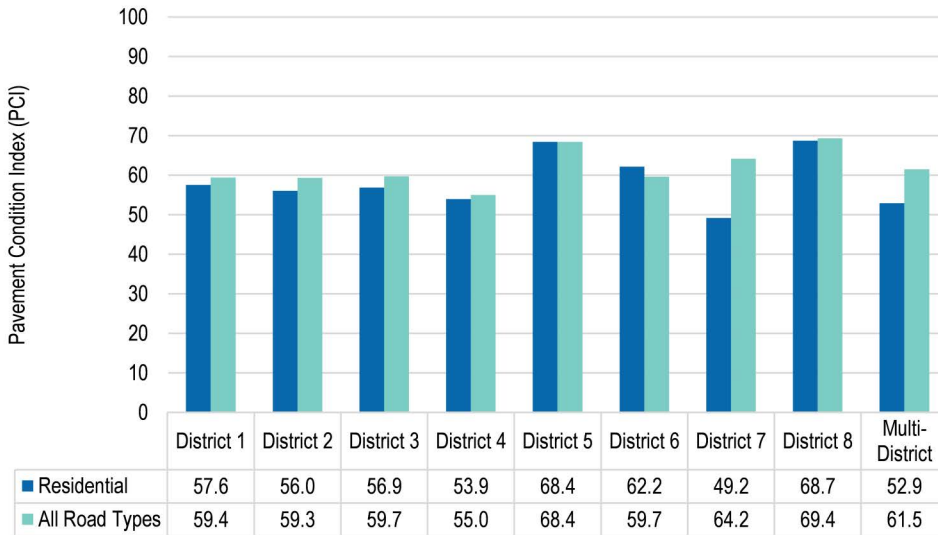
While the word “equity” does not appear in the Streets Rehabilitation and Repair Policy, it is a stated goal of the Public Works Department to take equity into consideration in developing the paving plan. Due to limited resources, Public Works balances equity with cost-effectiveness, including working on contiguous paving projects, rather than small piecemeal projects throughout the City. The mechanism by which Public Works checks for equity is by attempting to ensure an equal split of funds across City Council districts. While this is their practice, staff expressed a desire for more guidance as to how to apply equity into the planning process.

Using equity as criteria to prioritize projects may be most appropriate in the long-term planning of street paving. The City has defined equity and incorporated the definition into the transportation planning processes in the Bike Plan and Vision Zero. The Bike Plan is a long-term plan for building out the bikeway network through 2035. Projects in the plan were evaluated against a set of criteria that prioritize each project based on safety, community support, and equity factors. The equity score was based on whether the project was located in an MTC designated Community of Concern. The definition of Community of Concern include minority population, low-income households, people with limited English proficiency, households with no cars, seniors, people with disabilities, single-parent families, and households with severe rent burden. Additionally, Oakland recently developed a similar prioritization framework for street paving based on equity and additional factors.

Berkeley has voiced its commitment to improving infrastructure and doing so in an equitable way through Vision 2050.⁸ The Vision 2050 Task Force recently produced a report detailing a long-term infrastructure plan to address challenges to Berkeley’s aging infrastructure. Berkeley voters supported this initiative with the passage of Measure R in November 2018. The report establishes four core values on which all infrastructure planning decisions should be based. One of those core values is equity. According to the report, all benefits of infrastructure improvements should be distributed equitably throughout the community. This means that underserved individuals should experience the benefits of infrastructure improvements sooner than others, and improvements should be tailored to meet their unique needs.

So how is Berkeley doing with regard to equity in our streets? When looking specifically at residential streets throughout the City, Districts 8 and 5 have the highest average residential PCI and District 7 has the lowest. Additionally, street segments that are in more than one district (multi-district) have the second lowest average PCI in this comparison.

Figure 13. Average Pavement Condition Index by Street Segment, by District



Source: Auditor analysis of StreetSaver data

Note: Multi-district street segments are segments in more than one district.

It is important to note that no two districts are the same size or contain the same make up of street types. This makes comparisons across districts challenging. The current process for allocating funding does not consider other outcome measures besides PCI. Looking at average PCI scores across

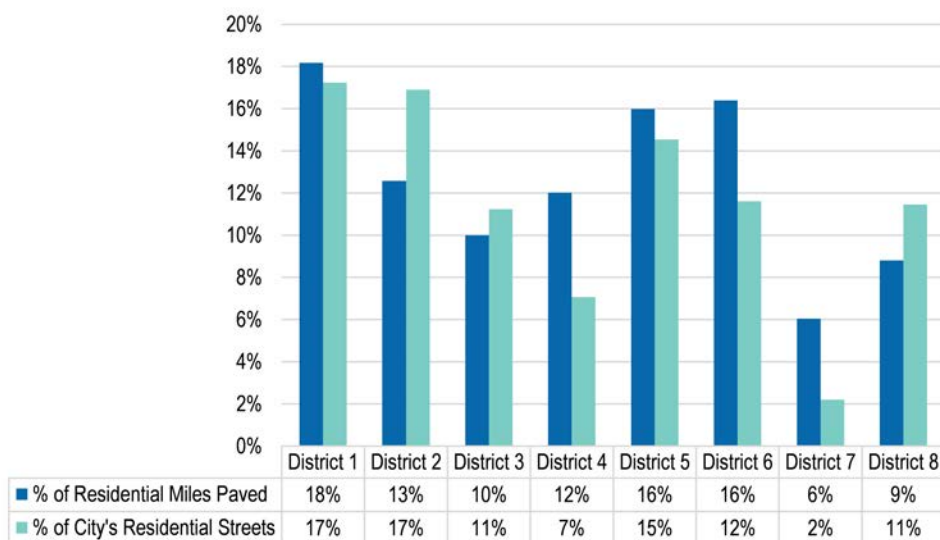
⁸ Task Force Recommendations: https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-29_Special_Item_01_Vision_2050_Task_Force_Recommendations_pdf.aspx

After securing a \$600 million bond, through the passage of Measure KK, Oakland prepared a three-year paving plan which represents \$100 million construction investment. Oakland anticipates the plan to be fully funded by Measure KK. The Oakland Department of Transportation developed a framework to prioritize streets for repaving based on equity, street condition, and traffic safety. For the prioritization of local streets, Oakland staff developed a weighted system that equally accounts for street condition and underserved populations. The definition of underserved population includes people of color, low-income households, people with disabilities, households with severe rent burden, people with limited English proficiency, and youth/seniors. The two metrics were combined by planning area, to produce a weighted factor that was used to distribute 85 percent of the local street program funding.

Measure R Ballot Language: “Shall the measure, advising the Mayor to engage citizens and experts in the development of Vision 2050, a 30-year plan to identify and guide implementation of climate-smart, technologically advanced, integrated and efficient infrastructure to support a safe, vibrant and resilient future for Berkeley, be adopted?”

districts might tell us something about the overall condition within a specific district, however, additional factors should be taken into consideration when discussing equity of paving citywide. For example, Figure 14 shows that Districts 1 and 2 have the most residential streets in the City, with each containing 17 percent of the City’s total residential streets, while District 7 contains only two percent of the City’s residential streets. When looking at all the residential streets paved between 2014 and 2020 under the Five-Year Paving Plans, District 2 received the least street paving in proportion to the percentage of residential streets in their district. This comparison does not take into account the cost variances in the types of pavement treatment. Some treatments are more expensive than others, which may result in less miles paved for the same amount of money as other less expensive treatments. This is just one additional way to look at equity across districts.

Figure 14. Residential Miles Paved Relative to Residential Miles by District, Years 2014 -2017



Source: Auditor analysis of StreetSaver data

Berkeley has not developed deeper ways to look at equity in paving like the ones described above. Demographic data by district is not readily available. However, by looking at the overall picture of our streets, it is clear that the streets in the Berkeley hills are generally in slightly better condition than the streets in the flat areas. If the City continues to underfund street repair and prioritize keeping better paved streets in good condition, the disparity in street condition among districts will continue to grow. According to forecasts conducted by PEI, Districts 1 and 2 are projected to have the lowest PCIs of 45.5 and 46.2 by 2025 at the current rate of funding.⁹

⁹This forecast includes all street types (arterials, collectors, and residential streets).

The Policy is not guided by clear goals or performance measures.

The current policy includes outdated priorities and lacks any goals or performance measures to track the success of the program. Other transportation plans in the City including the Bike Plan and Berkeley Strategic Transportation Plans, include goals and performance measures. While Public Works does take other transportation plans and programs into account when updating the Five-Year Paving Plan, there is room for improvement to increase transparency and ensure the best use of limited funds.

Performance-based planning and programming involves integrating performance management concepts into the existing planning and programming process to achieve desired outcomes of the entire transportation system. This type of planning attempts to ensure transportation dollars are spent based on the ability to meet established goals for improving the overall system. It involves using data to support long-range and short-range investment decision-making, and it is considered a best practice in the transportation industry. It generally starts with a vision and goals, selection of performance measures, and use of data and analysis tools to inform priorities, which are carried forward into short-term planning.

Figure 15. Performance-Based Planning and Programming Framework



Source: US Department of Transportation Performance Based Planning and Programming Guidebook, 2013

The Bike Plan defines safety goals and performance measures.

Goal 1: Safety First

Performance Measure: Zero bicycle-involved fatalities by 2025.

Performance Measure: Zero bicycle-involved severe injuries by 2035.

The Berkeley Strategic Transportation Plan (BeST Plan)

provides a prioritized vision of how to improve Berkeley's transportation network over 5-, 10-, and 30-year periods. This is a guide for achieving a transportation network that aligns with the City's Complete Streets Policy and other transportation visions established by other City plans and policies. The BeST Plan defines the methodology for measuring success of transportation improvements and includes defining metrics based on the vision, goals, and policies. There are five goals:

1. Increase mobility and access for all mode choices
2. Increase user safety
3. Increase access to commercial districts and opportunity areas
4. Increase transportation choices for disadvantaged communities
5. Increase environmental sustainability and resiliency

Paving decisions are not transparent and inefficiencies may exist.

There is a lack of transparency about how paving decisions are being made. Without a clear and updated policy, guided by goals and performance measures, Public Works and City Council are not able to make fully informed or transparent decisions regarding annual street paving. This may lead to inefficiencies and inequities in the streets program.

Recommendations

To ensure a transparent decision-making process, we recommend that the Public Works Department:

- 2.1 Update the Street Rehabilitation and Repair Policy annually and define who is responsible for ensuring the Policy is updated, as stated in the Policy.
- 2.2 When updating the Street Rehabilitation and Repair Policy, incorporate equity to align with Vision 2050 and clearly define how it will be applied to the street maintenance and rehabilitation planning process.
- 2.3 Define goals and performance measures to guide the Street Rehabilitation and Repair Policy and Street Rehabilitation Program that align with other plans and policies relevant to street paving (e.g., Complete Streets Policy, Vision 2050, etc.). Regularly report to Council on performance measures.

Appendix I: Methodology and Statement of Compliance

Methodology

We audited the Streets Rehabilitation Program for fiscal years (FY) 2014 through 2020. We performed a risk assessment of the program's practices and procedures to identify potential internal control weakness, including fraud risks, within the context of our audit objectives. We assessed funding levels and the pavement condition index, and evaluated policies and plans. This included a review of selected policies and procedures, as well as interviews with staff from Public Works. In performing our work, we identified concerns about the program's outdated policies, and insufficient resources, planning, and communication that would help ensure that Berkeley's streets are paved and maintained. While we assessed the fiscal impact of pavement condition, our analysis did not include the external costs on vehicles or safety associated with street condition.

To gain an understanding of the Streets Rehabilitation Program operations and threats to performance and to achieve our audit objectives, we:

- Reviewed the Street's Rehabilitation and Repair Policy and Complete Streets Policy.
- Reviewed and analyzed the Five-Year Street Rehabilitation Plans from FY 2014 through FY 2020 and accompanying council items.
- Reviewed MTC's 2035 Transportation Plan, 2018 Pothole Report, and certification letters.
- Interviewed Public Works Staff, Public Works Commissioners, City Councilmembers, and community members.
- Reviewed Pavement Engineering Incorporated's 2018 report on the City's pavement management program.
- Reviewed the City's budgets and Capital Improvement Programs from FY 2014 through FY 2020.
- Reviewed paving project costs for construction projects completed in FY 2014 through FY 2019.
- Reviewed the Bike, Pedestrian, and Berkeley Strategic Transportation Plans.
- Compared best practices for transportation planning with the City's current process.

Data Reliability

StreetSaver data is sufficient and reliable for the purposes of providing overall descriptive statistics on the condition of pavement throughout the City. Outside experts are hired to conduct periodic condition analyses of city streets and update the pavement management database (StreetSaver). Under contract with MTC, Pavement Engineering Inc. (PEI) updated the City's Pavement Management System in 2018. The purpose of a Pavement Management System is to track inventory, store work history and furnish budget estimates to optimize funding for improving the City's pavement system.

We relied on reports produced by the Metropolitan Transportation Commission (MTC) and PEI to answer our audit objectives. These reports are sufficient and appropriate in the context of our audit objectives. MTC is the metropolitan planning organization for the nine-county San Francisco Bay Area that includes Berkeley.

Pavement Engineering Inc. is a civil engineering firm that specializes in pavement management and rehabilitation. They are currently under contract with MTC as qualified Pavement Management Technical Assistance Partner consultants, and were responsible for reviewing and updating Berkeley's pavement management system, StreetSaver, in 2018.

Statement of Compliance

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Recommendations and Management Response

City Management agreed to our findings, conclusions, and recommendations. In our meetings with Public Works Department management, they described their current and planning actions to address our audit recommendations. We found those verbal responses reasonable. Below is the Public Works Department initial corrective action plan and proposed implementation dates. As part of the follow-up process, the Berkeley City Auditor will be actively engaging the Public Works Department every six months to assess the process they are making towards complete implementation.

- 1.1** Annually, conduct a budget analysis, based on the deferred maintenance needs at that point in time, to determine what level of funding is necessary to achieve the desired goals of the Street Rehabilitation Program. Report findings to City Council. This information will be helpful during updates to the Five-Year Street Rehabilitation Plan and during the budgeting process.

Management Response: Agree.

Proposed Implementation Plan: By January 2021, include this information in Public Works' staff recommendation for City Council's approval of 5 year paving plan.

Proposed Implementation Date: January 2021

- 1.2** Identify funding sources to achieve and maintain the goals of the Street Rehabilitation Program.

Management Response: Agree.

Proposed Implementation Plan: By January 2021, include this information in Public Works' staff recommendation for City Council's approval of 5 year paving plan.

Proposed Implementation Date: January 2021

- 2.1** Update the Street Rehabilitation and Repair Policy annually and define who is responsible for ensuring the Policy is updated, as stated in the Policy.

Management Response: Agree.

Proposed Implementation Plan: By June 2021, Public Works staff and Public Works Commission submit a proposed revised policy for Council adoption, which addresses both equity and Vision 2050. This policy will then be approved annually by City Council at the same time as the paving plan.

Proposed Implementation Date: June 2021

2.2 When updating the Street Rehabilitation and Repair Policy, incorporate equity to align with Vision 2050 and clearly define how it will be applied to the street maintenance and rehabilitation planning process.

Management Response: Agree.

Proposed Implementation Plan: By June 2021, Public Works staff and Public Works Commission submit a proposed revised policy for Council adoption, which addresses both equity and Vision 2050.

Proposed Implementation Date: June 2021

2.3 Define goals and performance measures to guide the Street Rehabilitation and Repair Policy and Street Rehabilitation Program that align with other plans and policies relevant to street paving (e.g., Complete Streets Policy, Vision 2050, etc.). Regularly report to Council on performance measures.

Management Response: Agree.

Proposed Implementation Plan: By May 2021, Public Works includes annual performance goals and measures as part of the citywide budget development process, and includes reports on these measures as part of the future biennial budget development.

Proposed Implementation Date: May 2021

Mission Statement

Promoting transparency and accountability in Berkeley government.

Audit Team

Erin Mullin, Auditor-in-Charge
Claudette Biemeret, Audit Manager (Former)
Tracy Yarlott-Davis, Audit Team Member

City Auditor

Jenny Wong

Office of the City Auditor

Phone: (510) 981-6750

Email: auditor@cityofberkeley.info

Website: www.cityofberkeley.info/auditor

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Copies of our audit reports are available at
www.cityofberkeley.info/Auditor/Home/Audit_Reports.aspx



BERKELEY CITY AUDITOR



Office of the Mayor

CONSENT CALENDAR
December 15, 2020

To: Members of the City Council

From: Mayor Arreguin and Councilmembers Bartlett, Hahn, and Taplin

Subject: Tenth 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 co-sponsoring the 10th Annual Martin Luther King Jr. Celebration on January 18, 2021.
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 10th 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 vision 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. Due to the COVID-19 pandemic, the event is being held virtually on January 18, 2021. Funds raised will go to local non-profit organizations recognized at the event.

FINANCIAL IMPLICATIONS

No General Fund impact; \$250 is available from Mayor Arreguin's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

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 10TH ANNUAL DR. MARTIN LUTHER KING JR. CELEBRATION

WHEREAS, the Tenth Annual Dr. Martin Luther King Jr. Celebration will take place virtually on January 18, 2021; 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 vision 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 10th 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 vision 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
December 15, 2020

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Appoint Alexandria Thomas-Rodriguez to the Berkeley Housing Authority Board

RECOMMENDATION

Adopt a Resolution appointing Alexandria Thomas-Rodriguez to serve as a tenant Commissioner on the Berkeley Housing Authority Board of Commissioners for a two-year term.

BACKGROUND

On May 22, 2007, the Berkeley City Council established a Berkeley Housing Authority (BHA) Board of Commissioners. State law mandates BHA commissioners, including successors be appointed by the Mayor and confirmed by the City Council.

There are currently two vacancies on the seven-member Berkeley Housing Authority Board, including one tenant Commissioner seat. BHA advertised an opening for the tenant Commissioner position and received several applications from residents. The Mayor reviewed the applicants and has selected Alexandria Thomas-Rodriguez for the vacant tenant Commissioner seat.

Alexandria Thomas-Rodriguez is a long-term Berkeley resident, having graduated from Berkeley High School. She has been involved with the Berkeley Housing Authority for the past three years, serving on the Resident Advisory Board, where she works on reviewing, editing and brainstorming ideas with the Operations Manager and other Section 8 participants on the Administrative Plan.

Thomas-Rodriguez currently works as a Tenant Counselor and Hotline Administrator for Tenants Together. In this role, she is on the front lines of handling tenant issues, taking in and prioritizing calls amid the COVID-19 pandemic that has led to a surge in tenants seeking advice. She also recently joined Berkeley Mutual Aid as a Case Manager, providing resources to Berkeley citizens for mental health, housing, food and essential items.

As a Section 8 tenant and through her work experience, Thomas-Rodriguez has gained the knowledge and experience to handle the work of the BHA Board, bringing compassion and fairness for tenants and landlords. She is also working with various City Commissions on public safety, transportation, and housing retention, which can be expanded in her role on the Board.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

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

APPOINTING ALEXANDRIA THOMAS-RODRIGUEZ AS A TENANT COMMISSIONER
ON THE BERKELEY HOUSING AUTHORITY BOARD OF COMISSIONERS

WHEREAS, the Council of the City of Berkeley, as the governing body of the City of Berkeley, declared itself to the Commissioners of the Berkeley Housing Authority (BHA) and appointed two tenant Commissioners pursuant to Health and Safety Code Section 34290; and

WHEREAS, on May 22, 2007 the Mayor appointed and the City Council by a majority vote confirmed the appointment of 5 Commissioners and 2 tenant Commissioners to the BHA Board pursuant to Health and Safety Code Section 34270; and

WHEREAS, there is currently one vacant tenant Commissioner seat that needs to be filled; and

WHEREAS, Alexandria Thomas-Rodriguez has been involved with the Berkeley Housing Authority for the past three years, serving on the Resident Advisory Board, where she works on reviewing, editing and brainstorming ideas with the Operations Manager and other Section 8 participants on the Administrative Plan; and

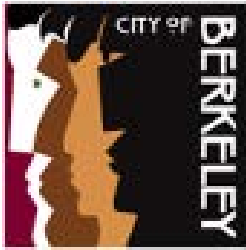
WHEREAS, Thomas-Rodriguez currently works as a Tenant Counselor and Hotline Administrator for Tenants Together where she is on the front lines of handling tenant issues, taking in and prioritizing calls amid the COVID-19 pandemic that has led to a surge in tenants seeking advice. She also recently joined Berkeley Mutual Aid as a Case Manager, providing resources to Berkeley citizens for mental health, housing, food and essential items; and

WHEREAS, As a Section 8 tenant and through her work experience, Thomas-Rodriguez has gained the knowledge and experience to handle the work of the BHA Board, bringing compassion and fairness for tenants and landlords.

NOW THEREFORE, BE IT RESOLVED by the Mayor of the City of Berkeley that Alexandria Thomas-Rodriguez is appointed to serve as a tenant Commissioner on the Berkeley Housing Authority Board; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that it supports the Mayor's determination regarding the qualifications of Alexandria Thomas-Rodriguez and hereby confirms the Mayor's appointment; and

BE IT FURTHER AND FINALLY RESOLVED by the Mayor of the City of Berkeley that, pursuant to Health and Safety Code Section 34272(a), Alexandria Thomas-Rodriguez is appointed to serve as a tenant Commissioner for a two-year term.



Office of the Mayor

CONSENT CALENDAR

December 15, 2020

To: Members of the City Council

From: Mayor Arreguín, Vice-Mayor Hahn, and Councilmembers Bartlett and Harrison

Subject: Establishment of Reimagining Public Safety Task Force

RECOMMENDATION:

1. Establish a Reimagining Public Safety Task Force, comprised of: one representative appointed by each member of the City Council and Mayor, one representative appointed by the Mental Health, Police Review and Youth Commissions, one representative appointed by the Associated Students of the University of California (ASUC), one representative appointed by the Berkeley Community Safety Coalition (BCSC), and three additional members to be appointed “At Large” by the Task Force. The Task Force will be guided by a professional consultant, and will include the participation of City Staff from the City Manager’s Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 1.
2. Appointments to the Task Force should be made by January 31, 2021,¹ and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council’s July 14, 2020,² commitment to centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria:
 - a. Active Members of Berkeley Community (Required of All)³
 - b. Representation from Impacted Communities
 - Formerly incarcerated individuals
 - Victims/family members of violent crime
 - Immigrant community

¹ With the exception of the “At Large” appointments, which will be selected by the initial appointees with an eye for adding outstanding perspectives, knowledge and experience.

² “Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present system. Together, we will identify what safety looks like for everyone.”, [Item 18d, Transform Community Safety, July 14, 2020, Berkeley City Council Agenda](#),

³ * At Large Appointees are not required to be Berkeley Residents, as long as they are active, committed Berkeley Stakeholders.

- Communities impacted by high crime, over-policing and police violence
 - Individuals experiencing homelessness
 - Historically marginalized populations
- c. Faith-Based Community Leaders
 - d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
 - e. Health/ Public Health Expertise
 - f. City of Berkeley labor/union representation
 - g. Law Enforcement Operation Knowledge
 - h. City Budget Operations/Knowledge
 - i. Committed to the Goals and Success of The Taskforce (Required of All)
3. The charge of the Task Force is as outlined in the July 14, 2020, City Council Omnibus Action,⁴ and should include but is not limited to:
- I. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety.
 - II. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
 - III. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering,⁵ among other things:
 - A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.
 - B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
 - C. Limiting militarized weaponry and equipment.
 - D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
 - E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with

⁴ [July 14th, 2020, Berkeley City Council Item 18a-e Proposed Omnibus Motion on Public Safety Items](#)

⁵ [Transforming Police](#), NICJR

educational, community serving, restorative and other positive programs, policies and systems.

- F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

4. Direct the City Manager to ensure that the working group of City Staff as outlined in her October 28th Off-Agenda Memo is coordinating with the Task Force.⁶

The Task Force's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY 2024-2025 budget processes to ensure that recommended changes will be achieved. The Task Force shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY 2022-23 Budget Process.

BACKGROUND

On July 14, 2020, the Berkeley City Council made a historic commitment to reimagine the City's approach to public safety with the passage of an omnibus package of referrals, resolutions and directions. Central to this proposal is a commitment to a robust community process to achieve this "new and transformative model of positive, equitable and community centered safety for Berkeley". Item 18d, Transforming Community Safety, provides direction on the development of a "Community Safety Coalition", goals and a timeline led by a steering committee and guided by professional consultants. Recommendation 3 above reflects the original scope voted on by the council. However, that item did not specify the structure, exact qualifications or process of appointing this steering committee. This item follows the spirit of the original referral, and provides direction on structure, desired qualifications and appointment process.

To avoid confusion with the community organization that has independently formed since the passage of that referral, this steering committee is now being referred to as the Reimagining Public Safety Task Force.

City staff has been diligently been working to implement the referrals in the omnibus motion, including the development, release and evaluation of a request for proposals (RFP) for a consultant to facilitate this process.⁷ Initially, the expectation was that the development of a structure and process for the Task Force would be developed in consultation with the professionals selected by this RFP. However, to ensure thorough review of these proposals the timeline for selecting the consultant is longer than initially expected. At the July 18, 2020, meeting, City Council clearly stated that the Task Force will begin meeting no later than January 2021. To meet this timeline, the

⁶[October 28, 2020 Off-Agenda Memo: Update on Re-Imagining Public Safety](#)

⁷ Ibid

Council should adopt the proposed framework and appointment process so that the Task Force and our community process can begin shortly after the RFP process is completed.

RATIONALE FOR RECOMMENDATION

The proposed structure creates a Task Force with 17 total seats, ensuring representation from each Councilmember and the Mayor, key commissions including the Police Review Commission, the Youth Commission and the Mental Health Commission as well as representation from the ASUC, the Berkeley Community Safety Coalition (BCSC) and three “at-large” members to be selected by the Task Force to fill any unrepresented stakeholder position or subject matter expertise.⁸

This model was developed with input from all co-authors, the City Manager, community stakeholders including the ASUC and BCSC as well organizations and experts with experience running community engagement processes. Additionally, the Mayor’s office researched a wide range of public processes that could inform the structure and approach for Berkeley, including youth-led campaigns, participatory budgeting processes, and long-term initiatives like the California Endowment Building Healthy Communities initiative.⁹

The proposed Task Force structure and process draws most directly on the processes underway in Oakland and in Austin, Texas.¹⁰¹¹ In July, Oakland voted to establish a Reimagining Public Safety Task Force with 17 members, including appointees from all councilmembers and the Mayor, three appointees from their public safety boards, two appointees to represent youth and two at-large appointees selected by their council co-chairs¹². The model proposed for Berkeley draws heavily from the Oakland approach. A key difference is that, unlike Oakland, this proposed structure does not recommend developing additional community advisory boards. Instead, it is recommended that Berkeley leverage our commissions and community organizations to provide additional input and research to inform the Task Force’s work rather than establish additional community advisory boards.

The list of proposed qualifications for appointees (recommendation 2) is also modeled after Oakland’s approach. In July, the city council committed to centering the voices of those that are most impacted by our current system of public safety as we reimagine it for the future. The list of qualifications is intended to guide councilmembers and other appointing bodies and organizations

⁸ [The Berkeley Community Safety Coalition](#), initially known as Berkeley United for Community Safety, produced a 40 page report that was shared with the council in July. Their recommendations were referred to the reimagining process as part of the Mayor’s omnibus motion. Co-Founder Moni Law describes BCSC as a “principled coalition that is multiracial, multigenerational and Black and brown centered. We include over 2,000 people and approximately a dozen organizations and growing.”

⁹ [California Endowment Building Healthy Communities Initiative](#).

¹⁰ [Austin, Texas Reimagining Public Safety Task Force](#)

¹¹ [Reimagining Public Safety](#), Oakland website

¹² [Oakland Reimagining Public Safety Task Force Framework](#)

to ensure that the makeup of the Task Force reflects that commitment. After all appointments are made, the Task Force will select 3 additional “at large” members to join the Task Force with an eye on adding perspectives, expertise or experience that are missing in initial appointments.

ALTERNATIVE ACTIONS CONSIDERED

The Council could wait for a consultant to be hired and have them develop a model for the Task Force. This would likely result in further delay in the process to reimagine public safety and push the starting point of the process past the Council’s January 2021 deadline. Alternative appointment structures were evaluated, including a citywide application process and an independent selection committee. However, given that the Task Force will ultimately advise the City Council, there was broad agreement that the council should have a strong role in appointing the Task Force.

FINANCIAL IMPLICATIONS

City Council allocated \$200,000 to support engagement of outside consultants in the reimagining process.

ENVIRONMENTAL SUSTAINABILITY

No Environmental Impact.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1. Framework for Reimagining Public Safety Task Force
2. July 14, 2020 City Council Item 18d, Transforming Community Safety
3. July 14, 2020 City Council Item a-e, Proposed Omnibus Motion on Public Safety Items



Reimagining Public Safety Task Force



Task Force Purpose & Goals ^{Page 7 of 70}

As Defined by July 14th Council Action



Purpose: The Community Safety Coalition, guided by a task force, will serve as the hub for a broad, deep and representative process, and uplift the community's input into a new positive, equitable, anti-racist system of community health and safety.

The work of the task force should include but not be limited to:

1. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety.
2. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.

Steering Committee Purpose & Goals



Continued...

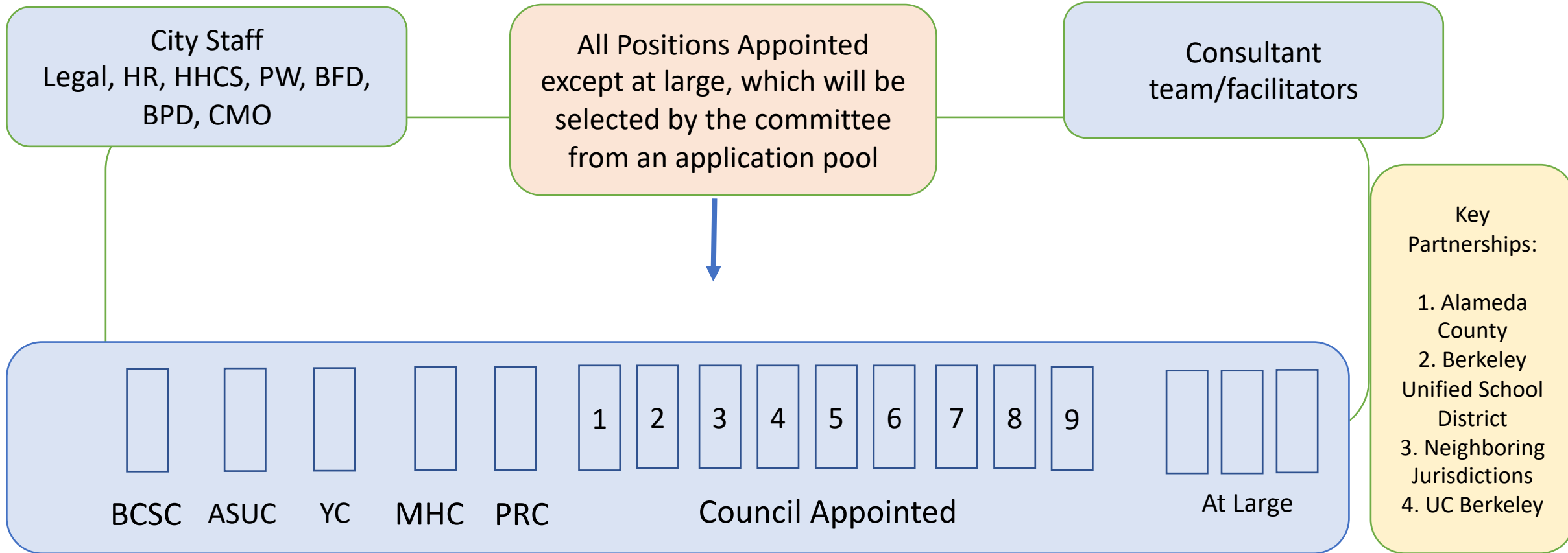
3. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering, among other things:

- a) The social determinants of health and changes required to deliver a holistic approach to community-centered safety
- b) The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
- c) Limiting militarized weaponry and equipment.
- d) Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- e) Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- f) Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit



Proposed Task Force Structure

Selected by Councilmembers, Mayor & Key Commissions and Community Stakeholders



Parallel
Community
Engagement





Task Force Membership

Knowledge, Expertise, & Experience Needed

- Active Members of Berkeley Community (Required of All*)
- Representation from Impacted Communities
 - Formerly incarcerated individuals
 - Victims/family members of violent crime
 - Immigrant community
 - Communities impacted by high crime, over-policing and police violence
 - Individuals experiencing homelessness
 - Historically marginalized populations
- Faith-Based Community Leaders
- Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
- Health/ Public Health Expertise
- City of Berkeley labor/union representation
- Law Enforcement Operation Knowledge
- City Budget Operations/Knowledge
- Committed to the Goals and Success of The Taskforce (Required of All)

**At Large appointees may not be Berkeley residents, so long as they are active and committed stakeholders*

Task Force Responsibilities



Active membership & Participation Required of Selected members

- Work collaboratively to achieve the purpose and goals established
- Thorough preparation for and active participation in all taskforce meetings (1-2 meetings per month)
- Participate in and support various community engagement efforts
- Other responsibilities – to be determined



Office of the Mayor
Jesse Arreguín

ACTION CALENDAR
July 14, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Vice-Mayor Sophie Hahn, Councilmember Ben Bartlett, Councilmember Kate Harrison

Subject: Transform Community Safety and Initiate a Robust Community Engagement Process

RECOMMENDATIONS

1. Adopt a Resolution expressing the City Council's commitment to:
 - a. A transformative approach to community-centered safety and reducing the scope of policing,
 - b. Equitable investment in the essential conditions of a safe and healthy community, especially for those who have been historically marginalized and have experienced disinvestment, and
 - c. A broad, inclusive community process that will result in deep and lasting change to support safety and wellbeing for all Berkeley residents.
2. Direct the City Manager to track and report progress on actions to implement this initiative, and other actions that may be identified by the Coalition and referred by Council to the City Manager. Updates shall be provided by written and verbal reports to Council and posted on a regularly updated and dedicated page on the City website.
3. Direct the City Manager to collaborate with Mayor and select Councilmembers to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:
 - a. Contract with independent subject matter experts to:
 - i. Analyze the scope of work of, and community needs addressed by, the Berkeley Police Department, to identify a more limited role for law enforcement, and identify elements of police work that could be achieved through alternative programs, policies, systems, and community

investments. Analysis should include but not be limited to: calls received by dispatch by type of complaint, stops by law enforcement generated at officer discretion (as contained in the Police Department's open data portal) or on request of other city agencies, number of officers and staff from other city agencies that respond to incidents, estimated time in response to different types of calls, daily patrol activities, organizational structure, and beat staffing. Work to include broad cost estimates of police and other city agency response to different types of calls, and other information and analysis helpful to identify elements of current police work that could be transferred to other departments or programs or achieved through alternative means. Work should be completed in time for the November 2020 Annual Appropriation Ordinance revision.

- ii. Identify immediate and longer-term opportunities to shift policing resources to alternative, non-police responses and towards alternative and restorative justice models, to better meet community needs, that could be considered in the November 2020 AAO#1 budget process. Some areas to be considered include homeless outreach and services, substance abuse prevention and treatment, and mental health/crisis management, as well as alternative models for traffic and parking enforcement, "neighborhood services" and code enforcement. Provide a broad timeline and process for transitioning functions not ready for transition at this first milestone.

Deliverables should coincide with budget cycles, including the November 2020 AAO and FY 2022-2023 Budget processes, and provide a suggested timeline for transitioning functions at these and other budget opportunities, so that alternative investments may be considered for funding and launched in a timely and orderly manner.

- b. Contract with independent Change Management experts to initiate and facilitate a representative Community Safety Coalition, guided by a Steering Committee, that will begin meeting no later than January 2021. The CSC and its Steering Committee should be broadly inclusive and representative of Berkeley residents and stakeholders. The Steering Committee, with the support of Change Management professionals, shall be responsible for engaging the Coalition and the broader Berkeley community and relevant City Staff in a robust process, to achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley.

The work of the Coalition should include but not be limited to:

1. Building on the work of the City Council, the City Manager, the PRC and other City commissions and other working groups addressing community health and safety.
2. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
3. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:
 - a. The social determinants of health and changes required to deliver a holistic approach to community-centered safety
 - b. The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
 - c. Limiting militarized weaponry and equipment.
 - d. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
 - e. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- c. The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.

SUMMARY

Local government's most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function, and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach; one that shifts resources away from policing towards health, education and social services, and is able to meet crises with a variety of appropriate responses.

The current re-energized movement for social justice and police reform highlights a problematic expansion, over many decades, in the roles and responsibilities of the police. As other systems have been defunded, most notably mental health, education, affordable housing and other health and safety-net programs, the police have been asked to respond to more and more crises that could have been avoided with a different set of investments in community wellbeing. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders routinely called to address mental health crises, poverty and homelessness, substance abuse, stress in the school environment, traffic and code violations and neighborhood disputes. This is an extensive set of responsibilities that is not traditionally the purview of the police.

This item initiates a restructure and redefinition of "health and safety" for all Berkeleyans, with immediate, intermediate and longer-term steps to transform the city to a new model that is equitable and community-centered. It roots the transformative process in broad, deep and representative community engagement which empowers the community to address social determinants of health and safety and deliver transformative change, with the help of change management professionals and informed by research and analysis of current and best practices.

BACKGROUND

The recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice. Across the country, community members have gathered for weeks to demand change and called out the enduring, systemic racism, white supremacy and accompanying police brutality that have defined the United States for too long. Among the more immediate demands are calls to reduce funding and the scope of police work and to invest in alternative models to achieve positive, equitable community safety.

These demands for change go beyond necessary efforts in procedural justice, implicit bias training, and improved use of force policies. Activists, organizers and their allies in our community are seeking a broader discussion about the true foundations for a safe and healthy community for all people. For too long, "public safety" has been equated

with more police, while economic and social welfare programs have been viewed as special projects unrelated to health and safety.

Responding from the epicenter of this moment, the City of Minneapolis has voted to disband their police department and engage in a deep and detailed year long process to fundamentally transform community health and safety in their city.¹ Closer to home, Mayor London Breed has announced that San Francisco will demilitarize their police force and end the use of police as a response for non-criminal activity.²

As this movement ripples across the nation, Berkeley has an opportunity to lead in transforming our approach to public health and safety. We need the right response for each crisis rather than defaulting to police. This resolution and recommendations initiate a thoughtful, thorough approach to restructuring and redefining health and safety through investment in the social determinants of health, rooted in deep community engagement and empowerment.

Community members are calling on city leaders to be creative in reimagining the city's approach to health and safety and to make clear, demonstrated commitments and timelines for this work.

In order to earn community buy-in for these important changes it is critical that the future of community health and safety be defined by the Berkeley community, centering the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically, and continue to be, marginalized and under-served by our current system. A community-wide process would ultimately inform recommended investments and approaches to achieve a higher and more equitable level of community safety for the entire community.

CURRENT SITUATION AND ITS EFFECTS

Despite strong efforts and leadership on police reform, homelessness, health, education and housing affordability in Berkeley, racial disparities remain stark across virtually every meaningful measure. According to the City of Berkeley's 2018 Health Status Summary Report, African Americans are 2.3 times more likely to die in a given year from any condition as compared to Whites. In 2013, African Americans were twice as likely to live in poverty in Berkeley. By 2018, they were eight times more likely. The Center for Policing Equity (CPE) found that Black drivers are 6.5 times as likely as white drivers to be stopped by Berkeley police officers and four times as likely to be searched. Latinx people are also searched far more often than white people. Furthermore, there is a striking disproportionality in BPD's use of force against Black community members.

¹ <https://lms.minneapolismn.gov/Download/File/3806/Transforming%20Community%20Safety%20Resolution.pdf>

² <https://sfmayor.org/article/mayor-london-breed-announces-roadmap-new-police-reforms>

Black people comprise 8% of Berkeley's population but 46% of people who are subjected to police force.³

Local government's most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach; one that shifts resources away from policing towards health, education and social services, and is able to meet crises with a variety of appropriate responses.

In addition to renewed efforts around policing in places like Minneapolis and San Francisco that were prompted by George Floyd's murder, the financial and public health impacts of COVID-19 had already required Berkeley to reimagine and innovate to meet the moment. Berkeley now faces multiple intersecting crises: the COVID-19 pandemic and its economic impacts, the effects of systemic racism and the ongoing climate emergency. There is no returning to "normal."

COVID-19 has demonstrated that we are only as healthy and safe as the most vulnerable amongst us, and we are in fact one community. There is both a moral and fiscal imperative to restructure the way Berkeley envisions and supports health and safety.

Berkeley is facing a \$40 million budget deficit, and while deferrals of projects and positions can help close the gap in the short term, the economic impacts of the pandemic will require deeper restructuring in the coming years. The current structure of the police department consumes over 44% of the City's General Fund Budget. With the increase in payments required to meet pension and benefit obligations, the police budget could overtake General Fund capacity within the next 10 years. Thus, even before the important opportunity for action created through outrage at the murder of George Floyd, the City's current investments in safety were unsustainable. To provide meaningful safety and continue critical health and social services, Berkeley must commit to, and invest in, a new, positive, equitable and community-centered approach to health and safety - this is affordable and sustainable.

³ <https://www.berkeleyside.com/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

RATIONALE FOR RECOMMENDATIONS

1. Resolution expressing City Council's commitment to a new city-wide approach to public health and safety

Transforming our system of health and safety requires strong commitment from our leaders and the community. This resolution (Attachment 1) is an expression of commitment and a tool for accountability to the public.

The proposed set of principles as well as specific initiatives are the starting point for a robust and inclusive process. Some actions will require significantly more work and additional council direction prior to implementation. For example, moving traffic and parking enforcement from police is a concept that is recommended but would require a significant redesign of city operations. Other changes may be able to move forward more quickly. These ideas are submitted in a spirit of conviction and humility. The future of community health and safety must be addressed in a fundamentally different way and the Council is committed to collaborating with the community to define a new, positive and equitable model of health and safety for everyone.

2. Direct the City Manager to publicly track progress on actions that respond to the directives of the principles herein and others identified by the Coalition. Progress shall be updated regularly and available on a dedicated page on the City website.

This webpage should include a summary of the actions outlined in this item, as well as other work already underway such as the Mayor's Fair and Impartial Working group, the Use of Force policy updates, other work underway by the Police Review Commission and any other Council referrals or direction on public safety, including existing referrals addressing alternative and restorative justice, that reflect the spirit and scope of this item.

Transformative change will only be successful if processes are transparent and information widely disseminated, as the City has so successfully demonstrated in managing the COVID-19 crisis. By publicly posting this information, the public will have the capacity to keep its elected officials, city staff, and our whole community accountable for realizing a new system of community centered safety that meets the needs of all of Berkeley's residents.

3. Direct the City Manager to collaborate with Mayor and select Councilmembers to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:

(a) Begin the process of structural change including directing the analysis of the activities of the Berkeley Police Department and other related departments.

Transforming community health and safety has to start by understanding the existing system, the calls to which it responds and other activities. This recommendation seeks to build on Councilmember Bartlett's George Floyd Community Safety Act to immediately engage independent, outside experts to conduct a data-driven analysis of police calls and responses and a broader understanding of how the police actually spend their time.⁴⁵

Engaging the services of outside experts will ensure a transparent and trusted process and provide accurate data required to effectuate substantive change will be identified and that data will inform immediate change and the work throughout the community engagement process. The experts must be knowledgeable about policing, code enforcement, criminal justice and community safety and have deep experience with current and emerging theories, as well as expertise in data collection and analysis to inform recommendations for transformative change.

This analysis should commence as quickly as possible with the goal of providing some recommendations in time for the November 2020 AAO and then to more broadly inform the work of the Community Safety Coalition.

(b) Identify immediate opportunities to shift elements of current policing resources to fund more appropriate community agency responses

This re-energized movement for social justice also highlights a problematic expansion, over many decades, in the roles and responsibilities of the police. As other systems have been defunded, most notably mental health, education, affordable housing and other health and safety-net programs, the police have been asked to respond to more and more crises that could be avoided with a different set of investments in community wellbeing. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders routinely called to address mental health crises, poverty and homelessness, substance abuse, stress in the school environment, traffic and code violations and neighborhood disputes. This is an extensive set of responsibilities that have slowly accreted to the police.

⁴https://www.cityofberkeley.info/uploadedFiles/Clerk/Update_Budget%20Request%20to%20Hire%20a%20Consultant%20to%20Perform%20Police%20Call%20and%20Re...pdf

⁵ [New York Times- How Do the Police Actually Spend Their Time?](#)

By November 2020, with preliminary information provided by outside experts, the City Manager and Council should identify some responsibilities that can be quickly shifted to other programs, departments and agencies. Some areas to be considered include:

- Mental health and crisis management (consideration should be given to possible expansion of the Mobile Integrated Paramedic Unit (MIP) Pilot initiated by the Berkeley Fire Department during the COVID-19 pandemic), and other models for mental health outreach and crisis response, including by non-profits
- Homeless outreach and services
- Civilianizing some or all Code Enforcement + Neighborhood Services and placing these functions elsewhere
- Alternatives for traffic and parking enforcement, and
- Substance abuse prevention and treatment

The consultants should work with the City Manager to provide a specific timeline and process for transitioning functions as quickly as possible, with deliverables to coincide with timelines for budget processes.

(c) Contract with Change Management experts to initiate and facilitate a Community Safety Coalition (“CSC”) and Steering Committee that will begin meeting no later than January 2021.

While the Council can make some important changes and investments in the near future, a complete and enduring transformation in community safety is only possible through robust community engagement. It is critical that the future of community health and safety is defined by the Berkeley community, elevating the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically marginalized and under-served by current systems. The Community Safety Coalition, guided by a steering committee, will serve as the hub for a broad, deep and representative process, and uplift the community’s input into a new positive, equitable, anti-racist system of community health and safety.

Berkeley has a history in leading transformational change to achieve a more equitable society. The robust public process that led to school desegregation is an example of our community’s success in bringing about significant, transformative change (Attachment 4).

The robust public process, led by the Community Safety Coalition and its steering committee, will be guided and facilitated by outside experts.

The work of the Coalition should include but not be limited to:

- Build upon the work of the City Council, City Manager, the Fair and Impartial Policing Working Group, the Use of Force subcommittee and other efforts of the Police Review and other City Commissions, and the work of other community agencies addressing community-centered health and safety
- Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley. This research should explore and propose investments in restorative justice models, gun violence intervention programs, and substance abuse support, among other things.
- Recommend a positive, equitable, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:
 - The social determinants of health and changes required to deliver a holistic approach to community-centered safety
 - The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
 - Limiting militarized weaponry and equipment.
 - Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
 - Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.

FINANCIAL IMPLICATIONS

\$160,000 from the Auditor's budget to assess police calls and responses

\$200,000 from current budget cycle from Fund 106, Civil Asset Forfeiture, for initial subject matter expertise and engagement of outside consultants

Staff time to support the process of identifying and implementing change.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

This effort is in support of the following strategic plan goals:

- Champion and demonstrate social and racial equity
- Create a resilient, safe, connected, and prepared City
- Create affordable housing and housing support services for our most vulnerable community members
- Provide an efficient and financially-healthy City government
- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community

ENVIRONMENTAL SUSTAINABILITY

No Environmental Impact.

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Vice-Mayor Sophie Hahn

Councilmember Ben Bartlett

Councilmember Kate Harrison

Attachments:

1. Resolution
2. Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis
3. "Shrink the Beast" A Framework for Transforming Police, National Institute for Criminal Justice Reform
4. School Desegregation in Berkeley: The Superintendent Reports, Neil Sullivan 1968

RESOLUTION

Whereas, The recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice; and

Whereas, Demands for change go beyond necessary efforts in procedural justice, implicit bias training, and use of force policies and seek a broader discussion about investment in the conditions for a safe and healthy community; and

Whereas, Investment in “public safety” has been equated with more police for too long while economic and social welfare programs have been viewed as special projects unrelated to health and safety; and

Whereas, This movement is highlighting the problematic expansion in the roles and responsibilities of police officers. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders to mental health crises, homelessness, drug addiction, sex work, school disruption, traffic and code violations and neighborhood conflicts; and

Whereas, the adopted 2020 budget allocated \$74 million to the Berkeley Police Department, which represents over 44% of the City’s General Fund of \$175 million, and is more than twice as much as the combined City budgets for Health Housing and Community Services, and Economic Development; and

Whereas, It is clear that our current system of public health and safety is not working and is not sustainable in Berkeley. Despite strong efforts and leadership on police reform, homelessness and affordable housing, racial inequity remains stark across virtually every meaningful measure of health and well-being; and

Whereas, Local government’s most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach that shifts resources away from policing towards equitable health, education and social services that promote wellbeing up front;⁶⁷⁸ and

Whereas, As this movement ripples across the nation, Berkeley has an opportunity to lead in transforming our approach to public health and safety. We need the right response for each crisis rather than defaulting to using the police; and

⁶ [Transforming Community Safety Resolution-Minneapolis](#)

⁷ [San Francisco Mayor, Supervisor announce effort to redirect some police funding to African-American community](#)

⁸ [The cities that are already defunding the police](#)

Now, Therefore, Be It Resolved by The City Council of The City of Berkeley:

That the City Council commits to the principles of reduce, improve and re-invest: reduce the scope and investment in policing, improve the response and accountability of public and community agencies, reinvest in racial equity and community-based intervention initiatives⁹;

Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present system. Together, we will identify what safety looks like for everyone.

Be It Further Resolved that the process will center the role of healing and reconciliation. The process will require healers, elders, youth, artists, and organizers to lead deep community engagement on race and public safety. We will work with local and national leaders on transformative justice in partnerships informed by the needs of every block in our city.

Be It Further Resolved that decades of police reform efforts have not created equitable public safety in our community, and our efforts to achieve transformative public safety will not be deterred by the inertia of existing institutions, contracts, and legislation.

Be It Further Resolved that these efforts heed the words of Angela Davis, “In a racist society, it is not enough to be non-racist. We must be anti-racist.”

Be It Further Resolved that the transformation under consideration has a citywide impact, and will be conducted by the City Council in a spirit of collaboration and transparency with all constructive stakeholder contributors including the Mayor’s Office, the City Manager, the Police Chief, and community organizations.

Be It Further Resolved that the City Council of the City of Berkeley is committed to:

1. A transformative approach to community-centered safety and reducing the scope of policing
2. Equitable investment in the essential conditions of a safe and health community especially for those who have been historically marginalized and have experienced disinvestment
3. A broad, inclusive community process that will result in deep and lasting change to support safety and wellbeing for all Berkeley residents.

⁹ [A Framework fo Transforming Police- NICJR](#)

Be it Further Resolved that the City Council supports taking the following actions to realize this transformation:

1. Direct the City Manager to track and report progress on actions to implement this initiative, and other actions that may be identified by the Coalition and referred by Council to the City Manager. Updates shall be provided by written and verbal reports to Council, and posted on a regularly updated and dedicated page on the City website.
2. Direct the City Manager to collaborate with Councilmembers later selected by the Mayor to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:
 - a. Contract with independent consultants/Change Management and subject matter experts to:
 - i. Analyze the scope of work of, and community needs addressed by, the Berkeley Police Department, to identify a more limited role for law enforcement, and identify elements of police work that could be achieved through alternative programs, policies, systems, and community investments. Analysis should include but not be limited to: calls received by dispatch by type of complaint, stops by law enforcement generated at officer discretion (as contained in the Police Department's open data portal) or on request of other city agencies, number of officers and staff from other city agencies that respond to incidents, estimated time in response to different types of calls, daily patrol activities, organizational structure, and beat staffing. Work to include broad cost estimates of police and other city agency response to different types of calls, and other information and analysis helpful to identify elements of current police work that could be transferred to other departments or programs, or achieved through alternative means. Work should be completed in time for the November 2020 Annual Appropriation Ordinance revision.
 - ii. Identify immediate and longer term opportunities to shift policing resources to alternative, non-police responses and towards alternative and restorative justice models, to better meet community needs, that could be considered in the

November 2020 AAO#1 budget process. Some areas to be considered include homeless outreach and services, substance abuse prevention and treatment, and mental health/crisis management, as well as alternative models for traffic and parking enforcement, “neighborhood services” and code enforcement. Provide a broad timeline and process for transitioning functions not ready for transition at this first milestone.

Deliverables should coincide with budget cycles, including the November 2020 AAO and FY 2022-2023 Budget processes, and provide a suggested timeline for transitioning functions at these and other budget opportunities, so that alternative investments may be considered for funding and launched in a timely and orderly manner.

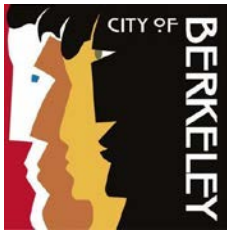
- b. Contract with independent Change Management experts to create and facilitate a representative Community Safety Coalition, guided by a Steering Committee, that will begin meeting no later than January 2021. The CSC and its Steering Committee, should be broadly inclusive and representative of Berkeley residents and stakeholders. The Steering Committee, with the support of Change Management professionals, shall be responsible for engaging the Coalition and the broader Berkeley community and relevant City Staff in a robust process, to achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley.

The work of the Coalition should include but not be limited to:

4. Building on the work of the City Council, the City Manager, the PRC and other City commissions and other working groups addressing community health and safety.
5. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
6. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:

- a. The social determinants of health and changes required to deliver a holistic approach to community-centered safety
- b. The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
- c. Limiting militarized weaponry and equipment.
- d. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- e. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.



Councilmember Ben Bartlett
City of Berkeley, District 3

EMERGENCY ITEM AGENDA MATERIAL

Meeting date: June 16, 2020
Item Description: Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis
Submitted by: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and Councilmembers Kate Harrison (Co-Sponsor)

Rationale:

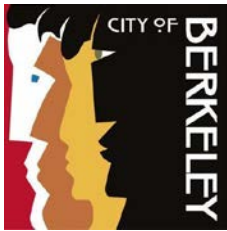
Pursuant to California Government Code Section 54954.2(b) (2), Councilmember Ben Bartlett submits the attached item to the City Council for placement on the June 16, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that “Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”

This item meets the criteria for “immediate action” as follows:

- 1) The budget is being considered and there is public outcry for Council to take action.
- 2) Racism Is a Public Health Emergency.
- 3) Council is considering numerous police items right now.

Hundreds of thousands of people in every state have marched in solidarity to call for an end to police brutality, to demand police accountability, and to reform law enforcement, bringing justice to the Black lives and people of color who have been wrongfully harmed at the hands of the criminal justice system. Police brutality has taken the lives of 46-year-old Black man George Floyd, 26-year-old Black woman Breonna Taylor, and countless other people of color. Often resorting to violent means of punishment, police officers are not trained to handle noncriminal and nonviolent situations. Unfortunately, the lack of sufficient data and reporting has allowed police misconduct to be swept under the rug, which has increased police militarization, failed to prioritize community safety, and prevented providing the civilian with the necessary treatment to resolve the situation.

To respond to urgent calls for police transparency and accountability, this item requests the City Manager to hire third-party consultants to conduct a data-driven analysis of the Berkeley Police Department’s calls, responses, budget, and expenditures to determine which calls can be serviced to non-law enforcement agencies, ensuring noncriminal and nonviolent situations are properly handled by trained community professionals.



Councilmember Ben Bartlett
City of Berkeley, District 3

CONSENT CALENDAR

June 16, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and
Councilmembers Kate Harrison (Co-Sponsor)
Subject: Safety for All: The George Floyd Community Safety Act - Budget Request to
Hire a Consultant to Perform Police Call and Response Data Analysis

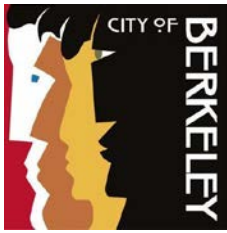
RECOMMENDATION:

1. Refer to the Thursday, 6/18/2020 Budget & Finance Policy Committee and the FY 2020-21 Budget Process the \$150,000 to
 - a. Hire a consultant to conduct a data-driven analysis of police calls and responses to determine the quantity and proportion of these calls that can be responded to by non-police services. The third-party consultant must be hired and engaged in work within three months of the item's passage.
 - b. Hire a consultant to conduct an analysis of the Berkeley Police Department's budget and its expenditures by call type. The third-party consultant must be hired and engaged in work within three months of the item's passage.
2. Direct the City Manager to:
 - a. Implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.

CURRENT SITUATION

In all 50 states and more than 145 cities, Americans are calling to end police violence and brutality, to legitimize police accountability, and to transform the police system to protect the safety of communities and people of color. Police violence and brutality led to the death of a 46-year-old Black man George Floyd and the murders of other Black people, igniting a flame that has been brewing for a long time. These events of police violence gave rise to a wave of demonstrations and demands for change, including many in the City of Berkeley.

Due to the Coronavirus pandemic, the City of Berkeley is facing a nearly 30+ million dollar budget deficit, sharply stalling economic growth with effects that parallel the Great Depression. At the same time, the City is projected to undergo an increase in people experiencing homelessness, trauma, and mental health crises. Therefore, the City must ensure that each dollar is spent for the residents' best interest and will produce the maximum return.



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City of Berkeley, District 3

In order to better respond to the needs of the Berkeley community, it is critical that the Council takes local-level action on police reform. In particular, the City must examine the types of calls and responses from the police department and analyze the agency's budgets and expenditures according to call type.

As a component of the **REDUCE, IMPROVE, RE-INVEST** framework, this item works towards the REDUCE goal: *the City should implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.* Specifically, this item proposes to hire an outside consultant to conduct an analysis of police calls and responses as well as the department budget.

With military-style techniques and structure, police officers are trained to combat crime in a manner that exerts violence through punishments, establishing a monopoly on force in communities. While law enforcement is supposed to protect our communities and keep us safe, crime waves from the 1970s and 1980s have transformed the police community into a body for crime control, maintaining such focus until modern-day despite declines in criminal activity¹. With this focus on crime control, police officers lack the necessary training to adequately respond to noncriminal and nonviolent crimes. Non Criminal crimes refer to issues involving mental health, the unhoused community, school discipline, and neighborhood civil disputes². Nonviolent crimes are categorized as property, drug, and public order offenses where injury or force is absent³. When police respond to these types of matters, they resort to violent means of arrest or problem escalation because they are ill-equipped and not trained to resolve the underlying issues.

According to the Vera Institute of Justice's report between 1980 and 2016, more than 10.5 million arrests are made every year; only 4.83 percent of those arrests were for violent offenses⁴. Eighty percent of these arrests were for low-level offenses, such as "disorderly conduct," non-traffic offenses, civil violations, and other offenses. This criminalization may be attributed to the arrest quotas for police productivity, which promotes punishment by rewarding the number of arrests for police funding instead of finding solutions to these issues⁵. This high percentage of low-level offenses resulted in

¹ <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>

² <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>

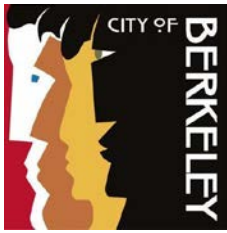
³

<https://www.bjs.gov/content/pub/ascii/pnoesp.txt#:~:text=Nonviolent%20crimes%20are%20defined%20as%20possession%2C%20burglary%2C%20and%20larceny.>

⁴

<https://arresttrends.vera.org/arrests?compare%5Boffense%5D%5Bpart1%5D=part1&compare%5Boffense%5D%5Bpart2%5D=part2#infographic>

⁵ <https://theintercept.com/2019/01/31/arrests-policing-vera-institute-of-justice/>



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arrest when other nonviolent, rehabilitative methods could have occurred from the solutions of community workers with the experience to handle these situations.

It is imperative that the City of Berkeley develops, implements, and enforces a clear and effective roadmap towards making real change, ending anti-Black racism, stopping police violence, and holding police accountable for their actions. Thus, the Council should direct the City Manager to hire third party consultants to conduct a data-driven analysis of police calls and responses as well as their budget and expenditures in order to determine ways in which experienced community workers can reduce the police footprint by addressing noncriminal situations. We recommend that community workers also resolve nonviolent situations.

BACKGROUND

In order to achieve the aforementioned goals, the City must implement a series of important law enforcement reforms and take action by initiating the following:

REDUCE:

I. Hire a consultant to conduct a data driven analysis of police calls and responses.

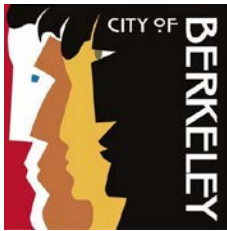
University of Denver Political Science Professor Laurel Eckhouse stated, “One method of reducing police presence... is to separate and reassign to other authorities various problems currently delegated to the police... such as the problems of people who don’t have housing... mental health issues... and even things like traffic⁶.” Community organizations, civilian workers trained in mental health situations, or neighborhood problem-solvers would better address these specific issues due to their experience, ensuring that the police are not the only force addressing these issues and promoting community vitality⁷.

Conducting a data driven analysis of police calls and responses would signify a report of the calls and responses that police receive and would inform the city where to better allocate resources to resolve specific issues. Noncriminal and nonviolent activities can thus be properly addressed by those who are equipped to handle these situations and would relieve law enforcement from these calls to then pursue more serious criminal situations. For example, the San Francisco Police Department receives approximately 40,000 calls per year about homeless people on the streets⁸. Social workers who can help unhoused citizens and those with mental health disorders are better equipped to help these citizens receive

⁶ <https://www.stanforddaily.com/2020/06/04/police-abolition-looks-like-palo-alto/>

⁷ <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>

⁸ <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>



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proper treatment while also protecting the safety of our communities, which would give law enforcement time to handle other crimes.

One suggestion to reduce the costs of policing is to boost productivity by allocating a portion of the calls for service to community organizations who have the resources and training to handle such situations⁹. For example, in Mesa, Arizona from 2006 to 2008, a third of calls for service are handled by civilians; these calls are for incidents of “vehicle burglaries, unsecured buildings, accidents, loose dogs, stolen vehicles, traffic hazards, and residential burglaries¹⁰.” Approximately half of calls for service in Mesa are handled by police officers, but among those, there are ways to reduce police authority. For example, 11 percent of those calls that police officers handled were in response to burglary alarms, where 99 percent were false. Six percent of those calls included “juveniles disturbing the peace.” This situation in Mesa demonstrates the possibility of reduced police force in exchange for community based response teams who can better resolve these issues with their experience.

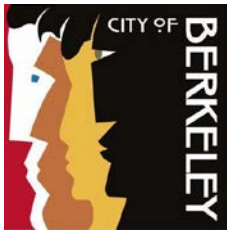
The City Manager should hire a third party consultant within three months of this item’s passage to conduct the data analysis, ensuring that the report is completed in an impartial and timely manner.

The third party consultant should create a report with the following information by analyzing and gathering the data from the police department, reporting their findings to the City every two years. We recommend the following data to be considered for analysis:

- a. Number of calls the police department receives per day, week, month, and year, which will be categorized into noncriminal, misdemeanor, nonviolent felony, and serious and violent felony calls.
- b. Demographics for these calls
- c. Characteristics of traffic stops
 - i. Quantity
 - ii. Type/reason
 - iii. Number of those resulting in searchings paired with the frequency at which illegal items were found
 - iv. Police response (i.e. citation, arrest, use of force)
 - v. Demographics of the civilian in the traffic stop that is broken into type of stop and whether a search occurred
- d. Number of complaints against an officer
 - i. Enumerate the officers with a high number of complaints

⁹ <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>

¹⁰ <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>



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ii. Reason behind the complaints.

With the results of the data analysis, the City can determine the portion of calls that the community crisis worker pilot can properly address with the resources and experience they have.

II. Hire a consultant to conduct an analysis of the police department budget.

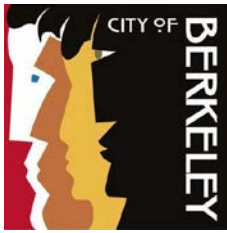
Using the analysis generated by a review of police call and response data, a third party consultant should be hired to analyze the police department's expenditures and budgets for various calls of service and report their findings to the City every two years.

According to the 2019 budget, the Berkeley Police Department's expenditures were approximately \$69 million, which consists of 5.6 percent of the city's net expenditures. However, for the 2020 budget, the BPD is expected to have \$74 million in expenditures, reflecting a \$5 million increase from the previous year and approximately \$8 million higher than 2017's expenditures¹¹. Unfortunately, anecdotal evidence suggests that only 20 percent of police time is spent on solving crime and the majority is spent towards addressing those experiencing homelessness and mental health crises. The City should reallocate resources to a crisis worker entity who would be tasked with responding to noncriminal calls. We recommend that nonviolent calls also be addressed by this entity. This would give police officers more time to focus on crime, leading to better outcomes for public safety, community health, and a higher quality of life.

In Canada, Police Information and Statistics Committee police services Waterloo Police Regional Service and Ontario Provincial Police collaborated with Justice Canada and Public Safety to collect data on their calls for service and determine the costs of policing¹². Their research reported that in 2013, bylaw complaints were listed as the most frequent call for service in Waterloo at 8,769 calls and non-crime policing activities were listed as the most frequent. In contrast, the only criminal activity listed in the top 10 generated calls were domestic dispute, theft under \$5000, and major violent crime in property damage. Considering the most frequent of costly calls are noncriminal activities such as selective traffic enforcement programs (\$22,212.45 in sum of total unit service time in hours) and vehicle stops (\$206,668.13), the greatest cost in calls were for noncriminal activities. As noncriminal activities result in the greatest costs, it would be more efficient for community workers to handle these situations in order to reduce

¹¹ <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY-2020-2021-Adopted-Budget-Book.pdf>

¹² <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2015-r018/index-en.aspx#c-1-i>



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police department costs, allowing trained professionals to resolve the issue and giving police officers time to spend on more serious criminal offenses.

By analyzing the budget expenditures for the police for each call type, the community can divest from the police and reallocate those funds for trained community organizations who can handle noncriminal and nonviolent offenses. Considering the significantly delayed response to former requests for the police department's budget, the data analysis should be conducted by a third party consultant that is hired and engaged in active service within three months of this item's passage, ensuring that the police department's budget information is transparent to the public and reported in an impartial, timely manner.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

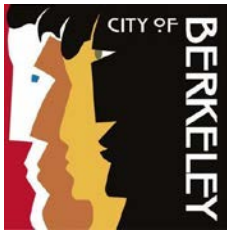
The City Manager provides regular reports on crime in Berkeley and on the policies of the Berkeley Police Department¹³. The data on serious crime is collected annually by the Federal Bureau of Investigation (FBI), which consists of over 17,000 law enforcement agencies that represent over 90 percent of the United States population. The FBI's Uniform Crime Report (UCR) reports crime statistics on violent crimes (including murder, rape, robbery, and aggravated assault) and property crimes (including burglary, larceny, auto theft, and arson). This data allows the BPD to analyze national and local crime trends, determine effectiveness of response to crime, and plan for future policies and resource allocation. Additionally, the City of Berkeley implements the Daily Calls for Service Log that the community can access to see the volume and nature of police activity.

Currently, Utah requires agencies to report tactical deployment and forcible entries where such reports are summarized by the Utah Commission on Criminal and Juvenile Justice. Utah Law Enforcement Transparency reporting interface was added to Utah Criminal Justice Information System in 2014 through the use of federal grant funding. Law enforcement agencies are required to report incidents of forcible entry and the deployment of tactical groups, representing data collection of police use of force¹⁴.

However, these reports do not analyze the demographics or types of calls and responses from the BPD, which makes it difficult to hold police officers accountable for the mistreatment of individuals. Without this information, it becomes difficult to determine how to decrease the police footprint or implement safer policing practices if the analysis only pertains to the quantity and types of arrests and does not include the

¹³ https://www.cityofberkeley.info/Police/Home/Annual_Crime_Reports.aspx

¹⁴ <https://justice.utah.gov/Documents/CCJJ/LETR/2018%20LET%20Annual%20Report.html>



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background, call of service, reason, demographics, complaints against the police officer, and other important factors to the BPD's response.

Despite voluntary data sharing and crime reports, data collection still remains vague and insufficient, leaving many unanswered questions regarding the number of instances of and reasons for use of force, complaint process against police officers, and other information about police actions. This lack of clarity allows police misconduct to perpetuate due to the lack of research that would hold police departments accountable.

ACTIONS/ALTERNATIVES CONSIDERED

One possible alternative to the community response teams would be to implement better training procedures so that police officers are more equipped to handle nonviolent and noncriminal activities. For example, the state of Washington requires both violence de-escalation and mental health training for police officers¹⁵. Such reform may render the data analysis on the types of calls unnecessary because the police department would be trained to handle all services regardless of the type of call.

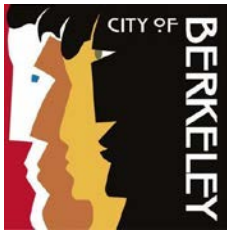
However, training police officers to handle situations such as mental health or homelessness would signify an increase in funding for the police department to provide such training services. Not only would this type of training be difficult to maneuver when police forces are currently trained in a militarized manner, but it would be more efficient for community professionals to peacefully and properly resolve such issues since they have already engaged in this training and experience for years.

Reforming police training may be beneficial, but in this case, it would also indicate the lack of basis for reporting the police department's types of calls and responses, which is necessary to hold the police accountable and ensure safer practices. While reporting the data analysis could still occur without the community crisis workers, only having the police department manage all situations would increase their authority over the communities, which would lead to increased militarization of the police forces if other community organizations do not intervene or hold them accountable.

OUTREACH OVERVIEW AND RESULTS

The District 3 Office has consulted with David Muhammad, who is the Executive Director of the National Institute for Criminal Justice Reform; the former Chief Probation Officer in Alameda County; and the former Deputy Commissioner of Probation in New York City. David Muhammad is a leading expert on criminal justice who has helped inform our response to the current situation.

¹⁵ <https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/>



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The District 3 Office has also consulted with Marcus McKinney, the Senior Director of Government Affairs & Public Policy at the Center for Policing Equity.

The District 3 Office has also consulted with Professor Tracey L. Meares, Walton Hale Hamilton Professor and Faculty Director of the Justice Collaboratory at Yale Law School.

RATIONALE FOR RECOMMENDATION

Police departments across the country enforce policies and practices that breed a culture of violence resulting in killings--like those of Floyd and Moore, and of countless other people of color. These authoritative, militarized behaviors are often rooted in anti-Black racism, and such behavior must stop being acceptable. Transformation of police departments, their role, and relationship to our communities requires a change in culture, accountability, training, policies, and practices.

To prioritize community safety and reduce police violence, the City must hire a third party consultant to analyze police data in order to decide how to divest from the police to fund experienced community workers who can adequately resolve noncriminal and nonviolent situations. These community workers would protect the community from violence and emphasize revitalization and rehabilitation over the punishment that police officers often enforce. Implementing a data-driven analysis on police data would increase the transparency of the police department and hold them accountable, detecting the issues within the police force that community response teams can help heal. The Council must make informed legislative decisions that will reduce police footprint, improve current practices of law enforcement, and reinvest in the community for the safety of our civilians.

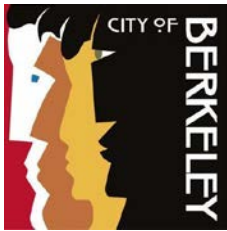
FISCAL IMPACTS OF RECOMMENDATION

The third party consultant/s would cost approximately \$150,000 to \$200,000. It is up to the City Manager to hire the third party consultants who will analyze the data of the police department's calls, responses, budget, and expenditures. Consultants must be hired and engaged in service within three months if this item passes. These consultants would ensure that noncriminal situations are handled by those with the necessary training, which may lead to a decrease in repeat offenses when community workers properly resolve the situation and guide civilians to helpful resources.

ENVIRONMENTAL SUSTAINABILITY

We do not expect this recommendation to have significant negative impacts on environmental sustainability.

OUTCOMES AND EVALUATION



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If this item is passed, third party consultants would be hired by the City and engaged in data analysis within three months of passage. These consultants would produce biennial reports regarding the Berkeley Police Department's types of calls and responses as well as the budgets and expenditures in order to inform the City how to reallocate funds from the police into a community response team with better experience to handle noncriminal situations. We recommend that nonviolent situations also be addressed by community crisis workers.

CONTACT PERSON

Councilmember Ben Bartlett
James Chang
Kyle Tang
Kimberly Woo

510-981-7130
jchang@cityofberkeley.info
ktang@cityofberkeley.info
kimwoo1240@berkeley.edu

ATTACHMENTS

1. Cover Letter - Safety for All: George Floyd Community Safety Act
 - <https://drive.google.com/file/d/16pqqd9J6NPRzh6298Bgazo7jw1qxTK6Y/view?usp=sharing>

SHRINK THE BEAST:

A Framework for Transforming Police

NICJR★
National Institute for
Criminal Justice Reform



The killing of George Floyd by Minneapolis police was the match that lit a fire that has been building in our communities for a long time. Nationwide demands for not just reform, but complete transformation of policing have put pressure on local jurisdictions across the country to make rapid and real change.

Since its founding, the National Institute for Criminal Justice Reform (NICJR) has worked to reform the juvenile and criminal justice systems through a process of Reduce – Improve – and Reinvest. This framework can also be effective in transforming policing. In the past 15 years, the U.S. juvenile justice system has been reduced by more than half. Youth correctional facilities have been shuttered and investment into community services has increased. While there is certainly more progress to be made, the movement to transform policing can learn a great deal from criminal justice reform.

NICJR's framework to Shrink the Beast focuses on three areas: reducing the footprint of law enforcement, significantly improving what remains of policing, and reinvesting the savings from smaller police budgets into community services.

Reduce

One of the most significant structural reforms we must advance in policing, already happening in the criminal justice arena, is shrinking its scope. Officers are asked to do too much with too few resources. The warrior mentality that police are indoctrinated with, starting as early as the first day of the police academy, does not allow them to handle many of those responsibilities well. It is time for an alternative response network for all non-violent calls for service. Similar to the community-based organizations that provide diversion programs for youth and adults who would otherwise end up in the justice system, a new infrastructure of community safety and problem-solving responders, with expertise in crisis response, mental health, and de-escalation techniques, must be developed. Such a network should be vast and well equipped, including 24-hour on-call community crisis response and outreach workers. The resulting reduced police force would then focus primarily on responding to serious violence. Small, but promising examples of this model already exist:

- › **In Oakland, CA**, non-profit organizations employ street outreach workers and crisis response specialists who respond to shooting scenes, intervene in and mediate conflicts, and sit down with young adults who have been identified as being at very high risk of violence to inform them of their risk and offer them intensive services. These City-funded efforts have been credited with a [50 percent reduction in shootings](#) and homicides in the city.
- › **In Eugene, OR**, Crisis Assistance Helping Out on the Streets ([CAHOOTS](#)) responds to more than 22,000 requests for service annually with its Crisis Intervention Workers. This represents nearly 20 percent of the total public safety call volume for the metropolitan area.
- › **In Austin, TX**, the [Expanded Mobile Crisis Outreach Team](#) is equipped to respond to 911 calls where callers indicate that a mental health response, not police, is needed.
- › **In Albuquerque, NM**, where the police have been involved in numerous unjustified killings, the Mayor has proposed creating a [new non-law enforcement public safety agency](#) that will respond to non-violent calls.

Steps To Reduction



Create a robust alternative emergency response network with mental health workers, crisis intervention specialists, and street outreach workers – the Community Emergency Response Network (CERN).



Significantly reduce police patrol divisions which are currently primarily responsible for responding to 911 calls. Police will instead focus on responding to serious and violent incidents, a small percentage of all current calls.



CERN Crisis Intervention Specialists would respond to all other calls.



Traffic policing should be replaced by technology to the maximum extent possible.



Violence reduction teams should be created or remain intact: Patrol and investigation units focused on reducing gun violence. Like all remaining police personnel, these units must be trained in and adhere to strict use of force and Procedural Justice policies.



Investigation Units should also remain intact.

Improve

The primary challenge in police agencies is culture. Many have described it as a warrior culture. Adrenaline-filled young officers want to “knock heads” during their shifts; the “us vs them,” military occupation syndrome. We must confront and transform this destructive culture. Policing should focus on protection and service to the community.

Improving the smaller police departments that remain, after taking the steps to reduction outlined above, includes three components: policy, training, and accountability. Implement new policies including restricting the use of force, mandating verbal de-escalation, community policing, and eliminating stop and frisk. Implement high quality and frequent training on these newly developed policies. And, most importantly, hold all police personnel accountable for adhering to and demonstrating these policies in action.



Steps To Improvement

- 1 Increase hiring standards to screen out candidates with any signs of racial bias, interest in the warrior culture, or those who have been fired or forced to resign from previous law enforcement positions.
- 2 Prioritize hires of those who grew up in the city and/or live in the city.
- 3 Make deliberate efforts to have the police force representative of the community it serves.
- 4 Revise use of force policies to limit any use of deadly force as a last resort in situations where a suspect is clearly armed with a firearm and is using or threatening to use the firearm.
- 5 All other force must be absolutely necessary and proportional.
- 6 Provide thorough, high quality, and intensive training in subjects including:
 - New use of force policy
 - Verbal de-escalation
 - Bias-free policing
 - Procedural Justice
- 7 Transparency: Provide regular reports to the public on stops, arrests, complaints, and uses of force, including totals, demographics, and aggregate outcomes data.
- 8 Effectively use an early intervention system that tracks various data points to identify high risk officers and implement discipline, training, and dismissal where necessary.
- 9 Use aggressive, progressive discipline to root out bad officers.
- 10 Rescind state and local laws that provide undue protection to police unions and prohibit effective and efficient disciplinary action.

Reinvest

A smaller footprint of law enforcement should result in a reduced police budget. Resources should be shifted away from the police department to the CERN and other community-based intervention initiatives, including Credible Messengers/Life Coaches, social workers, and mental health service providers.



The National Institute for Criminal Justice Reform (NICJR) is a non-profit organization providing technical assistance, consulting, research, and organizational development in the fields of juvenile and criminal justice, youth development, and violence prevention. NICJR provides consultation, program development, technical assistance, and training to an array of organizations, including government agencies, non-profit organizations, and philanthropic foundations.

NICJR.org

R E P O R T R E S U M E S

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SCHOOL DESEGREGATION IN BERKELEY--THE SCHOOL SUPERINTENDENT REPORTS.

BY- SULLIVAN, NEIL V.

PUB DATE NOV 67

EDRS PRICE MF-\$0.25 HC-\$0.92 21F.

DESCRIPTORS- *SCHOOL INTEGRATION, *BOARD OF EDUCATION POLICY, *BOARD OF EDUCATION ROLE, SCHOOL ADMINISTRATION, SCHOOL SUPERINTENDENTS, JUNIOR HIGH SCHOOLS, ELEMENTARY SCHOOLS, COMMUNITY COOPERATION, BUS TRANSPORTATION, STAFF ROLE, ELECTIONS, INTEGRATION PLANS, BERKELEY, CALIFORNIA

DESCRIBED IS THE HISTORY OF THE EFFORTS TO DESEGREGATE THE BERKELEY, CALIFORNIA, SCHOOL DISTRICT, WHICH IS SCHEDULED TO BE FULLY DESEGREGATED BY SEPTEMBER 1968. CHANGE BEGAN IN THE 1950'S WITH THE ELECTION OF A "LIBERAL" TO THE BOARD OF EDUCATION. FIRST STEPS INVOLVED IMPROVING EDUCATIONAL OPPORTUNITIES FOR MINORITY GROUP CHILDREN AND MAKING EFFORTS FOR BETTER RACE RELATIONS. DESEGREGATION BEGAN IN THE JUNIOR HIGH SCHOOLS BUT NOT WITHOUT COMMUNITY FRICTION TO THE POINT OF A DEMAND FOR A RECALL ELECTION OF THE BOARD. HOWEVER THE BOARD WAS VINDICATED ON ITS STAND FOR VOLUNTARY INITIATION OF DESEGREGATION. A NEW SCHOOL SUPERINTENDENT WAS FACED WITH THE JOB OF IMPLEMENTING THE PLAN AND BEGAN HIS EFFORTS BY DEVELOPING COMMUNITY SUPPORT AND PRODUCTIVE LIAISON WITH HIS STAFF. THE NEXT STEP INVOLVED DESEGREGATING THE ELEMENTARY SCHOOLS. THE WIDE GEOGRAPHIC SEPARATION OF IMBALANCED SCHOOLS IN THE CITY REQUIRED THE DESIGNATION OF CERTAIN WHITE SCHOOLS AS RECEIVING SCHOOLS AND THE USE OF FEDERALLY FUNDED BUSES AND ADDITIONAL STAFF FOR THE 230 INCOMING PUPILS. HOWEVER THIS WAS ONLY A "TOKEN" EFFORT. VOLUNTARY REVERSE BUSING AND A TIMETABLE FOR COMPLETE DESEGREGATION HAVE BEEN RECOMMENDED. IT IS FELT THAT THE REQUISITES FOR SUCCESSFUL SCHOOL DESEGREGATION ARE FULL COMMITMENT BY THE SCHOOL ADMINISTRATION AND THE BOARD, COMMUNITY INVOLVEMENT WITH AND FAITH IN THE BOARD AND ADMINISTRATION, AND THE DEVELOPMENT OF "WORKABLE" PLANS. THIS PAPER WAS PREPARED FOR THE NATIONAL CONFERENCE ON EQUAL EDUCATIONAL OPPORTUNITY IN AMERICA'S CITIES, SPONSORED BY THE U.S. COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C., NOVEMBER 16-18, 1967. (NH)

04752

**SCHOOL DESEGREGATION IN BERKELEY:
THE SCHOOL SUPERINTENDENT REPORTS**

Prepared by
Neil V. Sullivan, Ed. D., Superintendent of Schools
Berkeley Unified School District-Berkeley, California
for the
National Conference on Equal Educational Opportunity
in America's Cities
sponsored by the
U.S. Commission on Civil Rights, Washington, D.C.
November 16-18, 1967

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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In recent years Berkeley, California, has been fortunate to have a school district which recognizes its problems and works effectively toward their solution. The city schools already have completely desegregated the junior high schools, and have made a token start at the elementary level. The School Board has committed itself to completing the process in all schools by September 1968. When that goal is reached, Berkeley will be a rare example of a major city working out a solution to this problem without court orders, violence, boycotts, or compulsion, but only with the conviction of the Board of Education, the Administration, and the citizens that it was right.

This has not been achieved overnight. To place the present achievements in their proper context it is necessary to trace the development of events in the recent past.

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PRE-1964

The Liberal Renaissance - Prior to the mid-1950's Berkeley's local government -- including the Board of Education -- was typical of those found in most middle-size, middle-class communities. The orientation was pro-business, with a heavy emphasis on keeping the tax rate down. This condition was so pronounced that teachers, in order to obtain a much needed and earned salary increase, were forced to use an initiative petition to get school revenues raised; the Board had refused to do so.

There are many different versions concerning the beginning of the liberal renaissance. There is general agreement that the first concrete step was the election of one liberal to the Board in 1957, followed by another in 1959, and two more in 1961. With the 1961 election the liberals assumed control of both the Board of Education and the City Council. However, even with only one "liberal" Board member in the late 1950's, the Board began to give attention to the problems of race relations in a multi-racial city.

Preliminary Steps - A citizens committee (named the Staats Committee after its chairman) was organized to study race relations within schools. This committee did not come to grips with the question of de facto segregation but sought to deal otherwise with improving educational opportunities for minority youngsters and improving race relations in the schools. For the late 1950's this report was a forward-looking document. It led to two particularly noteworthy developments.

First, the hiring practices for minority teachers were greatly improved. The number of Negro teachers increased from 36 in 1958 to 75 in 1962. Negroes also were advanced to principalships and other high positions in the District's administrative hierarchy. And by 1962 there were about 30 Orientals on the certificated staff.*

Second was the Intergroup Education Project (IEP). This project was designed to help teachers appreciate cultural diversities and better understand youngsters from other than middle-class backgrounds. It conducted seminars for teachers, mass community meetings, and weekend conferences for this purpose. The IEP helped prepare the ground for the high staff support for later integration efforts.

Junior High School Desegregation - In 1962 a delegation from the Congress on Racial Equality visited the Superintendent of Schools -- and later the Board of Education. Complimenting the School District for progress already made, the CORE delegation suggested that it was time to get on with the task of desegregating the schools. CORE asked that a citizens committee be appointed to study this problem.

The report included a recommendation for desegregating the junior high schools by assigning some students from the predominantly Caucasian "hill" area to Burbank, the Negro junior high school; students from predominantly Negro west Berkeley would be assigned partly

* The distribution of minority teachers among the various schools did not keep pace with progress in hiring. Most of these recruits were assigned to predominantly Negro schools. In more recent years we have made a concerted effort to achieve a better racial balance on all faculties. It is important, especially to combat stereotypes, to the education of all children to see members of all races working together in such respected vocations as teaching.

to Garfield, the Caucasian junior high school. Since the third junior high school already was racially balanced, this recommendation would have eliminated de facto segregation at the junior high school level.

The report struck the community like a bombshell. Although the community was aware that the committee was functioning, most people had not taken seriously the possibility that such a concrete recommendation would be made. The reaction was intense. During the remainder of 1963 and through January of 1964 there was extensive community discussion of the proposal. Two hearings were held -- one attracting 1200 people and other drawing over 2000. PTA's and other groups set up study committees on this problem; never before had such crowds attended PTA meetings!

In the hill area affected by the recommendation many liberals faced a dilemma. Some asked: "How do we express our opposition to this particular proposal without sounding like bigots?" Our response was to ask them to develop a better plan. Many sincere critics of the citizens committee proposal set out to do just that.

One of these alternative proposals was named the "Ramsey Plan" after the junior high school English teacher who suggested it. This plan proposed desegregation of Berkeley's three junior high schools by making the predominantly Negro school into a 9th grade school and dividing the 7th and 8th graders between the two remaining junior high schools.

In February 1964 a five-member staff committee was asked to study the reactions of the Berkeley school staff to the citizens committee proposal and to other ideas that had been offered. Every school faculty was asked to consider the matter.

In March the 5-member staff committee reported to the Board that the staff as a whole was favorable toward integration, and preferred the Ramsey Plan to the original citizens committee proposal. The Board instructed the Superintendent to consider the educational pros and cons of the Ramsey Plan, and its feasibility for September 1964 implementation.

The results of this study were presented to the Board and the community on May 19, 1964, a landmark date in the history of Berkeley schools. Again there were over 2000 people in the audience. The opposition, which had formed the "Parents Association for Neighborhood Schools" (PANS) solemnly warned that if the Ramsey Plan or any such desegregation proposal were adopted, the Board would face a recall election. The Board members did vote for the Ramsey Plan -- and they did face recall.

The Recall - Through the summer months the opponents of the Board collected signatures on recall petitions. A rival group was formed to defend the Board (Berkeley Friends of Better Schools). By late July the PANS group had enough signatures to force a recall election.

There followed a series of procedural skirmishes before the City Council and the state courts. Finally, an election was called for October 6, and after an intensive and heated campaign it was held. It was a stunning triumph for the courageous incumbent Board members. This election was another landmark for Berkeley education and for the cause of desegregation across the nation. There was more at stake than indi-

vidual Board members continuing in office. The basic issue was the survival of a Board of Education which voluntarily took effective action to desegregate schools -- not because of court order or other compulsion, but simply because the Board believed desegregation was right. If such a board of Education could not be sustained the lesson would not be lost on boards of education in other cities facing the same problem. Thus, it was extremely significant that in this election the Board was vindicated by the Berkeley community.

SULLIVAN ADMINISTRATION

The New Administration - On September 1, 1964, five weeks prior to the recall election, I took office as Berkeley's Superintendent of Schools in the midst of a climate of change and uncertainty. Of the five-member Board of Education which had unanimously invited me to come to Berkeley, only two remained in office. One had resigned because his business interests led him to move from the city. Another was transferred to become minister of one of the largest churches of his denomination in New York City, and a third was appointed by the Governor to be a Superior Court judge. The two who remained were facing a recall election.

There also was a sweeping change in the school administration. Virtually every top ranking member of the central administration was either new to the District or new in his position. Over one-third of our schools had new principals.

Making the New Plan Work - The decision to desegregate the junior high schools had been made before I arrived. The role of the

new administration was to make it work.

School opened as usual and the new system was put into effect with no marked difficulties. In fact, the orderliness of the transition was an important contribution to the defeat of the recall attempt. It demonstrated clearly that desegregation could be achieved without the dire consequences that had been forecast.

Developing Community Support - Defeat of the recall election meant that courageous Board members would remain in office, and the junior high school desegregation plan would continue. My next task as Superintendent was to attempt to reunite a badly split community, to develop a sense of community understanding, and to provide a basis for school support.

I approached this problem by creating a climate of openness with the public. We immediately established the practice of recognizing and admitting our problems and inviting the community's help in seeking solutions. As a new superintendent, I was besieged by invitations to speak publicly. I accepted as many as I could and during the 1964-65 school year scheduled over 100 speaking engagements.

I issued an open invitation to citizens to visit my office and discuss their school concerns, to share their ideas and suggestions. In addition I telephoned or wrote to dozens of people who had been recommended to me as community leaders deeply interested in schools. For several months I met almost continually, often a few times a day, with citizens individually and in groups. These meetings made me familiar with the Berkeley community and established a climate that encouraged exchange of ideas.

I established a liaison channel between my office and the area-wide PTA Council. I made it a practice to convene three or four briefing sessions a year with the unit presidents and council officers of that organization, and included other groups such as the League of Women Voters. At these sessions problems and issues facing the schools, as well as hopes and plans for improvement were discussed.

The day after the recall election I recommended the formation of a broadly-based School Master Plan Committee, to examine all facets of the School District's operation and to develop guidelines for the future. I urged participation of all elements of the community, making it clear that we wanted cooperation, regardless of positions in the recall election. The response was heartwarming; over 200 highly qualified citizens were nominated or volunteered their services. The Board of Education selected 91 people from this list to serve on the committee. Also named were 47 staff members. The committee has been hard at work for two years, and presented its report in the fall of 1967.

During my first year in Berkeley, I was invited by the local newspaper to write a weekly column on local and national education matters. This column has been a valuable means of keeping the community informed and introducing some new ideas. During the past year I accepted the invitation from a local radio station to conduct a weekly program of fifteen minute sessions dealing with events in the school system and issues facing public education. Each month the final week's program is extended to one hour, and features a direct phone-in from the radio audience.

In addition to developing relationships with the general public, we have worked to maintain good liaison with the staff. We have frequent breakfast conferences with the leaders of both teacher organizations, and meet regularly with the Superintendent's Teacher Advisory Council, made up of teacher representatives chosen by each faculty.

The purpose of these communication efforts has been three-fold. First, extensive dialogue with staff and community helps to identify and define problems needing attention. Second, it serves as an excellent source of new ideas and suggestions. Third, it helps interpret our problems, goals, and programs to the community.

Our efforts have been, in short, to "mold consensus" in the community behind the school system. Although we have not achieved unanimity on any single subject (that would be impossible in Berkeley!) there have been good indications during the past three years. It seems that we have succeeded in molding community support for the schools, and in developing sufficient consensus to resolve some of the crucial problems facing urban schools today.

A START TOWARD ELEMENTARY INTEGRATION

Segregation in the Elementary Schools - The Board's adoption of the Ramsey Plan, followed by the defeat of recall election, insured desegregation at the junior high school level. Since there is only one regular senior high school, our entire secondary school program, beginning with grade 7, was desegregated. However, we still face de facto segregated elementary schools. The four elementary schools in south and west Berkeley are overwhelmingly Negro. The seven schools located in

the northern and eastern hill areas of the city are overwhelmingly Caucasian. In between, in a strip running through the middle of Berkeley, are three desegregated schools. Since the racially imbalanced Negro and Caucasian schools are on opposite sides of the city, separated by the integrated schools, boundary adjustments will not solve the problem.

When the Ramsey Plan was adopted the Board tabled a companion recommendation that would have desegregated the elementary schools by dividing the city into four east-to-west strips, each containing three or four schools. The schools within each of these strips would have been assigned students on a Princeton principle, i.e., 1-3 in some schools, grades 4-6 in others.

Educational Considerations - It is not the function of this paper to develop fully the case for school desegregation. However, the basic motivation underlying our progress in Berkeley can be stated concisely.

Many studies, in Berkeley and elsewhere, have documented the fact that segregation hurts the achievement of disadvantaged youngsters. Schools with a preponderance of these boys and girls have low prestige and generally lack an atmosphere conducive to serious study.

The emotional and psychological harm done to children through this type of isolation also has been demonstrated. Regardless of cause, racial segregation carries with it the symbol of society's traditional rejection of Negroes.

The benefit of integration extends to children of all races. We are all sharing this society, and if it is to be successful we must learn to respect each other and get along with one another. This will not happen if segregation remains.

These considerations have been taken seriously in Berkeley as we move toward total school integration.

ESEA Busing Program - The Elementary and Secondary Education Act of 1965 allowed the schools to make a beginning on the problem of elementary school segregation. Berkeley's share under Title I of that Act was approximately a half-million dollars. A major share of these funds was used to reduce pupil-teacher ratios in our four target area (Negro) schools and to provide extra specialists and services for students attending them. The reduction of pupil-teacher ratios left a surplus of 235 children. The seven predominantly Caucasian hill-area schools had spaces for these youngsters. Our proposal for the first year's use of Title I funds, then, included improved services and reduced pupil-teacher ratio in the target area schools and the purchase of buses to transport the 235 "surplus" youngsters to the hill area schools.

In the preparation of this project we again employed our principle of mass community involvement. Each school faculty was invited to submit suggestions. Their response was gratifying. These suggestions, when piled together, produced a stack of paper several inches high. When they had been sifted and evaluated, and a project developed, we submitted it to the Board. Copies were made available to the school faculties and the public for their reactions. Two major public meetings were held in different sections of the city, and the Board of Education held a workshop session at which teachers could react. Many valuable suggestions and constructive criticisms resulted and were incorporated into the final proposal.

As might have been predicted, most of the public attention was centered on the busing proposal, although it involved a relatively minor share of the funds. This time the opposition, though by no means silent, was much less severe.

Since the children in the hill area schools were not being asked to go anywhere else -- the hill schools were simply going to receive youngsters from the other areas of the city -- this provided no focal point for the development of opposition. And the proposal included employing eleven extra teachers, paid with local money, and placing them in the receiving schools to maintain the pupil-teacher ratio there. A few scattered voices were raised against the proposal, but the preponderance of community opinion was favorable. Both teacher organizations endorsed the project, and on November 30, 1965, the Board adopted the program for implementation the spring semester.

The proposal went to the State Board of Education and became one of the first fourteen ESEA projects approved in the State of California. We had approximately two months to prepare for its implementation -- the selection of youngsters (this was voluntary on the part of the parents), the employment of teachers, arrangement of transportation, and other administrative details. Parent groups in the receiving schools helped by establishing contact with the parents of the transferring students. The students in the receiving schools likewise participated, and some wrote letters of welcome to the newcomers. Dry runs were conducted with the buses so that by the time the program was implemented in February 1966, the necessary advance preparation had been accomplished.

Results to Date - Although the program has not been in effect long enough for an extensive objective evaluation, early indications are that it has been extremely successful. The children have adjusted well in their new school environment and, by their performance, have made friends for integration. One evaluation, made by an outside consultant employed by the District, found that receiving school parents whose children were in class with Negroes were more favorable to integration than parents whose children were not in class with Negroes. And parents of the bused students were so pleased with the results that many requested that their other children be included.

This limited program provided an integrated experience for the 230 youngsters being transferred, less than 10 percent of the sending schools' enrollment. It also provided token integration for the receiving schools. However, it left the four southwest Berkeley schools just as segregated as they were before, although with a somewhat improved program due to the reduced pupil-teacher ratio and added services.

COMMITMENT TO TOTAL INTEGRATION

The Problem - Although the ESEA program has provided a start in the direction of elementary school desegregation, we never regarded the busing of only 235 youngsters as the solution to the segregation problem. The problem will not be solved as long as our four south and west Berkeley schools remain overwhelmingly Negro, and the schools in the north and east overwhelmingly Caucasian. The segregation problem must be solved if minority youngsters are ever to close the achievement gap and if all youngsters, regardless of race, are to be adequately prepared for life in a multi-racial world.

Although we have integrated the schools down to the 7th grade, we strongly believe that integration must begin earlier. In too many cases attitudes already are hardened and stereotypes developed by the time the youngsters reach the 7th grade. It is, of course, politically and logistically easier to desegregate the secondary schools. In fact, a bi-racial city that has not desegregated its secondary schools is by definition not committed to integration. The problem is much more difficult at the elementary level. Buildings and attendance areas are smaller, children are younger, and community emotions are more intense. Yet, the problem must be solved at the elementary level. It is ironic that solutions come more easily at one level, but more good can be accomplished at the other.

The Commitment - The commitment of the Board of Education to desegregation of all elementary schools in Berkeley came in the spring of 1967. In early April a delegation from west Berkeley made a resen- tation to the Board, stating that it was time to get on with the job of total desegregation. The delegation had many other recommendations specifically relating to the south and west Berkeley schools and the programs available to minority youngsters. At this meeting I recommended that the Board authorize the Administration to develop a program of voluntary reverse busing from Caucasian areas to south and west Berkeley. I let it be known that this was to be regarded only as a stop-gap measure to demonstrate good faith and did not represent a solution to the desegregation problem.

At the next meeting, however, before we could develop a reverse busing plan, the issue moved ahead. Both of our certificated staff organizations made appeals to the Board for action either to erase de facto

segregation completely or at least to make a significant step in that direction. Officials of the local NAACP and other members of the audience supported these appeals. A motion was presented to the Board calling for desegregation of all Berkeley schools. The Board concurred and established September 1968 as the target date for desegregating the schools.

The next two or three Board meetings, including one workshop or "open hearing", drew crowds of several hundred spectators and many speakers. Most of the speakers and most of the crowds were supportive of the Board's action; there was a minority who disagreed with the Board's position -- some opposed desegregation altogether, and others felt that 1968 was too long to wait.

On May 16 the Board adopted a formal resolution reaffirming the September 1968 commitment and adding an interim calendar of deadlines for the various steps required to achieve desegregation. The Administration was instructed to develop plans for total integration. We were instructed to make our report by the first Board meeting in October, 1967. The timetable calls for the Board to adopt a particular program by January or February 1968. Seven or eight months would then remain for implementing the program in time for the opening of school in September 1968. This is the calendar on which we now are operating.

The Board included in its Resolution on Integration two other features: first, the assumption that desegregation is to be accomplished in the context of continued quality education, and second, that massive community involvement was to be sought in development and selection of the program. Both of these features I heartily support.

Developing the Plan - We went to work immediately. The Administration compiled information on enrollment and racial makeup of each school, school capacities and financial data. This information was distributed to each faculty. We then called a meeting of all elementary school teachers; I relayed our charge from the Board and asked each faculty to meet separately and develop suggestions. We also sent information packets to over sixty community groups and invited them to contribute their ideas. By the end of June we had received many suggestions, both from staff members and lay citizens.

Meanwhile both local and national endorsements were pouring in. The Berkeley City Council passed a resolution commending the Board on its commitment to integration. Other local organizations and individuals did the same.

During the summer months two task groups were assigned to work on the problem. One was concerned with the logistics of achieving desegregation and the other was concerned with the instructional program under the new arrangement. The Board appointed a seven-member lay citizens group to advise the Administration in development of its recommendations. Even after the Administration's recommendation has been given to the Board, this group will continue to function as an advisory body to the Board. Upon receiving the Administration's recommendation, the Board plans a series of workshop sessions to provide every opportunity for community reaction and suggestion.

As this paper is written (mid-September) we are making excellent progress toward meeting our deadline. Soon after the opening of school, a report from the Summer Task Group outlining four or five

of the most promising plans was sent to each school faculty and to each group or individual who submitted a plan during the summer. These proposals are being made available to the community as well, along with the many suggestions received earlier from staff and lay citizens. School faculties and the community-at-large are invited to react to these proposals and to make suggestions to the Administration. Procedures have been organized to facilitate a response from school and community groups. Each faculty has been asked to meet at least twice. On one afternoon, schools will be dismissed early and the district-wide staff divided into cross sectional "buzz" groups. Each of these groups will submit ideas. Following these steps we will use the task group proposals, along with the reactions and suggestions that come from the staff and community, in developing our recommendation to the Board. This recommendation will be presented to the Board on schedule, at the first meeting in October. From that point on the matter will be in the hands of the Board, which is to make its decision by January or February 1968.

As our plans develop, we have received invitations to appear before many groups, large and small. Some have been hostile at first. However, meeting with them has made possible an excellent exchange of views and an opportunity for explaining our program to people who had not been reached earlier. We anticipate that the fall months will be crowded with such speaking assignments. It is our firm commitment, and that of the Board of Education, to inform the citizens of Berkeley thoroughly about the issue and about prospective plans prior to the Board's adoption of a program in January or February.

LESSONS LEARNED

While working toward integration in the Berkeley schools over the past several years, we have learned some lessons:

1. Support by the Administration and the Board of Education for the concept of school integration is absolutely essential. The Board must give its consent before any plan of desegregation can occur. The support of the Superintendent and his administrative team is vital in helping to obtain Board support and in making a success of any program adopted. While the Board nor the Administration need broad community support, their leadership role is vital.

2. Integration has the best chance of success when a climate of openness has been established in the community. Lines of communication with Board, Administration, teachers, and the community-at-large must be kept open through frequent use. Anyone who thinks a solution to the problem of integration can be developed in a "smoke-filled room" and then rammed through to adoption while the community is kept in ignorance is simply wrong.

Our citizens are vitally interested; they are going to form opinions and express them, whether we like it or not. It is in our interest to see that these opinions are formed on the basis of correct information. Furthermore, the success of integration, once adopted, depends upon broad community support and understanding between the lay community and the schools. This can be created only through a climate of openness.

3. It can be done! A school district can move voluntarily to desegregate without a court order and without the compulsion of violence or boycotts. Berkeley has demonstrated that a school community can marshal its resources, come to grips with the issue of segregation, and develop a workable solution.

Furthermore, if the new arrangement is well planned and executed, it will gain acceptance on the part of many who opposed it at first.

Many fears and threats which arose in Berkeley were not realized. The Board was not recalled. Our teachers did not quit in droves. In fact, the reverse happened; our teacher turnover rate has been drastically reduced during the last two or three years. Integration did not lead to the kind of mass white exodus being experienced in other cities (which, interestingly enough, have not moved toward integration). In fact, last year for the first time in many years the long-standing trend toward a declining white enrollment in the Berkeley schools was reversed.

The not-so-subtle hints that direct action for integration would lead to loss of tax measures at the ballot box proved to be unfounded. In June 1966 we asked the voters for a \$1.50 increase in the ceiling of our basic school tax rate. Much smaller increase proposals were being shot down in neighboring districts and across the nation. In Berkeley we won the tax increase with over a 60 percent majority.

4. A community can grow. Berkeley did! When the citizens committee report came out in the fall of 1963 with an actual plan for desegregation of the junior high schools, the community suddenly awoke to the fact that desegregation was a real possibility. The furor that

resulted could be predicted in any city. However, as large public hearings and countless smaller meetings were held by dozens of groups, support for integration began to grow and opposition diminish. One area of the city that reacted emotionally at first later provided some of our strongest supporters.

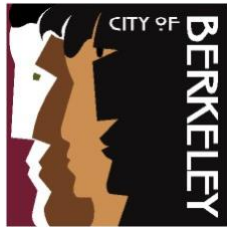
An example in a different but related field can illustrate this point. Berkeley held a referendum election on a Fair Housing Proposal early in 1963, before the citizens committee report, and the measure was defeated by a narrow margin. A year and a half later the community, together with the rest of California, voted on the same issue -- Proposition 14. Although the statewide vote on that issue was a resounding defeat for Fair Housing, the City of Berkeley voted the direct opposite by almost a two-to-one margin. The Proposition 14 election was held only a month after the recall election, after almost a full year of intensive community involvement with the school desegregation issue. In other words, a city that voted down its own Fair Housing proposal, later voted two-to-one for Fair Housing in a statewide election. Many of us feel that this change of direction was substantially influenced by the extensive community involvement in the school integration question between the two elections. The community grew in understanding as it studied the issues.

5. Community confidence in the good faith of its school administration and school board must be maintained. Berkeley has been successful in doing this. The good faith of our Board and Administration has been demonstrated. There have been no court orders, no pickets, no boycotts, no violence. Each advance has been made, after extensive

study and community deliberation, because the staff, the Board and the community thought it was right. By moving in concert with the community we have avoided being placed in polarized positions of antagonism. The climate thus produced has enabled us, as we move step by step, to work with rather than against important segments of the community in seeking solutions. If this climate of good faith is missing, even the good deeds of school officials are suspect.

CONCLUSION

There is no greater problem facing the schools of America today than breaking down the walls of segregation. If our society is to function effectively its members must learn to live together. Schools have a vital role to play in preparing citizens for life in a multi-racial society. The Berkeley experience offers hope that integration can be successfully achieved in a good-sized city. This success can be achieved if the Board of Education, the school staff, and the citizens of the community are determined to solve the problem and work together toward this end.



Office of the Mayor

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: July 14, 2020

Item Number: #18a-e

Supplemental/Revision Submitted By: Mayor Arreguin

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

The City Council has before it tonight five different proposals to initiate a robust community process to reimagine policing, and also specific proposals to conduct analyses and initiate new approaches to public safety.

The Mayor is proposing an omnibus motion that adopts elements of every one of the five proposals with some modifications.

Given that the Council is discussing various proposals relating to public safety tonight, and there is strong community interest in Berkeley initiating reforms in light of the murder of George Floyd and the nationwide movement for racial justice, the Good of the City outweighs the lack of time for prior citizen review or evaluation by the Council.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Office of the Mayor

**Proposed Omnibus Motion on Public Safety Items (Items 18a-e)
July 14, 2020**

RECOMMENDATION

That the Berkeley City Council adopts the following motion:

1. To APPROVE item 18a “George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis” (Bartlett) as revised in Supplemental Packet 1 and further amended below:

- Reaffirming the Council’s prior action adopting Recommendation # 1 through its allocation of \$160,000 for an Auditor I position in the FY 2021 Budget to conduct a data-driven study that includes analysis of police calls and responses, as well as analysis of the Berkeley Police Department (BPD) budget and expenditures by call type, including FTE (full-time equivalent position), cost per FTE, overtime and special pay expenditures and supervisory structure. Recommended data points/areas of focus are included in pages 4-7 of the Bartlett item. The Auditor is encouraged to consult subject matter experts in developing the scope of work for this study and to consult with the community-based organization selected for community outreach (Item 18d) throughout her work.

- Approving Recommendation # 2 as revised below:

Refer to the City Manager and the public safety reimagining process in item 18d to evaluate initiatives and reforms that reduce the footprint of the Police Department and limit the Police’s scope of work primarily to violent and criminal matters.

- Allocate \$100,000 from the FY 2021 Unallocated General Fund Balance (of \$141,518 unallocated in the FY 2021 Adopted Budget) to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit. This Specialized Care Unit (SCU) consisting of trained crisis-response workers would respond to 911 calls that the operator evaluated as non-criminal and that posed no imminent threat to the safety of first responders. The program would be designed by staff based on existing successful models and likely employ a combination of mental health professionals as well as EMTs and/or nurses, who would be unarmed. The program should be designed to reduce costs while enhancing outcomes in public safety, community health, mental health, social services, civil rights, and overall quality of life. Based on pilot results, a proposal to adjust and/or expand and continue the program, and related reductions in policing services, should be presented to the City Council for consideration in time for

inclusion in the FY 2022 budget. *(Council previously approved a study of the creation of a Specialized Care Unit pilot on June 16, 2020)*

2. To APPROVE the following recommendations based on Councilmember Davila's item 18b "Support Redistribution of City Resources and Operations from the Berkeley Police":

- As previously recommended in other areas of this motion by other Councilmembers, refer as part of the public safety reimagining process to evaluate functions currently served by Berkeley Police personnel which could be better served by trained non-sworn city staff or community partners and how those positions/responsibilities could be transferred out of the police department as soon as practicable. (Davila Recommendation 1 modified)
- Refer to the public safety reimagining process the goal of reducing the Berkeley Police Department budget by 50%, to be based on the results of requested studies and analysis and achieved through programs such as the Specialized Care Unit. Functions to consider shifting away from the Police Department include non-emergency calls that are evaluated to pose no danger to the safety of responders, such as calls related to enforcement of COVID-19 Shelter in Place orders, mental health calls (including wellness checks), calls related to quality of life crimes, calls related to homelessness, and any other calls that can be safely served by another new or existing city or community partner resource (Davila Recommendation 2 and 3 modified)
- Engage in a full and complete operational analysis, undertake meaningful community consultation and develop a transition plan. This reduction will enable a reallocation of public safety resources so that Police are focused on violent and criminal matters, and consider how to shift resources to, among others, non-sworn mental health, homeless outreach, and parking and traffic enforcement professionals. This will also enable the reallocation of existing police dollars for community programs and priorities to support communities of color, promote violence prevention and restorative justice and improve community health and safety. (Davila Recommendation 3 modified)
- Reducing the Berkeley Police Department budget will allow funding to be considered for these and other similar priorities: youth programs, or community groups and programs, violence prevention and restorative justice programs, domestic violence prevention, housing and homeless services, food security, mental health services including a specialized care unit, healthcare, new city jobs, expanded partnerships with community organizations, public health services, and the creation of a new Department of Transportation to administer parking regulations and traffic laws. (Davila Recommendation 4 modified)
- Refer to the City Manager and the public safety re-imagining process to identify the expertise needed for non-police responses to calls, taking into account comparable

approaches including CAHOOTS and other existing programs that might be expanded such as the Berkeley Free Clinic, Building Opportunities for Self Sustainability (BOSS), and the Women's Daytime Drop-in Center, Consider the Homeless and others. (Davila recommendation 6 modified)

- Create plans and protocols for emergency/911 dispatch to send calls to the preferred responding entity and consider placing dispatch in the Fire Department or elsewhere outside the Police Department. (Davila recommendation 7 modified)
- Request that the Berkeley Unified School District end programs that place police officers in schools. (Davila recommendation 8 modified)

(Councilmember Davila's suggested language encouraging BUSD to adopt policies to safeguard information from ICE is already adopted district policy. BUSD was one of the first districts in the country to adopt a sanctuary schools policy and should be commended for its forward-thinking leadership.)

- Refer to the City Manager and public safety reimagining process to explore the creation of a city policy to prohibit the expenditure of Police Department settlements from the General Fund. In the interim, it is recommended that the projected cost of settlements be included in the Police Department budget and the Department be responsible for requesting additional funding as needed. (Davila recommendation 9 modified)

3. To APPROVE the report and resolution in item 18d "Transform Community Safety and Initiate a Robust Community Engagement Process" (Mayor/Hahn/Bartlett/Harrison) with the following revisions below:

- Amend recommendation 3 to clarify that the City Manager would "collaborate with the Mayor and **all** Councilmembers to complete the work, to inform investments and reallocations to be incorporated into future Budget processes."
- Amend recommendation 3 to refer all of the recommendations from the Berkeley United for Community Safety coalition (see attached) to the City Manager and public safety reimagining process.
- Amend recommendations 3(a) (ii) to clarify that the analysis and initial recommendations on shifting police resources to alternate, non-police responses and toward alternative and restorative justice models will coincide with the November 2020 AAO#1 process and the **June 2021 budget process**.
- Amend recommendation 3(b) to add the following language proposed by Councilmember Wengraf in item 18c:

This work should include public, transparent community forums to listen, learn and receive people's ideas about how policing should be re-imagined and transformed so that communities of color can be safer within their neighborhoods, the City of Berkeley, and trust in the Berkeley Police Department can begin to be rebuilt.

- Amend recommendation 3(b)(1) to read:
Building on the work of the City Council, the Council Public Safety Policy Committee, the City Manager, the PRC, other City commissions and working groups (e.g. the Mayor's Fair and Impartial Policing Working Group) addressing community health and safety, the Community Safety Coalition and community process will engage relevant city commissions in this work on an ongoing basis.

4. To APPROVE Item 18e "BerkDOT: Reimagining Transportation for a Racially Just Future" (Robinson) as revised in Supplemental Packet 1:

Refer to the City Manager, the FY 2021-22 budget process, and the proposed community engagement process to reimagine public safety to:

- (1) Pursue the creation of a Berkeley Department of Transportation (*BerkDOT*) to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, & infrastructure, and
- (2) Identify & implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.



Berkeley United for Community Safety

June 27, 2020 / Event Recommendations (Partial List)

- Adopt best practices, one example Alameda County Connect: access screening, resources, mobile crisis team.
- Look for models that provide services that keep the community healthy and safe. Research the Oakland Model and the Oakland Power Project.
- We need an all new well-resourced, holistic and intersectional first responder team that responds to mental health, addiction issues, sexual harm, and homeless camp response. One that does not involve the police.
- We need more licensed and trained mental health professionals; culturally competent, compassionate, and aware. Diverse therapists also needed to relate to clients.
- We need to train professionals; “mental health clinicians” in both substance abuse and mental health issues. Outreach workers are needed who can de escalate and properly assist fellow community members in crisis.
- Fund a program with Community Care Workers on the street with proper training and resources to assist - leaving police to work on investigating and arresting criminals.
- Consider whether Berkeley Free Clinic can assist with developing a group of Community Care volunteers who assist in responding to crisis in homes and on the street that exhibit mental health, substance abuse when no crime is being committed.
- Create a City Department that focuses on Social Equity and Racial Justice.
- Make the city budget process MORE TRANSPARENT. Invest in Budget Town Halls that break down how the document works.
- Protect funding for youth programming including schools, Anticipated cuts to BUSD (2-6 million) due to COVID-19. Black and Brown Youth disproportionately affected by these cuts (fund and fast track African American Holistic Health Center)
- Divest funds from BPD into restorative justice programming run by the city or contracted to a community organization.
- Bolster nutrition programs that are at risk of being cut.
- Offer officer trainings that align with annual goals for the department. Professional development opportunities are to be made available only when these trainings support achievement of the annual goals for the department.



- BPD should not accept, request or seek to acquire military grade weapons or materials.
- BPD should receive a revised mission statement as a result of community discussions that redefines what is wanted from a "police force".
- Grant the community the ability to be autonomous.
- Have a specific public security priority to consolidate funding for all the communities' security efforts and needs. This will help create a system that will help further accountability in the police department.
- Create a stronger police accountability board.
- Ban rubber bullets as tear gas has been banned. Use less lethal tools.
- Council members need to fight for accountability and for what the community needs.



CONSENT CALENDAR
December 15, 2020

To: Honorable Members of the City Council
 From: Mayor Jesse Arreguín, Councilmembers Droste, Robinson, and Taplin
 Subject: Adopt a Resolution Advocating for More Effective Methods of Traffic Enforcement

RECOMMENDATION

Adopt a Resolution supporting the California State Legislature to enact legislation that would give municipalities greater flexibility to enforce speeding and vehicle code enforcement laws and send copies of the resolution to Governor Gavin Newsom, Senator Nancy Skinner and Assemblymember Buffy Wicks

BACKGROUND

According to Berkeleyside analysis, from January 2019 through November 2019 there were 230 people injured due to traffic collisions in Berkeley including three fatalities.¹ Notably, in January 2020 School Board President Judy Appel and her wife were severely injured by a driver who failed to yield. This analysis found that in crashes where the driver was at fault, unsafe speed was one of the biggest issues. Currently, the tools available under state law to enforce speeding laws and safe traffic behavior are inadequate to meet the City's ambitious goals in the implementation of Vision Zero, BerkDOT, and the broader effort to reimagine public safety.

The California Legislature needs to enact legislation that allows municipalities like Berkeley the flexibility in enforcement approaches to meet the new paradigm embodied by Vision Zero, and the efforts to reimagine public safety. These strategies and solutions to eliminate severe and fatal traffic injuries as well as the racial disparities in stops, searches and arrests that arise from unequitable enforcement require changes in State law in California. Currently, it is not legal to use Automated Speed Enforcement (ASE), a safety technique that is used in 142 communities across the United States, that is a proven tool to counter excessive speeding.² Similarly, vehicle code enforcement generally guides traffic enforcement. Achieving our goal of safely transitioning enforcement of traffic law to civilianized employees in BerkDOT would be more easily met with a change in State Law.

In the interests of safety, equity and fiscal sustainability, alternative speed enforcement tools are needed in Berkeley. The inflexibility of California State Law should not be a barrier to Berkeley achieving its goal of safe streets and equitable public safety. The City Council should call on the

¹ <https://www.berkeleyside.com/2020/01/28/berkeleyside-interactive-maps-cyclist-and-pedestrian-injury-crashes-in-2019>

² https://www.sfmta.com/sites/default/files/reports-and-documents/2017/12/1._ab_342_fact_sheet_dec_2017_0.pdf

state legislature to enact legislation that would give municipalities greater flexibility to enforce traffic laws.

ENVIRONMENTAL SUSTAINABILITY

No Environmental Impact.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1. Resolution

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

URGING THE STATE LEGISLATURE TO ESTABLISH MORE EFFECTIVE METHODS OF TRAFFIC ENFORCEMENT

WHEREAS, in January 2019 School Board President Judy Appel and her wife were hit by a car causing debilitating injuries;³ and

WHEREAS, in the City of Berkeley there have been numerous accidents due to speeding, failure to yield at traffic signs and traffic lights, causing numerous fatalities, including but not limited to serious injuries and property damage; and

WHEREAS, according to analysis in Berkeleyside, from January 2019 through November 2019 there were 230 people injured due to traffic collisions in Berkeley, including three fatalities;⁴ and

Whereas, in the 2018, the U. S. Department of Transportation, National Highway Traffic Safety Administration reported, 8,596 (16.7%) of Driver and motorcycle operators involved in fatal crashes, due to “driving too fast for conditions or in excess of posted speed limits or racing; and

WHEREAS, Berkeley’s road safety is deteriorating as too many motorists exceed limits on residential streets, the use automated enforcement using traffic cameras and civilian personnel traffic enforcement can decrease these negative impacts, fatalities and improve traffic and roadway safety; and

WHEREAS, in March 2020 the Berkeley City Council adopted the Vision Zero Action Plan, data-driven strategy to eliminate all traffic fatalities and severe injuries while increasing safe, healthy, and equitable mobility for all;⁵ and

WHEREAS, as a part of Vision Zero we are re-engineering our streets, and focusing traffic enforcement efforts on the most deadly traffic violations with the goal of eliminating all severe and fatal traffic injuries in Berkeley; and

WHEREAS, in July 2020 the City of Berkeley made a historic commitment to reimagine public safety, create a Department of Transportation (BerkDOT) and to use civilian personnel to enforce traffic violations; and

WHEREAS, the City of Berkeley is 17.7 square miles, and the Berkeley Police Department’s Traffic Bureau and Patrol Officers do not have sufficient people power to provide effective speed enforcement in a way that would prevent deaths and injuries while creating greater safety in Berkeley streets; and

3 <https://www.berkeleyside.com/2019/01/05/school-board-president-and-wife-in-critical-condition-after-berkeley-crash>

4 <https://www.berkeleyside.com/2020/01/28/berkeleyside-interactive-maps-cyclist-and-pedestrian-injury-crashes-in-2019>

5 <https://www.cityofberkeley.info/visionzero.aspx>

WHEREAS, When speed enforcement is performed by police officers it is a well documented fact that implicit and explicit racial bias can play a detrimental role in making traffic stops inherently unjust; and

WHEREAS, The Center for Policing Equity (CPE) found that Black drivers are 6.5 times as likely as white drivers to be stopped by Berkeley police officers and four times as likely to be searched; an

WHEREAS, Automated Speed Enforcement, a safety technique that has been proven in other cities across the United States and abroad to reduce excessive speeding and severe and fatal injury traffic collisions, is not legal in California; and

WHEREAS, the Insurance Institute for Highway Safety reports traffic cameras are in place in 23 states;

WHEREAS, Alternative Traffic Enforcement, such as civilian personnel enforcement, or automated cameras would create more efficient and equitable enforcement of speeding and vehicle code violations; and

WHEREAS, the City of Oakland passed a resolution advocating for the State Legislature to enact similar legislation;

NOW THEREFORE, BE IT RESOLVED by The City Council of The City of Berkeley That the City Council requests that the California Legislature enact legislation that would give municipalities the flexibility to adopt more effective methods for speeding enforcement; and

BE IT FURTHER RESOLVED, that the City Council of the City of Berkeley directs that this issue be added to our State Legislative lobbying agenda, and that our state lobbyist is directed to work on the matter.



Office of the Mayor

CONSENT CALENDAR

December 15, 2020

To: Members of the City Council

From: Mayor Jesse Arreguin and Councilmember Susan Wengraf

Subject: Deferral of Remaining Permit Fees for 2009 Addison Street

RECOMMENDATION

Approve the deferral of \$720,000 in remaining permit and inspection fees for Berkeley Repertory Theater's housing project at 2009 Addison Street for a period of ten years, after which point the fees will be repaid to the City of Berkeley. Authorize the City Manager to execute a written agreement to memorialize this deferral and repayment requirements.

FINANCIAL IMPLICATIONS

According to the Berkeley Rep roughly \$385,000 in permit fees have already been paid to the Permit Service Center Enterprise Fund, with a remaining \$720,000 in fees due in order to receive building permits to complete construction. Through adoption of this item, the remaining permit and inspection fees would be deferred for a period of ten years, after which time they would need to be repaid in full. This would enable the project to proceed and allow Berkeley Rep time to recover from the COVID-19 pandemic and recover economically. The funding to cover the remaining \$720,000 would be borne from the balance of the Permit Service Center Enterprise Fund.

BACKGROUND

The Berkeley Repertory Theater has received approval in 2018 for a seven-story, mixed use project at 2009 Addison Street in Downtown Berkeley. The project will provide housing for Berkeley Rep's visiting artists as well as the 15 young professionals who are awarded fellowships every year. In addition to 45 apartment units, the building will include two spaces for the Berkeley Rep School of Theatre, an outdoor terrace, and an 88-foot video display marquee on the mezzanine level. This groundbreaking project provides artist housing in collaboration with a regional theater company. 2009 Addison will bring more residents and economic vitality to our Downtown area, further bolstering our tax base.

Due to the COVID-19 pandemic and increasing costs, the project budget has increased significantly making it financially prohibitive to proceed with construction. Berkeley Rep has requested that the City consider deferring remaining permit fees in order to help make the project economically feasible and to allow construction to proceed. Berkeley Rep has agreed to repay remaining permit fees 10 years from the date of deferral. While this will result in a short-term impact on the Permit Service Center (PSC) Fund, the PSC Fund has a sufficient balance to be able to cover this amount, and fees will be repaid over time. City Council action is required to defer any permit fees over \$50,000.

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Attachments:

- 1: Letter from Berkeley Rep requesting fee deferral for 2009 Addison Street

To: Mayor Jesse Arreguin and the Berkeley City Council
From: Berkeley Repertory Theater
Re: 2009 Addison Street - Artists' Housing

Permit and inspection fees for 2001 Addison Street are expected to be approximately \$1,100,000, of which BRT has already paid \$385,000. Given extenuating circumstances, BRT requests a deferral of the remaining fees until September 1, 2030 - a period of 10 years - a period during which the Theater will need to rebuild its producing capacity, which has been devastated by this crisis. It also recognizes that, regardless of the availability of a vaccine, we expect it to take years to rebuild audience trust and reestablish norms of cultural attendance.

As a reminder:

Project Description:

- 45 units of artist housing
- 3 classrooms for Berkeley Rep School of Theater
- Exterior deck with 200 person capacity
- Enclosed backstage and loading dock for the Roda Theater
- LEED Gold ??? certification
- Union construction

Project Vision:

For over 30 years, Berkeley Rep has struggled to find adequate housing for its guest artists and for its fellowship program. Our collective bargaining agreements require that artists be housed within half a mile of the theater, with stipulations about furnishings and safety. As a result of increased employment and the tight housing market, our housing costs have increased from \$300,000 to almost \$2,000,000 in just twelve years. And the experts on our facilities committee have advised us that after the pandemic, which has slowed and even lowered rents, the rental market will continue to be heated with limited availability and continued increases in rental rates. Over a year ago, with rental costs now absorbing almost 12% of the theater's budget, Berkeley Rep's board committed to construction of a building to address our long term housing needs. While those needs will drop for a few years as Berkeley Rep stabilizes after this pandemic, we anticipate that eventually, we will again need this housing.

State of Affairs of the Theater:

Berkeley Rep closed our doors on March 16, 2020. In a matter of weeks, we deconstructed what it had taken us 50 years to build. Over a matter of weeks, we were forced to lay off most of our employees. Our staff went from 180 employees to 30. Many of those were people who had worked with us for 35, 25, and 15 years. Those who we lost have been devastated. They are seeking new professions, they have moved to new cities. Some await our reopening and are living off their savings. We don't know who will be able to return when we finally reopen our doors. Since March 16, we have lost approximately \$6,000,000 in ticket and related income. We cancelled or postponed four productions. We laid off most of our staff and we shut down our buildings. As a result,

we reduced our year-end deficit to \$1.5,000,000. Our budget for the current fiscal year reflects a total of \$150,000 in production income and a reduction in contributed income. To balance that budget we will require, and our Board is committed to finding, an additional \$2,500,000 in extraordinary funding. As we look to the 2022 fiscal year, in which we fully expect to start producing again, we are projecting more need for extraordinary funding to replace what we anticipate will be an extremely cautious return to the theater by our patrons.

Project Status 2009:

Financing -

It is fortuitous that lending for 2009 Addison was secured pre-pandemic in a way that allows the theater the choice of whether to build even now, despite its lack of revenue. In a more typical finance package, BRT might have tripped covenants that would have stopped the project. Covenants that would have scrutinized its lack of revenue due to Covid. It so happens that conditions of the loan required the theater borrow all of its \$29,000,000 up front (and begin paying interest on that loan immediately). While this has cost us a great deal in interest payments as the permit process has been a slow one, the benefit is that the theater has the money to build. The theater has been paying on that debt despite not being able to build, adding tremendous stress to an already difficult situation. The construction is now scheduled to begin construction in January, a 15 months later than first planned. And this has added \$1,000,000 to the project budget.

Construction Budget -

Prior to Covid, the project faced rising costs from a building boom and as increase in the cost of labor and materials. In the face of these increases, we trimmed \$1,000,000 from the budget. With the onset of Covid, counter-intuitively, base costs have only increased. Covid-related expenses and slow-downs have further increased the budget (as an example, our construction insurance increased from \$20,000 to almost \$300,000) while materials and labor have only continued to rise. As a result, we are facing yet another \$1,000,000 in increased costs - that is another \$1,000,000 over-budget. We have proposed another round of cost-engineering that will bring us back towards budget, but it is the last set of compromises we can make without threatening the vision of the project. Since they were a cornerstone of the project and the vision of the theater, we have preserved the housing through this round of cost-cutting. Any further reduction will cut into vital components of the building and specifically, the housing.

Berkeley Repertory Leadership -

We are blessed with an extraordinary team at this time - from the core 30 staff-members to a committed board of 34, who bring expertise from varying sectors of the economy and professional backgrounds. We have built this team of staff and Board members upon a shared vision of theater within the cultural life of our greater society and more specifically upon a vision of the Berkeley Repertory as a partner in the cultural and economic life of the City of Berkeley. At a recent Board meeting, at which staff presented the budget shortfalls and projected various options for paths forward, the Board was asked the fundamental question of whether or not to proceed with this project. They voted unanimously to proceed with the project in spite of the recognition that it will be a very difficult path, and with full knowledge that the Berkeley Repertory Theater, its leadership, its staff and its board, bore a responsibility to this community to forge ahead and to lead at this time.

The Path Forward:

The operational budget of the theater will operate at a deficit of for the next five years. While we expect to start rehiring staff beginning in summer of 2021, we do not expect to achieve previous levels of employment until 2025. An emergency Resilience campaign will be needed to close our operating gap in each of those years. Our Board has committed to raising as much as \$20,000,000 to help us through this time. What we already have tested is that funds raised must be committed to employment of artists and staff and to the making of Theater. Our donors have prioritized that. This has made us very aware that we will have real difficulty raising additional funds for the housing project. The Board has committed to raising this money, have yet to actually raise those dollars. There will be extraordinary need throughout the Country in the next few years. We do not know whether this campaign will be successful. We hope that by 2026 we can wean ourselves from the funds raised through this Resilience campaign, at which point we will need to stabilize based on whatever the new normal has become. Without the funds from the Resilience campaign we will have to test our capacity to raise additional annual funds and hope that attendance will stabilize at pre-pandemic levels. This is all new territory and we do not have any roadmap to help us know what the future holds. It is our expectation that once stabilized, we can begin to plan to pay off the fees for which we now ask a deferment.

Our request:

Defer up to \$720,000 in City of Berkeley fees for ten years.

Summary:

Total Fees:	\$1,100,000
Already paid:	<u>\$380,000</u>
Deferred:	<i>\$720,000 (Until September 1, 2030)</i>

Why deferral matters to the City of Berkeley?

- **Employment:** Berkeley Rep, prior to the pandemic, employed over 100 people full-time per season and another 350 artists, artisans, technicians and administrators throughout the course of each season;
- **Economic Multiplier:** Our operating budget of \$18-\$20 million resulted in total economic impact to the city of over \$60 million (using a 3:1 multiplier that is generally considered a conservative estimate);
- **Benefit to Local Vendors:**
 - The Berkeley Rep budget prioritizes local vendors. A new company policy also prioritizes BIPOC owned companies. Our vendors include Truitt and White, ACE Hardware, Minuteman Press, ACT Catering, just to reference a few who are vital to the City;

- Berkeley Rep patrons provide much needed business for one of the most threatened and also our most special sectors - local restaurants. Our patrons visit restaurants running the gamut from Pollo and Jupiter to Revival and Chez Panisse;
- **Regional Draw:** Berkeley Rep draws patrons to our downtown from nine counties, and even has regular attendees from Fresno, Stockton and even Austin, Texas.
- **BRT as Gateway:** Because of our role as a 'gateway to the arts for many arts lovers, Berkeley Rep's patrons have become fans of Aurora Theater the Freight and other local arts venues.
- **Local Leadership:** Berkeley Rep not only takes its leadership role seriously as an entity, but also our staff are expected and do serve on civic boards and volunteer in civic activities;
- **As a Resource for other Nonprofits:** Throughout this pandemic, Berkeley Rep has shared resources and opportunities for training and learning with other local arts organizations (i.e., Berkeley Rep is storing all of California Shakespeare Company's props and shop goods since that company has lost their scene shop).

Why 2009 Addison is Important to Berkeley Rep:

- **Cost-Control:** Berkeley Rep will be able to control its cost of housing in a market that has risen even in the face of Covid, and which will continue to rise after the pandemic.
- **Local Work/The Ground Floor:** BRT will attract new work for its nationally recognized Ground Floor new play development program, which supports and features young artists from the most varied social, economic and political backgrounds. This program is rare in the country and one of the most responsive to the stresses of our time;
- **Berkeley Rep School of Theater:** the classrooms will facilitate the expansion of our school, preserving our capacity to offer programs to children and adults within easy access to public transit;
- **Fellowship Program:** Will provide housing for Berkeley Rep's nationally respected Fellowship program, which each year trains 15 early career aspiring theater professionals. For over 15 years, Berkeley Rep has been at the forefront, with this program, of training BIPOC professionals;
- **Reduction of Carbon Footprint:** BRT will reduce its carbon footprint by creating living spaces immediately adjacent to the two theaters and school;
- **National and International Standing:** Improved housing for artists will attract more world-renowned artists and projects to Berkeley - in the spirit of projects like PARADISE SQUARE, AMERICAN IDIOT, and NO MAN'S LAND featuring Ian McKellen and Patrick Stewart;

In Summary:

We are not asking for permit fees to be waived. We understand that the City, itself, anticipates its own adverse impacts from the pandemic. The City of Berkeley has been steadfast in its commitment to preserving the life and well-being of all its residents and we are so grateful for that. We have only the greatest respect for and appreciation for all that you, our leaders and our City staff, have accomplished to protect us. We are aware that the decisions are difficult and often treacherous, and that the situation has cost the City millions of dollars in lost revenue. In recognition that we have a role to play in rebuilding the economic life of the City, we are asking, instead, simply for a deferment of payments until we have the capacity and resources to repay them.

The Theater must survive this health and economic crisis, and it will emerge with greater experience and greater resilience - for its inner resources, but also and most importantly in partnership with the City. The need for housing, and specifically housing in support of artists and the arts is no less important now than it ever was - it is, rather, even greater. There can be no better statement of our will to survive, our commitment to artists and commitment to our community, than to proceed with this project. It reflects our aspirations, once we have the pandemic behind us, to once again, produce world-class theater, to teach children and adults the joy of creative expression, to house our programs for teens and young professionals and welcome back to Berkeley, arts-lovers from throughout the Bay area.

If there is one feature of our lives that we have all come to understand during shelter-in-place, it is the value of being able to commune together in a shared, real space and to be able to enjoy the pleasure of live, unmediated artistic expression. The virtual world may have been our lifeline during this long, long spell, but it has birthed in many of us, a newfound appreciation for what we have lost.

Susan Medak
Managing Director
Berkeley Repertory Theater



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila and Councilmember Sophie Hahn

Subject: Support the Installation of a Plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2.

RECOMMENDATION

Adopt a Resolution supporting the installation of a plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2, and refer to the City Manager to start the process.

FISCAL IMPACTS OF RECOMMENDATION

Funding source could be a Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds to support this process. The installation of Former State Assemblymember William Byron Rumford's Plaque was estimated at \$2,000.

CURRENT SITUATION AND ITS EFFECTS

One of the City of Berkeley's Strategic Plan goals is to champion and demonstrate social and racial equity. Honoring one of our City's most important African American leaders by raising visibility supports this goal.

BACKGROUND

Vice President-Elect Kamala Harris childhood home is located on Bancroft Avenue in District 2.

Growing up in Berkeley and Oakland, Mrs. Harris had a view of the Civil Rights movement. She was inspired by Thurgood Marshall, Constance Baker Motley, and Charles Hamilton Houston, and learned the kind of character it requires to stand up to the powerful, and was determined to spend her life advocating for those who could not defend themselves.

After earning an undergraduate degree from Howard University and a law degree from the University of California, Hastings, she began her career in the Alameda County District Attorney's Office.

In 2003, Mrs. Harris became the District Attorney of the City and County of San Francisco. Among her achievements as District Attorney, Mrs. Harris started a program that gives first-time drug offenders the chance to earn a high school diploma and find employment.

Having completed two terms as the District Attorney of San Francisco, Mrs. Harris was elected as the first African-American and first woman to serve as California's Attorney General. Over the course of her nearly two terms in office, Mrs. Harris won a \$25 billion settlement for California homeowners hit by the foreclosure crisis, defended California's landmark climate change law, protected the Affordable Care Act, and helped win marriage equality for all Californians.

In 2017, Mrs. Harris was sworn in as a United States Senator for California, the second African-American woman and first South Asian-American senator in history. She serves on the Homeland Security and Governmental Affairs Committee, the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on the Budget.

In November 2020, Mrs. Harris was elected as Vice President of the United States.

ENVIRONMENTAL SUSTAINABILITY

No environmental implications.

RATIONALE FOR RECOMMENDATION

As the first Black person to be elected as Vice President of the United States, Mrs. Harris made incredibly valuable contributions to our state and our community. Honoring her through placement of an educational plaque in the City helps inspire future generations.

CONTACT PERSON

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA SUPPORTING THE INSTALLATION OF A PLAQUE RECOGNIZING UNITED STATES VICE PRESIDENT-ELECT KAMALA HARRIS IN FRONT OF HER CHILDHOOD HOME IN DISTRICT 2

WHEREAS, Vice President-Elect Kamala Harris childhood home is located on Bancroft Avenue in District 2; and

WHEREAS, Growing up in Berkeley and Oakland, Mrs. Harris had a view of the Civil Rights movement. She was inspired by Thurgood Marshall, Constance Baker Motley, and Charles Hamilton Houston, and learned the kind of character it requires to stand up to the powerful, and was determined to spend her life advocating for those who could not defend themselves; and

WHEREAS, After earning an undergraduate degree from Howard University and a law degree from the University of California, Hastings, she began her career in the Alameda County District Attorney's Office; and

WHEREAS, In 2003, Mrs. Harris became the District Attorney of the City and County of San Francisco. Among her achievements as District Attorney, Mrs. Harris started a program that gives first-time drug offenders the chance to earn a high school diploma and find employment; and

WHEREAS, Having completed two terms as the District Attorney of San Francisco, Mrs. Harris was elected as the first African-American and first woman to serve as California's Attorney General. Over the course of her nearly two terms in office, Mrs. Harris won a \$25 billion settlement for California homeowners hit by the foreclosure crisis, defended California's landmark climate change law, protected the Affordable Care Act, and helped win marriage equality for all Californians; and

WHEREAS, In 2017, Mrs. Harris was sworn in as a United States Senator for California, the second African-American woman and first South Asian-American senator in history. She serves on the Homeland Security and Governmental Affairs Committee, the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on the Budget; and

WHEREAS, In November 2020, Mrs. Harris was elected as Vice President of the United States.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley supports the installation of a plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2, and referral to the City Manager to start the process.



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila and Councilmember Kate Harrison

Subject: Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

RECOMMENDATION

Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

BACKGROUND

California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin.

71.6% of voters in Alameda county voted in favor of Proposition 12.

Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal aren't confined in tiny cages, and that the products sold from these caged animals aren't sold in the California marketplace.

The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the egg-laying hens and mother pigs standards have a compliance date of December 31, 2021.

In passing Proposition 12, California voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives.

By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages.

Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement.

Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies.

There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal.

In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals.

The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals.

Berkeley, CA is known for its social responsibility and humane values, including its adoption of the Fish Prize / Award Ban, Declawing Ban, and Meatless Mondays.

FINANCIAL IMPLICATIONS

To be determined.

ENVIRONMENTAL SUSTAINABILITY

Confined animal feeding operations (CAFOs, or “factory farms”) pack enormous numbers of animals into small spaces by confining egg-laying hens, mother pigs, and veal calves in cages so restrictive they are rendered virtually immobile. Factory farms are a leading cause of air and water pollution. The prestigious Pew Commission on Industrial Farm Animal Production released the results of a 2.5-year investigation into the problems associated with factory farming. The Commission found that the factory farming system “often poses unacceptable risks to public health, the environment and the welfare of the animals themselves.”

Proposition 12 helps reduce some of the worst environmental impacts of CAFOs. Encouraging companies to come into compliance with Proposition 12 as soon as possible sends a strong message about the importance of protecting rivers, air and land from factory farms.

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA SUPPORT CALLING UPON FOOD COMPANIES WITHIN BERKELEY TO IMPLEMENT THE REQUIREMENTS OF PROPOSITION 12 AS SOON AS POSSIBLE BY ONLY SELLING EGGS AND MEAT FROM CAGE-FREE FACILITIES

WHEREAS, California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin; and

WHEREAS, 71.6% of voters in Alameda county voted in favor of Proposition 12; and

WHEREAS, Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal aren't confined in tiny cages, and that the products sold from these caged animals aren't sold in the California marketplace; and

WHEREAS, The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the egg-laying hens and mother pigs standards have a compliance date of December 31, 2021; and

WHEREAS, In passing Proposition 12, California voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives; and

WHEREAS, By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages; and

WHEREAS, Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement; and

WHEREAS, Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies; and

WHEREAS, There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal; and

WHEREAS, In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals; and

WHEREAS, The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals; and

WHEREAS, Berkeley, CA is known for its social responsibility and humane values, including its adoption of the Fish Prize / Award Ban, Declawing Ban, and Meatless Mondays.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby call upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

BE IT FURTHER RESOLVED, that the City Council takes the monitoring and enforcement of animal cruelty laws seriously, and is committed to ensuring compliance of this important law.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison, Kesarwani, and Bartlett
Subject: Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan

RECOMMENDATION

Refer to the to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee (FITES) to continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, create a paving master plan, and consider the Public Works Commission Paving Policy, once complete.

POLICY COMMITTEE RECOMMENDATION

On November 18, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item with a positive recommendation to the City Council requesting that the item be referred back to the Facilities committee for further consideration and to request that Council refer the Paving Plan from the Public Works Commission to the committee when the item comes before Council in January. Vote: All Ayes.

BACKGROUND

On January 21, 2020, the City Council referred the following language from the revised agenda material from Councilmember Harrison in the Supplemental Communications Packet 2, and as further revised by the Council, to the FITES Committee for consideration:

Refer to the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee to work with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, and creating a paving master plan.

The FITES committee has been working diligently with the Public Works Department, the Public Works Commission and community members to explore funding opportunities to support programs and policies that will significantly increase citywide paving condition index (PCI).

Currently, the Public Works Department and Commission are in the process of finalizing an updated five-year paving plan. The five-year paving plan will proceed directly to Council in January so that bids may be issued for paving in 2021. At the same time, the Department and Commission are working on proposals for funding significant long-term paving improvement, stabilization and maintenance programs and recommendations for an updated Paving Policy, which has not been revised since 2009, and which includes a new definition of paving equity and consideration of how to complete paving segments in the most efficient manner possible. Both the Public Works Department and Commission expect to have updated paving policy and funding proposals for Council review by early next year. The FITES committee is prepared to continue consideration of these proposals in order to assist Council action.

In light of these policy developments and given that FITES consideration of the original Council referral is set to expire on November 23, 2020, Committee members unanimously voted on November 18, 2020 to request that the Council extend the period of consideration. Approval of this item would extend the FITES Committee's consideration and oversight with regard to improving Berkeley's PCI and referral of the Public Works Commission's forthcoming Paving Policy to the FITES Committee.

ENVIRONMENTAL SUSTAINABILITY

Extending FITES consideration of paving funding opportunities and policies would provide continued Council oversight related to procuring sustainable and low-carbon paving technologies and practices.

FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary to facilitate further FITES Committee consideration.

CONTACT PERSON

Councilmember Kate Harrison
510-981-7140

**SOPHIE HAHN**

Berkeley City Council, District 5
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704
 (510) 981-7150
 shahn@cityofberkeley.info

CONSENT CALENDAR
 December 15, 2020

To: Honorable Members of the City Council
 From: Mayor Jesse Arreguin, Vice Mayor Sophie Hahn,
 Councilmember Kate Harrison (Co-Authors)
 Subject: Reserving \$2.5M in Housing Trust Funds for the Small Sites Program

RECOMMENDATION

Adopt a Resolution reserving \$2.5 million in Housing Trust Funds for the Small Sites Program.

BACKGROUND

On February 14, 2017, in response to a December 15, 2015 referral from then-Councilmember Arreguín, the Berkeley City Council established an Affordable Housing Small Sites Program, creating a streamlined process for the allocation of Housing Trust Fund dollars to assist non-profits in acquiring existing “Small Sites” properties. The emphasis is on 5-25 unit multi-family buildings, particularly properties with strong potential for conversion to resident ownership, those in which no-fault evictions have been filed, or those at high risk of speculative purchase.¹

Funding for the Small Sites Program can be allocated from a variety of sources, including Measure U1 funds, or by using existing HTF monies for the program. In 2018, the City Council allocated \$1 million in general fund dollars (representing a portion of income from Measure U1) “to start a Small Sites Program and begin the process of supporting acquisition and rehabilitation of properties with up to 25 units.”² In 2020, the Council allocated another \$1 million in general fund monies to the Program, representing a portion of monies generated through U1.

To date, Small Sites Program funds have been used for the following purposes:

¹ City of Berkeley Referral Response: Establishment of Affordable Housing Small Sites Program, https://www.cityofberkeley.info/Clerk/City_Council/2017/02_Feb/Documents/2017-02-14_Item_18a_Referral_Response_Establishment.aspx; Mayor Arreguin, Referral to City Manager, Small Sites Acquisition Program and Tenant Opportunity to Purchase, https://www.cityofberkeley.info/Clerk/City_Council/2017/02_Feb/Documents/2017-02-14_Item_18b_Small_Sites_Acquisition.aspx.

² Berkeley City Manager’s Companion Report and Referral Response: Creation of a Small Sites Program, https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/Documents/2018-10-02_Item_Gb_Companion_Report_and_Referral_Response.aspx.

- \$1,603,598 awarded to the McGee Avenue Baptist Church project of 8 units at 1638 Stuart Street
- \$50,000 granted through a competitive process to Bay Area Community Land Trust to be used for capacity building.³

Thus, there remains \$346,402 earmarked for the Small Sites Program.

This item proposes to reserve \$2.5 million of existing Housing Trust Fund monies for the Small Sites Program. Because Small Sites is a program of the Housing Trust Fund, this measure constitutes a reservation of a portion of existing HTF funds from the current HTF balance of \$6,700,000, not a formal allocation, as was the case when general fund monies were appropriated to the Small Sites Program.

Monies available through the Housing Trust Fund change over time, as new funds are deposited into the Fund from a variety of sources and funds are allocated to specific affordable projects or for other authorized HTF purposes. For example, when a new market rate development that does not include some or all of the 20% affordable units on site receives a certificate of occupancy (or, in some cases a building permit), the affordable housing fee is collected and deposited into the HTF. Thus, the reservation of a portion of the current HTF balance does not limit future HTF funds to the remainder of HTF monies available at this time.

In recent months, due in part to the Covid downturn, small multi-unit buildings are becoming available in Berkeley. At the time of this writing, the real estate website Realtor.Com shows 35 multi-unit properties on the market in Berkeley.⁴ Many of these and similar properties could be purchased by non-profit affordable housing providers and become eligible to receive funds through the Small Sites Program. Purchasing existing units and rehabilitating them as needed is significantly more cost effective than building new housing; it also prevents displacement from our neighborhoods.

In addition, on January 16, 2019, the City of Berkeley issued a Notice of Funding Availability (NOFA) announcing the availability of \$950,000 to support projects meeting the requirements of the Small Sites Program.⁵ Because the NOFA references a “2019” program, and available funds of “\$950,000,” a new or amended NOFA may need to be issued by the City Manager, if and when the requested \$2.5 million in Housing Trust Fund dollars is reserved for the Small Sites Program.

Any project applying for Small Sites funding must comply with Small Sites Program requirements.⁶ Applications will be reviewed on a case-by-case basis, and can be

³ https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/Documents/2018-10-16_Item_05_Approving_Small_Sites_Program.aspx

⁴ https://www.realtor.com/realestateandhomes-search/Berkeley_CA/type-multi-family-home

⁵ City of Berkeley, Small Sites Program, 2019 Notice of Funding Availability, https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/01-FINAL%20SSP%20NOFA%20Application%20and%20Exhibits.pdf.

⁶ City of Berkeley, Small Sites Program, 2019 Notice of Funding Availability,

approved by the HHCS Director if they are consistent with the Small Sites Program's purpose, project feasibility, sustainable housing operations and other requirements. Full details of the Small Sites Program are provided in the *Small Sites Program, 2019 Notice of Funding Availability*.⁷

FISCAL IMPACTS

\$2.5 million of the \$6.7 million currently available in the Housing Trust Fund will be reserved for a program of the Housing Trust Fund.

CONTACT INFORMATION

Mayor Jesse Arreguín, 510-981-7100

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

ATTACHMENTS

1. Resolution

https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/01-FINAL%20SSP%20NOFA%20Application%20and%20Exhibits.pdf.

⁷ City of Berkeley, Small Sites Program, 2019 Notice of Funding Availability, https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/01-FINAL%20SSP%20NOFA%20Application%20and%20Exhibits.pdf.

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

RESERVATION OF \$2.5 MILLION IN
HOUSING TRUST FUNDS FOR THE SMALL SITES PROGRAM

WHEREAS, the City Council established a Housing Trust Fund Program (HTF) “to pool monies from different sources to help achieve the City's General Plan and Consolidated Plan goals of developing and preserving long-term below market rate housing for low, very low, and extremely-low income households in order to maintain and enhance the ethnic and economic diversity of the City”; and

WHEREAS, the HTF currently has funds of approximately \$6.7 million available; and

WHEREAS, monies available through the Housing Trust Fund change over time, as new funds are deposited into the Fund from a variety of sources and funds are allocated to affordable projects or for other authorized HTF purposes; and

WHEREAS, reservation of a portion of the current HTF balance does not limit future HTF funds to the remainder of HTF monies available at this time; and

WHEREAS, the City Council established a Small Sites Program (SSP), a program of the HTF, for the acquisition and rehabilitation of small, multifamily rental housing properties with up to 25 units, supporting the conversion of vacant or rent-controlled properties to affordable housing with 55-year regulatory agreements, ensuring long-term affordability for current and future residents; and

WHEREAS, the SSP has established program requirements related to eligibility, project funding, scope of renovation, project proformas and budget, affordability, existing tenants, rental assistance vouchers, and developer requirements; and

WHEREAS, in the current COVID-19 economic downturn, small multi-unit properties in Berkeley have come onto the market, whose purchase could be financed through the SSP; and

WHEREAS, the SSP allows for existing housing to be preserved or converted to affordable housing more quickly, and often at a lower cost, than new-build Affordable Housing; and

WHEREAS, for potential applications to the SSP to be viable, the City should reserve a reasonable amount of funds to the program;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that \$2,500,000 of Housing Trust Fund's current funds is hereby reserved for the Small Sites Program.



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Wengraf and Hahn
Subject: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$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 5 years of monthly delivery costs.

FINANCIAL IMPLICATIONS

No General Fund impacts

BACKGROUND

Research shows that the presence of a generous number of books in the home of a young child is, by itself, a surprisingly strong indicator of later education level attainment, outweighing correlations to income and parent education. Frequent book sharing with babies is the best way to nurture roots of literacy. Ownership makes that easy.

Literacy is a cornerstone of social justice and equality. Without it, full access to and participation in the programs, movements and institutions that shape our culture and society is hindered.

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Councilmember Wengraf Council District 6 510-981-7160

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 FUNDING TO THE BERKELEY BABY BOOK PROJECT

WHEREAS, Councilmember Susan Wengraf has surplus funds in her office expenditure account and will contribute \$125.00 and invites other Councilmembers to join her in contributing; and

WHEREAS, a California non-profit tax-exempt corporation, The Berkeley Baby Book Project, will receive funds in an amount up to \$125.00 per contributing Councilmember's discretionary account; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of providing a generous number of books to children aged 0-5 to read and have as their own; and

WHEREAS, research shows that books in a young child's home is a surprisingly strong indicator of later education level attainment, outweighing correlations to income and parent education.

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 \$125 per office, shall be granted to The Berkeley Baby Book Project.



The Berkeley Baby Book Project

June, 2020

Dear Fellow Literacy Advocate

Thanks to generous support from people like you our Dolly Parton's Imagination Library Program has gifted over 20,000 new, age-appropriate, quality books to children in our city aged 0 to 5. Currently 800 children receive books monthly and 450+ have 'graduated' from our Imagination Library (IL) Program, launched in 2015 with Head Start. IL books are delivered by the USPS, addressed to the child, who owns them. Books are a gift to the child; there's no cost to families.

Research shows that the presence of a generous number of books in the home of a young child is, by itself, a surprisingly strong indicator of later education level attainment, outweighing correlations to income and parent education. Frequent book sharing with babies is the best way to nurture roots of literacy. Ownership makes that easy.

Literacy is a cornerstone of social justice and equality. Without it, full access to and participation in the programs, movements and institutions that shape our culture and society is handicapped.

We aim to make books a birthright all over the East Bay, starting in our home town. I hope you will consider supporting our efforts. IL makes our goal feasible: just \$25 covers a full year of monthly book deliveries; \$125 covers 5 years of monthly delivery costs.

Because of Covid-19 we activated online registration capability for IL, a thing we'd planned for in late 2021 because of the predictable increase in participation it brings. But, IL is a superb service for hunkering down families, with schools and libraries closed. We felt an urgency to make it more easily available. And, IL books are effectively quarantined before delivery: they're wrapped and labeled 2-10 weeks before landing in the mailbox. And, preschoolers are happily motivated to read *their own* book with *their* name on it, often proudly proclaiming, "Mine!" upon delivery.

We are counting on this community to support our long-term work thru these uncertain times.

With IL, any child can amass a high-quality home library long *before* Kindergarten begins. Eligibility for the Program is determined only by a child's age and home address: all children under age 5 inside an Affiliate's region of service are eligible, they need only be registered by a parent/guardian. The BBBP serves Berkeley, with aspirations to expand.

Imagination Library is good for the child, good for schools, and good for the community. Widespread IL participation can strengthen our social fabric: shared book ownership creates potential for connection between children from families with little else in common. Preschool and Kinder teachers can build on shared literature experiences. BUSD Pre-K teachers love it.

Putting a book in a child's hands is just one small thing but it is a *joyous* thing, it is a *powerful* thing. It is a *long game* thing. I am in for that long game. Please join me. Make a donation today.

Sincerely,

Seena Hawley, Executive Director P.O. Box 8213, Berkeley, CA 94707
510-292-1346 seena@thebbbp.org www.thebbbp.org
A 501(c)(3) organization EIN 46-1358633

Some 2019 survey comments, and a graph!

Since the books have been delivered my son has started to read on his own and loves Reading time. Thank you for supporting his love for reading and learning.

I just wanted to say that this program is very helpful for the community and people of color because our black and brown kids can see themselves on the cover and inside so many of these books.

We love this program. I am encouraged to read to my son every day because of your help with this program. Thank you so much! Mom

It's soooo exciting when a book arrives. I show my child the label with HER name on it and she's just so pumped to have her own book mailed to her. We especially love love love the books with Spanish and English. Thank you for all your efforts.

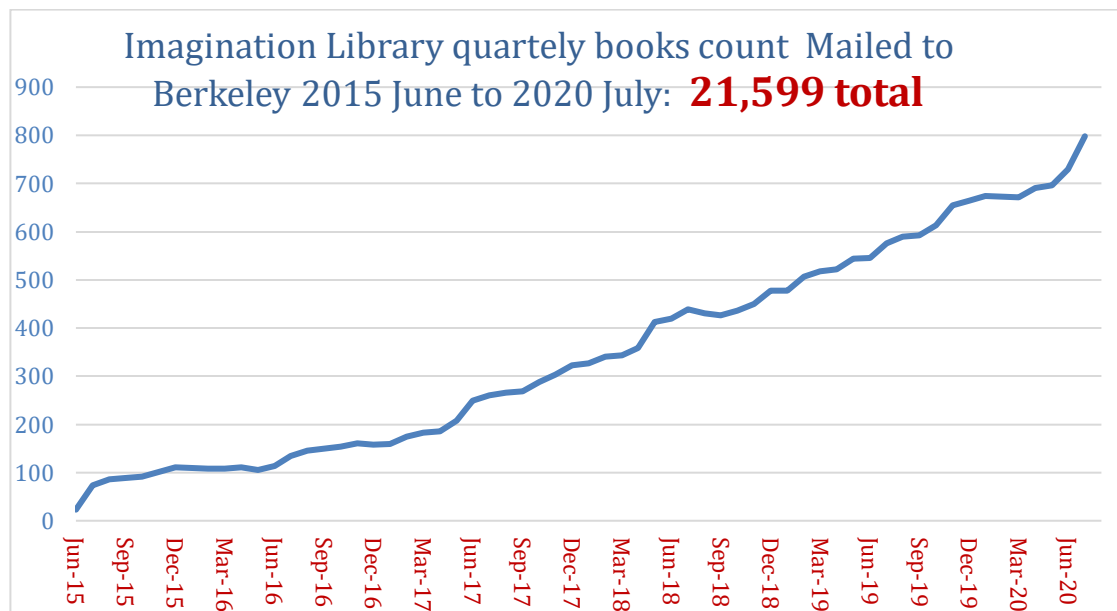
Imagination Library has created excitement and ownership around reading, and gives them shared stories with other kids at their school.

My son loves getting his books he runs to the mail box every time at first he couldn't read by his self and now it is getting so much better. Thank you guys for all you do.

Thank You! These books bring us so much joy!

The variety has been great -- most of which I would not have discovered on my own. My kids love receiving a book in the mail. Thank you 100X over for another great year!!

My two children have really developed a love for books and I know Dolly's books played a big role in that. Thank you for all your work!





CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson, Mayor Jesse Arreguin, and
 Councilmember Sophie Hahn
 Subject: Resolution: Support of S. 4571 - 2020 Census Deadline Extensions Act

RECOMMENDATION

Adopt a Resolution supporting S. 4571, the 2020 Census Deadline Extensions Act, which would extend the Census Bureau's statutory deadlines for delivering apportionment and redistricting data to April and July 2021, respectively.

BACKGROUND

The Census Bureau currently faces a December 31, 2020 statutory deadline to produce census numbers for congressional apportionment, and an April 1, 2021 deadline to transmit redistricting data to the states. The 2020 Census Deadline Extensions Act would extend both deadlines by 120 days to allow for thorough and accurate data processing.

Due to the COVID-19 pandemic, the Bureau extended data collection through October 31, 2020.¹ If Congress does not act to adjust the apportionment and redistricting deadlines accordingly, time for data processing would be cut in half, from 26 weeks in 2000 and 21 weeks in 2010 to just 11 weeks in 2020. These deadlines are particularly challenging given a larger, more diverse population, as well as disruptions to census operations caused by the pandemic.

One of many disruptions has been the closure of college campuses, which has increased the likelihood of double-counting or miscounting college students who have moved back home. The Census Bureau is required to count people at their April 1 "usual residence," meaning that students should be counted in their college towns. However, Berkeley has already seen some of the lowest self-response rates in the nation for Census Tracts 4227 and 4228, which encompass the Southside neighborhood.²

The Bureau needs adequate time to supplement low self-response rates through imputation. Data from this census will guide the allocation of economic and pandemic recovery resources to states and municipalities, including grant money, PPE, medical equipment, vaccines, and therapeutics. Furthermore, students counted in the wrong

¹ <https://www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html>

² <https://2020census.gov/en/response-rates/self-response.html>

state could affect the outcome of congressional apportionment. Without careful data processing, cities like Berkeley could face significant undercounting, underfunding, and underrepresentation in the decade to come.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Resolution

2: Bill text

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

SUPPORT OF S. 4571 - 2020 CENSUS DEADLINE EXTENSIONS ACT

WHEREAS, S. 4571, the 2020 Census Deadline Extensions Act, would extend the Census Bureau's statutory deadlines for delivering apportionment and redistricting data to April and July 2021, respectively; and

WHEREAS, the Bureau's operations have been drastically impacted by the COVID-19 pandemic, leading to the decision to extend data collection through October 31, 2020; and

WHEREAS, due to the impact of the pandemic on college campuses, the City of Berkeley has already seen some of the lowest self-response rates in the nation for Census Tracts 4227 and 4228, which encompass the Southside student neighborhood; and

WHEREAS, if Congress does not act to adjust the Bureau's statutory deadlines, there will be insufficient time for the data quality assurance and imputation work that the Bureau conducts to accurately count these low self-responding populations; and

WHEREAS, the 2020 Census numbers will guide the next decade of congressional apportionment, redistricting, economic investment, and the allocation of critical economic and pandemic recovery resources to states and localities.

THEREFORE BE IT RESOLVED that the Council of the City of Berkeley supports S. 4571, the 2020 Census Deadline Extensions Act, and calls upon Congress to carry out its constitutional duty to give the Census Bureau the time its experts need to produce statistically sound and acceptably accurate data.

BE IT FURTHER RESOLVED that copies of this Resolution shall be sent to Senator Brian Schatz, Representative Don Young, Senator Kamala Harris, Senator Dianne Feinstein, Representative Barbara Lee, and the U.S. Census Bureau.

S. 4571

To extend certain deadlines for the 2020 decennial census.

IN THE SENATE OF THE UNITED STATES

September 15, 2020

Mr. Schatz (for himself, Ms. Murkowski, and Mr. Sullivan) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To extend certain deadlines for the 2020 decennial census.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “2020 Census Deadline Extensions Act”.

SEC. 2. CENSUS DEADLINE MODIFICATION.

Notwithstanding the timetables provided in subsections (b) and (c) of section 141 of title 13, United States Code, and section 22(a) of the Act entitled “An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress”, approved June 18, 1929 ([2 U.S.C. 2a\(a\)](#)), for the 2020 decennial census of population—

(1) the tabulation of total population by States required by subsection (a) of such section 141 for the apportionment of Representatives in Congress among the several States shall be—

(A) completed and reported by the Secretary of Commerce (referred to in this section as the “Secretary”) to the President not earlier than 1 year and not later than 13 months after the decennial census date of April 1, 2020; and

(B) made public by the Secretary not later than the date on which the tabulation is reported to the President under subparagraph (A);

(2) the President shall transmit to Congress a statement showing the whole number of persons in each State, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives, as

required by such section 22(a), and determined solely as described therein, not later than 14 days after receipt of the tabulation reported by the Secretary; and

(3) the tabulations of population required by subsection (c) of such section 141 shall be completed by the Secretary as expeditiously as possible after the decennial census date of April 1, 2020, taking into account the deadlines of each State for legislative apportionment or districting, and reported to the Governor of the State involved and to the officers or public bodies having responsibility for legislative apportionment or districting of that State, except that the tabulations of population of each State requesting a tabulation plan, and basic tabulations of population of each other State, shall be completed, reported, and transmitted to each respective State not later than 16 months after the decennial census date of April 1, 2020.

SEC. 3. 2020 CENSUS OPERATIONS.

For the 2020 decennial census of population, the Bureau of the Census may not conclude the Nonresponse Followup operation or the Self-Response operation before October 31, 2020.



Lori Droste
Councilmember District 8

Consent Calendar
December 15, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Lori Droste, Mayor Jesse Arreguin, Councilmember Rigel Robinson, Councilmember Kate Harrison
Subject: Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration

Recommendation

Refer to the City Manager to develop a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. Consider criteria for transitioning spaces for public vs. private outdoor use:

- Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces
- Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors.
- Consider *merchant opt-out vs. opt-in*: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the city might reach out to temporary permit holders and offer an opt-in or quick transition program.
- Consider *fees and potential fee waivers for temporary spaces transitioning to permanent status*: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits.

- *Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible.*
- *Request the Agenda Committee consider sharing this item on Berkeley Considers.*
- *Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)*

POLICY COMMITTEE RECOMMENDATION

On November 2, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Robinson/Hahn) to send the item with a positive recommendation to the City Council with the recommendation language as amended by the committee.

The revised recommendation language includes:

Refer to the City Manager to develop a program and, if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. - Consider criteria for transitioning spaces for Public vs. Private outdoor use. - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces. - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors. - Consider Merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the City might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider Fees and potential Fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider Protocols for transfer of private use parklets if businesses change, turn over, etc. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers.

Vote: Ayes - Hahn, Robinson; Noes – Davila; Abstain – None; Absent - Harrison

Background

Since the parklet pilot program began in 2013, the City of Berkeley has explored the use of parklets to improve the pedestrian environment, support commercial areas, and re-

envision public spaces. By 2018, the City had six parklets and City Council adopted a parklets ordinance to make the program permanent.¹

With the rise of COVID-19, the City has adopted new public health orders to protect the safety of residents by mandating social distancing protocols and new rules around indoor dining, recreation, and gatherings. Parklets have emerged as a safe way for restaurants to allow patrons to eat outside with ample space in between diners. Salons and gyms have utilized parklets to move services outside. Currently, 29 businesses have applied for outdoor commerce permits (which includes both sidewalk seating and parklets) with 13 of those applications for parklets.

To support businesses as quickly as possible, the City passed an urgency ordinance² to establish outdoor dining and commerce in the public right of way. As currently written, the simplified application process as well as the permit for outdoor dining and commerce will last as long as the City's declaration of emergency. The fee waiver associated with this ordinance lasts up to one year (as of June 2020).

When the City's declaration of emergency ends, these permits and the outdoor dining and commerce structures in the public right of way will expire.

Information on the safety protocols, insurance requirements, and specific types of outdoor dining and commerce permits can be found on the OED materials in Attachment 1.

Financial Implications

The installation of parklets may result in a slight reduction in parking revenues over time. Transportation staff have provided the following table to reflect the lost parking revenue associated with parklets. Because meter costs vary throughout the City, different commercial areas have different revenue projections.

¹ https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-15_Item_08_Establishment_of_the_Parklet.aspx

² <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>

Impacts of Parklets on Parking Meter Revenue

Meter Area	# of Parklets	Total Spaces	Annual Revenue Loss	
			Actual*	Potential**
4th Street	3	7	\$19,200.75	\$28,633.50
Downtown	6	21	\$78,983.78	\$229,068.00
Elmwood	3	6	\$27,016.00	\$44,995.50
North Berkeley	6	22	\$60,433.59	\$119,988.00
Solano	3	8	\$14,230.33	\$32,724.00
	21	64	\$199,864.46	\$455,409.00

*Calculated using February 2020 revenue data
Revenue shown is average of meter financial area. 4th St. specific to 1800 block of 4th Street.

**Potential revenue assumes metered spaces are paid from 9am-6pm, Monday-Saturday, holidays excepted, at Feb. 2020 hourly rates.

Contact

Councilmember Lori Droste, District 8, 510-981-7180

Attachment 1:

https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Public_Health/covid19/Aug20_OED_OutdoorCommerceGuide.pdf



Lori Droste
Councilmember District 8

Consent Calendar
December 15, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Lori Droste, Mayor Jesse Arreguin, Councilmember Rigel Robinson, Councilmember Kate Harrison
Subject: Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration

Recommendation

Refer to the City Manager and the ~~Facilities, Infrastructure, Transportation, Environment and Sustainability Policy Committee~~ to develop a program, and if necessary, ordinance language to facilitate the transition of ~~make~~ the temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to become permanent status. Consider criteria for transitioning spaces for public vs. private outdoor use. Ordinance language should include:

- Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces
- Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors.
- Consider merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders should ~~should~~ might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the city might reach out to temporary permit holders and offer an opt-in or quick transition program.
- Consider fees and potential fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or

sidewalk seating typically necessary for outdoor dining and commerce permits ~~sh~~ could be waived for all transitioning permits.

- *Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible.*
- *Request the Agenda Committee consider sharing this item on Berkeley Considers.*
- ~~Protocols for transfer of parklets if businesses change, turn over, etc.~~
- *Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)*

Background

Since the parklet pilot program began in 2013, the City of Berkeley has explored the use of parklets to improve the pedestrian environment, support commercial areas, and re- envision public spaces. By 2018, the City had six parklets and City Council adopted a parklets ordinance to make the program permanent.¹

With the rise of COVID-19, the City has adopted new public health orders to protect the safety of residents by mandating social distancing protocols and new rules around indoor dining, recreation, and gatherings. Parklets have emerged as a safe way for restaurants to allow patrons to eat outside with ample space in between diners. Salons and gyms have utilized parklets to move services outside. Currently, 29 businesses have applied for outdoor commerce permits (which includes both sidewalk seating and parklets) with 13 of those applications for parklets.

To support businesses as quickly as possible, the City passed an urgency ordinance² to establish outdoor dining and commerce in the public right of way. As currently written, the simplified application process as well as the permit for outdoor dining and commerce will last as long as the City's declaration of emergency. The fee waiver associated with this ordinance lasts up to one year (as of June 2020).

When the City's declaration of emergency ends, these permits and the outdoor dining and commerce structures in the public right of way will expire.

¹ https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-15_Item_08_Establishment_of_the_Parklet.aspx

² <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>

Information on the safety protocols, insurance requirements, and specific types of outdoor dining and commerce permits can be found on the OED materials in Attachment 1.

Financial Implications

The installation of parklets may result in a slight reduction in parking revenues over time. Transportation staff have provided the following table to reflect the lost parking revenue associated with parklets. Because meter costs vary throughout the City, different commercial areas have different revenue projections.

Impacts of Parklets on Parking Meter Revenue

Meter Area	# of Parklets	Total Spaces	Annual Revenue Loss	
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*Calculated using February 2020 revenue data
Revenue shown is average of meter financial area. 4th St. specific to 1800 block of 4th Street.

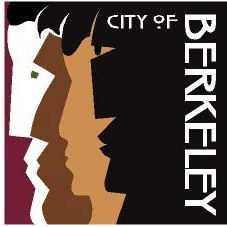
**Potential revenue assumes metered spaces are paid from 9am-6pm, Monday-Saturday, holidays excepted, at Feb. 2020 hourly rates.

Contact

Councilmember Lori Droste, District 8, 510-981-7180

Attachment 1:

https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Public_Health/covid19/Aug20_OED_OutdoorCommerceGuide.pdf



Office of the City Manager

REVISED AGENDA MATERIAL

Meeting Date: December 1, 2020

Item Number: 30

Item Description: Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and 23

Submitted by: Jordan Klein, Interim Director, Planning & Development Department

This supplemental report includes new language for Section 1 and Section 3 of the proposed ordinance.

The restrictions on issuance of RPP permits in Section 1 of the proposed ordinance (14.72.080 C) have been removed. It was brought to staff's attention that an advisory opinion by the State Attorney General in 2016 interprets Vehicle Code section 22506 to disallow restrictions on RPP permit issuance based on unit size or type.

Revised text has been provided for Section 3 of the proposed ordinance, correcting paragraph lettering in 23C.18.030, and correcting corresponding code references in Section 23C.18.040.

Section 1. That Berkeley Municipal Code Section 14.72.080 is amended to read as follows:

14.72.080 Issuance of permits.

A. Residential, local business and neighborhood-serving community facility parking permits shall be issued by the Department of Finance in accordance with requirements set forth in this chapter. Each such permit shall be designed to state or reflect thereon the identification of the particular residential, local business or neighborhood-serving community facility permit parking area for which it is issued. No more than one residential or local business parking permit shall be issued to each motor vehicle for which application is made.

B. When issuing local business and neighborhood-serving community facility permits, the Department of Finance in consultation with the traffic engineering division shall issue permits such that they will not unduly be concentrated on a specific block front in any given residential permit parking area.

~~C.1.~~

~~No permits shall be issued to residents in newly constructed residential units which do not meet the parking requirements established by the Zoning Ordinance unless a variance for parking requirement set forth in the Zoning Ordinance was issued. In the C-T Zoning District, the R-SMU Zoning District, and portions of the R-S Zoning District where no parking is required for residential uses, no residential parking permits will be issued for occupants of residential units created after the effective date of the Southside Plan. The Current Planning division shall provide a listing of newly constructed housing units to the Department of Finance.~~

~~2. No permits shall be issued to residents of Group Living Accommodations as defined in Chapter 23F.04 that are approved after January 1, 2012, unless the Zoning Adjustments Board specifies otherwise when it approves the GLA. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.~~

~~3. In the R-2 and R-2A zoning districts, no permits shall be issued to residents of dwelling units with more than 5 bedrooms to which new bedrooms have been added subsequent to January 1, 2012. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.~~

~~4. This subdivision shall not prevent issuance of permits to residents of permitted and legal nonconforming sororities, fraternities and student cooperatives who are not otherwise prohibited from obtaining them.~~

DC. The Department of Finance and the traffic engineering division are authorized to issue such rules and regulations necessary to implement this chapter, and are not inconsistent with it.

ED. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation.

Section 3. That Berkeley Municipal Code Chapter 23C.18 is hereby added to read as follows:

Chapter 23C.18: Transportation Demand Management

Sections:

23C.18.010 Purpose

23C.18.020 Applicability of Regulations

23C.18.030 Transportation Demand Management Program Requirements

23C.18.040 Monitoring, Reporting and Compliance

Section 23C.18.010 Purpose

The purpose of this chapter is to establish a Transportation Demand Management program that supports:

- A. City Transportation Element goals of reducing vehicle trips, encouraging public transit use and promoting bicycle and pedestrian safety, and
- B. City Climate Action Plan goals to reduce private vehicle travel and promote mode shift to more sustainable transportation options.

Section 23C.18.020 Applicability of Regulations

A. The following types of projects must comply with the requirements of this Chapter:

- 1. Residential projects, including the residential portion of mixed-use projects, that include ten or more Dwelling Units that have not been issued a Building Permit by the effective date of this ordinance.

B. The following types of projects shall be exempt from the requirements of this Chapter:

- 1. Residential projects, including the residential portion of mixed-use projects, located in the following locations:
 - a. C-DMU Downtown Mixed Use District
 - b. Southside Plan Area
- 2. Residential projects, including the residential portion of mixed-use projects, with the majority of the units subject to recorded affordability restrictions.

23C.18.030 Transportation Demand Management Program Requirements

Any project subject to this Chapter shall:

A. Ensure that all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units, such that potential renters or buyers shall have the option of renting or buying a dwelling unit at a price lower than would be the case if there were a single price for both the dwelling unit and the parking space(s);

B. Offer at least one of the following transit benefits, at no cost to the resident, for a period of ten years after the issuance of a Certificate of Occupancy. For projects that include 99 dwelling units or fewer, the project shall provide one transit benefit per bedroom, up to a maximum of two benefits per dwelling unit. For projects of 100 dwelling units or more, the project shall provide one transit benefit for every bedroom in

each dwelling unit. A notice describing these transportation benefits shall be posted in a location or locations visible to residents.

1. A monthly pass for unlimited local bus transit service; or
2. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager; and
- C. Provide publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors. Provided information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.

Section 23C.18.040 Monitoring, Reporting and Compliance

A. For projects subject to this Chapter, prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in 23C.18.030 (C) and 23D.12.065 (A) have been installed. The property owner shall also provide documentation that the programmatic measures required in 23C.18.030 (A) and (B) will be implemented.

B. The property owner shall submit to the Planning Department TDM Compliance Reports in accordance with Administrative Regulations promulgated by the Zoning Officer that may be modified from time to time to effectively implement this Chapter.

C. Property owners may be required to pay administrative fees associated with compliance with this ordinance as set forth in the City's Land Use Planning Fees schedule.



Office of the City Manager

PUBLIC HEARING
December 15, 2020
(Continued from December 1, 2020)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Interim Director, Planning & Development Department
Subject: Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23

RECOMMENDATION

Conduct a public hearing and upon conclusion select among proposed ordinance language options and take the following action:

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 14 and Title 23 which would:

1. Modify Minimum Residential Off-street Parking Requirements
2. Impose Residential Parking Maximums in Transit-rich Areas
3. Amend the Residential Preferential Parking (RPP) Permit Program
4. Institute Transportation Demand Management (TDM) Requirements

SUMMARY

This report presents recommendations for implementing a residential off-street parking reform package. This proposal is a response to Policy 1 of the Green Affordable Housing Package (GAHP) Referral, which focuses on parking reform, and the Citywide Green Development Referral, which requests TDM for high-density residential projects. The Planning Commission met eleven times over the past four years to develop recommendations. Staff from multiple departments have been participating in an interdepartmental working group to evaluate and discuss proposals. Council is asked to consider proposals listed as Option A and Option B in the ordinance revisions.

FISCAL IMPACTS OF RECOMMENDATION

Reductions in off-street parking requirements are intended to make land and building area available, and to provide financial incentives, for additional housing units, particularly affordable units. Projects that include additional units will result in proportionally more inclusionary housing units and Affordable Housing Mitigation Fees. Otherwise, these changes are not expected to have a fiscal impact.

CURRENT SITUATION AND ITS EFFECTS

Reforming residential parking requirements and implementing a TDM program addresses Strategic Plan Priorities, advancing the City's goals to create affordable housing and to be a global leader in addressing climate change. City Council asked Planning Commission to review parking policies in 2015 and 2016 through the following two referrals (see Attachment 2):

Green Affordable Housing Package Referral (October 27, 2015) -- Reduce barriers to affordable housing production by researching two ideas:

Policy 1: Exchange off-street parking required for new development with affordable units and/or funding for affordable housing through the following ideas:

- Reduce/eliminate parking requirement for housing that offers TDM measures, car-sharing or shared-mobility programs.
- Implement parking maximums.
- Reduce/eliminate parking requirements for new housing that serves populations with low car ownership.
- Reduce/eliminate parking requirements for transit-intensive housing.
- Reduce parking requirements for new residential units near transit hubs.

Policy 2: Remove structural barriers to affordable housing development through improvements and streamlining of the permitting process.

Citywide Green Development Requirements Referral (April 26, 2016) – Apply the Commercial Downtown Mixed-Use District's (C-DMU) TDM regulations (e.g. bicycle parking, vehicle sharing spaces, RPP, unbundled parking, and transportation benefits) to projects with 75 or more units in commercial zoning districts.

Initial GAHP discussions focused on capturing affordable housing units in exchange for parking reductions, as requested in the referral. However, the passage of new State laws that mandated parking reductions near transit (see discussion of Assembly Bill 744 in staff reports provided as Links 9, 10, and 11) limited the City's ability to capture benefits. Furthermore, there were complications associated with levying a parking fee that would go towards the Housing Trust Fund (e.g., nexus fee studies required). As a result, the response to Policy 1 of GAHP was focused solely on parking reform. Policy 2 was similarly advanced as a result of new State laws, including amendments to the Housing Accountability Act, State Density Bonus law, and State ADU law and adoption of SB-35 (Streamlined Approval Process), and was addressed with City initiatives such as the Housing Action Plan, initiation of the Zoning Ordinance Revision Project, and the pending Analysis of Development Fees. These efforts are still active and are intended to reduce barriers to affordable housing development, as requested by GAHP referral Policy 2.

The Planning Commission began discussing a comprehensive parking reform package in January 2019. Between then and March 2020, it revisited this topic seven times, having focused discussions on parking minimums, parking maximums and transportation demand management requirements. Links to staff reports from these meetings (Links 2 through 7) are provided at the end of this report. Discussions began with an analysis of current regulations, recent development patterns and regulations in other cities, then moved on to analysis of research requested on specific topics to inform proposals.

The Planning Commission received presentations from City staff from Land Use Planning, Public Works Transportation, and from the non-profit organization TransForm (<https://www.transformca.org/>). The Transportation Commission, which received a presentation on the full parking reform proposal, provided feedback to planning staff at their February 20, 2020 meeting and appointed a representative to speak at the March 4, 2020 Planning Commission public hearing. AC Transit staff attended Planning Commission meetings where TDM was discussed and provided public comment on proposals.

The Transportation Division also engaged a consultant to conduct a Residential Parking Utilization Study to inform proposals (see Attachment 3). The study summarized on- and off-street parking capacity in and near multifamily residential developments of ten or more units¹. The areas of the City that can accommodate ten or more units are located in the multi-family (R-3, R-4) and high density residential (R-S, R-SMU) and commercial districts. Most of these areas are within walking distance to commercial corridors, transit hubs and/or areas of the city that provide services and amenities to residents and visitors. Findings from the study suggest that on- and off-street parking for multi-family buildings of ten or more units is underutilized and that the average rate of car ownership (for buildings with ten or more units) is one car per two units, based on DMV registration information.

Attachment 4 provides “At-A-Glance Summaries” of parking reform topics that were discussed.

Planning Commission Recommendations

After several meetings to discuss the issues and possible strategies, on March 4, 2020 the Planning Commission held a public hearing and recommended a set of draft Zoning Ordinance amendments to City Council for consideration. Minutes from that meeting are provided as Attachment 5. The Planning Commission’s recommendations are provided below. For Recommendations 1, 2 and 3, the Planning Commission’s recommendation

¹ Staff chose the threshold of ten or more units for consistency with methodologies followed by King County, Washington, Washington DC, and Chicago when conducting similar parking utilization studies. Additionally, the Zoning Ordinance uses a threshold of ten or more units in higher-density residential districts for off-street parking requirements.

is indicated as Option A, and staff has provided alternate options for Council's consideration that are based on the results of the Residential Parking Utilization Study.

1. Modify Minimum Residential Off-Street Parking Requirements

Option A – Eliminate off-street parking minimums for all new projects (except in ES-R and H Overlay Districts on roads less than 26 feet in width).

Option B – Eliminate off-street parking minimums for new projects of ten or more units in high density residential and commercial / mixed-use districts.

Initial discussions at Planning Commission focused on staff's proposal to eliminate off-street residential parking requirements for projects with ten or more units (see Link 3). This proposal was informed by the Residential Parking Utilization Study's on- and off-street parking utilization rates and automobile registration rates in zoning districts allowing high density residential projects. The study did not include data collection or data analysis for low density residential districts (R-1, R-1A, R-2 or R-2A). Planning Commission expanded the reach of the proposal to include all units in all districts. The Transportation Commission reviewed this proposal as a discussion item at its February 20, 2020 meeting and agreed with the Planning Commission's direction. This bold move resonated with members of the public that participated in the Planning Commission and Transportation Commission meetings and requested visionary, forward-thinking policies. Option B returns to staff's initial recommendation. This option provides a more conservative approach, relying on findings in the Residential Parking Utilization Study. Extending this policy to lower density residential districts, not included in the study, may result in unintended consequences affecting the feasibility of future housing projects and/or create impacts to on-street parking.

For both options, off-street parking would still be required for projects in the Environmental Safety-Residential (ES-R) District, where preservation of off-street parking is an important factor in maintaining clear emergency access and evacuation routes. Similarly Option A applies parking minimums to projects in the Hillside Overlay (H) Districts located on roads that are less than 26 feet in width. To provide flexibility, these requirements could be waived with an AUP with Option A. Option B is more restrictive -- projects within the ES-R District and the H Districts could not reduce off-street parking requirements; however, residential projects in other districts could reduce parking minimums with an AUP.

2. Impose Parking Maximums in Transit-Rich Areas

Option A – Implement parking maximums of 0.5 spaces per unit for projects with two or more units within 0.25 miles of high frequency transit² (except in ES-R and H Overlay Districts on roads less than 26 feet in width).

² High frequency transit includes major transit stops, as defined by Section 21064.3 of the California Public Resources Code or bus stops along a transit corridor with less than 15 minute headways during the morning and afternoon weekday peak periods.

Option B – Implement parking maximums of 0.5 spaces per unit for projects with ten or more units within 0.25 miles of high frequency transit (except in ES-R and H Overlay Districts).

Parking maximum proposals are often focused on transit-rich areas in order to encourage a shift from private vehicles to alternative modes where they are readily available. Proposed options would include exceptions for projects where the majority of units are deed-restricted as affordable, to ensure parking maximums would not introduce barriers to affordable housing projects due to possible financing requirements. Proposals also include an exception for projects located in the ES-R District and the H Districts -- or portions of the H Districts (for the same safety reasons stated in Recommendation 1, above). A map of Berkeley's transit-rich areas is provided in Attachment 6.

Option A applies the findings of the Residential Parking Utilization Study (see Link 3) to establish parking maximums on projects with two or more units. As stated in Recommendation 1, the parking study did not include data collection or analysis in low density residential zoning districts (R-1, R-1A, R-2 or R-2A) and did not consider impacts of parking maximums on project feasibility. Option B establishes parking maximums on projects with ten or more units – only applying the results of the Parking Utilization Study to the type and size of project that was studied.

3. Amend the Residential Preferential Parking (RPP) Permit Program

Option A: Prohibit residents of new projects of five or more units from obtaining RPP permits.

Option B: Prohibit residents of new projects of ten or more units from obtaining RPP permits.

Current zoning and RPP regulations provide that residents of new projects that do not include parking in the C-DMU and the Car-Free Housing Overlay in the Southside Plan Area, as well as other projects that do not meet minimum parking requirements based on a Use Permit or Density Bonus concession, cannot obtain RPP permits. The Planning Commission expanded this element in the recommended parking reform package to exclude any new project with five or more units, in order to reduce demand for on-street parking and lessen impacts on RPP areas, which are generally located in lower density residential districts. Option B, the first proposal the Planning Commission considered, applies to projects with ten or more units, sharing the recommended threshold for the TDM proposal (see Link 1).

4. Institute TDM Requirements

Require the following TDM measures for projects of ten or more units:

- *Provide off-street bicycle parking per the 2017 [Berkeley Bicycle Plan](#);*
- *Provide real-time transportation information displayed on monitors in project common areas;*

- Offer residents free monthly transit passes (one per bedroom, with a maximum of two passes per unit for projects with less than 100 units and one pass per bedroom for projects with 100 units or more), or equivalent Clipper Card credit, provided by the property manager for a period of ten years; and
- Require “unbundling” of off-street parking.

Many TDM options were researched and considered by the Planning Commission. Chosen measures were selected for their demonstrated effectiveness in reducing private vehicle travel and for their ease of administration (see Links 4 and 5). This proposal includes exemptions from the TDM requirements for projects with a majority of deed-restricted affordable units (for reasons stated in Recommendation 2, above) and projects located in the C-DMU District (where TDM requirements already exist) and in the Southside Plan Area (which is predominantly populated by students who receive transit passes from UC Berkeley).

Summary of Options

The table below shows how options relate to projects of different sizes:

Regulation	Projects Affected (number of units)			
	One or More	Two or More	Five or More	Ten or More
Parking Minimums	Option A	--	--	Option B*
Parking Maximums	--	Option A	--	Option B
RPP	--	--	Option A	Option B
TDM	Option A			

* NOTE: Option B of Parking Minimums cannot be paired with Option A of Parking Maximums because Parking Maximums is less than required Parking Minimums.

Environmental Review

Pursuant to CEQA Guidelines Sections 15378(a), 15060(c)(2) and 15064(d)(3), environmental review is not required because the proposed Zoning Ordinance amendments are not a Project. The proposed Zoning Ordinance amendments do not meet the definition of a Project under CEQA Guidelines Section 15378(a), nor do they constitute activities covered by CEQA under CEQA Guidelines Section 15060(c)(2), because passage of the amendments themselves do not constitute a direct physical impact on the environment, nor would they result in an indirect, reasonably foreseeable physical impact on the environment. Due to the city-wide nature of the proposed amendments, and the diffuse impacts, if any, of physical changes to the environment that may result from the types of development encouraged by the proposed amendments, identifying and quantifying such potential changes would be highly speculative. Underlying zoning standards for density and lot development would remain unchanged. Pursuant to CEQA Guidelines Section 15064(d)(3), any change that is

speculative is not considered reasonably foreseeable. The proposed amendments do not include any provisions that would exempt or otherwise reduce environmental review required under CEQA for individual development projects.

BACKGROUND

Most zoning districts in the City of Berkeley establish minimum off-street parking requirements for residential development.³ Table 1 summarizes the basic parking requirements.

Table 1 - Current Off-Street Parking Requirements

Zone(s)	Required Off-Street Parking Spaces
R-1, R-1A, ES-R, R-2, R-2A	One space per unit
R-3, R-4 C-1, C-N, C-NS, C-SO, C-SA	One space per unit for projects of 10 or fewer units ^a OR One space per 1,000 GSF* of residential space for projects of more than 10 units ^a
C-W	One space per unit
C-DMU	One space per three units ^b
C-T	None
M-UR	One space per unit ^{a,b,c}
^a 25% reduction for projects that house senior citizens ^b Can be reduced with Use Permit and TDM measures ^c May be satisfied by off-site leased parking and may be reduced 10% by providing motorcycle parking. *GSF = gross square footage	

Use Permits are also available to reduce these parking requirements in most districts subject to a traffic and parking study, offsetting measures such as TDM, and findings related to the adequacy of the remaining parking, non-detriment to neighborhoods, and restrictions on the availability of RPP permits. State Density Bonus Law separately provides for reduced parking standards and for waivers and concessions that are intended to address the affordability of housing development and the provision of additional housing units.

To aid with a response to parking reform referrals, Land Use Planning convened an inter-departmental working group with staff from the Transportation Division, Office of Economic Development, Office of Energy and Sustainable Development, Office of Emergency Services, and Fire Department to discuss parking-related policies and to ground-truth proposals. This multi-departmental collaboration was extremely helpful in identifying unintentional consequences of proposals and provided additional options for City Council to consider.

ENVIRONMENTAL SUSTAINABILITY

Reducing minimum parking requirements and increasing the supply of housing near transit in the City of Berkeley would reduce vehicle miles traveled and greenhouse gas

³ MU-LI, MM and M Districts do not permit residential development.

emissions. Instituting new TDM requirements would encourage mode shift away from private vehicle travel and towards more sustainable modes of transportation.

RATIONALE FOR RECOMMENDATION

Off-street parking is often underutilized and adds to the cost of new housing. Parking minimums and parking maximums, if applied appropriately, encourage a supply that meets demand. TDM requirements encourage alternatives to private vehicle use and provide support for more sustainable travel modes. The adoption of the proposed RPP restrictions would control on-street parking impacts.

The latest update to the City of Berkeley’s Climate Action Plan indicated that approximately 59% of greenhouse gas emissions in Berkeley are attributable to transportation.⁴ In order to achieve the goals laid out in the Climate Action Plan, it is essential that we employ strategies to reduce these emissions.

ALTERNATIVE ACTIONS CONSIDERED

A variety of alternate options were discussed as explained in the Planning Commission Recommendation section, starting on page 3 above.

The Planning Commission also considered establishing a fee amount for the existing Transportation Services Fee (TSF), or establishing a new Transportation Impact Fee. These these ideas were not recommended as part of this package because of the time and funding needed to conduct an impact fee study. City Council could refer this as a future action if there is a desire to implement these measures.

In addition, staff considered recommending a citywide TDM program (the current recommendation excludes the C-DMU and the Southside). Staff proposed to Planning commission exempting these areas from the program – C-DMU because it operates a TDM program and Southside because the student population is provided AC Transit EZ passes. However, upon further consideration and after Planning Commission made their recommendation, staff has recognized the benefits of a citywide TDM program – the most apparent being consistency across all districts. Some of the discrepancies between the programs are listed below:

	C-DMU TDM Program	Parking Reform TMD Package
Project Applicability	Projects greater than 20,000 square feet	Projects with ten or more units
Number of Transit Passes	1 per unit	1 per bedroom, with a cap of two passes per unit for projects with 100 units or fewer, and no cap for projects with more than 100 units.

⁴ See “Climate Action Plan and Resilience Update”, July 21, 2020.
https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx

Duration of Transit Pass Offering	In perpetuity	For ten years
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Planning Commission recommended that transit passes be offered to residents for a period of ten years based on analysis provided by staff, comparing the cost of off-street parking to the cost of offering transit passes. Additionally, the ten year cap was chosen because travel behavior has evolved significantly over the past ten years -- due to car-share, bike-share and ridesharing innovations – and Planning Commission wanted flexibility to establish new TDM measures at a later date that meets future residents' needs.

To resolve this issue, City Council can refer to the Planning Commission development of amendments that apply the new TDM program citywide. These actions would need a public hearing at Planning Commission since they were not considered by Planning Commission at a previous meeting.

CONTACT PERSONS

Justin Horner, Associate Planner, Planning and Development, 510-981-7476
Alene Pearson, Principal Planner, Planning and Development, 510-981-7489

Attachments:

1. Zoning Ordinance Amending Title 14 And Title 23 To Modify Minimum Residential Off-street Parking Requirements, Impose Residential Parking Maximums in Transit-rich Areas, Institute Transportation Demand Management (TDM) Requirements and Amend the Residential Preferential Parking (RPP) Permit Program
2. Green Affordable Housing Referral and Citywide Green Development Standards Referral
3. Residential Parking Utilization Study
4. At-A-Glance Summaries of Parking Reform Topics under Consideration
5. Minutes from March 4, 2020 Planning Commission meeting
6. Map Identifying Areas in Berkeley 0.25 Miles from Major Transit Stops and High Quality Transit Corridors
7. Public Hearing Notice

Links to Planning Commission Staff Reports:

1. [March 4, 2020 – Parking Reform Package Public Hearing
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2020-03-04_Item%209_Staff%20Report_Parking%20Reform.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2020-03-04_Item%209_Staff%20Report_Parking%20Reform.pdf)

2. [January 15, 2020 – Parking Maximums](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2012-01-15_ITEM%2013_with%20all%20ATT_Parking%20Maximums%20Staff%20Report%201-15.pdf)
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2012-01-15_ITEM%2013_with%20all%20ATT_Parking%20Maximums%20Staff%20Report%201-15.pdf
3. [December 4, 2019 – TDM and Parking Requirements](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/ITEM%209%20-%20combined.pdf)
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/ITEM%209%20-%20combined.pdf
4. [October 2, 2019 – Proposed TDM Program](https://www.cityofberkeley.info/uploadedFiles/PLANNING_-_New/2019-10-02_PC_Item%209.pdf)
https://www.cityofberkeley.info/uploadedFiles/PLANNING_-_New/2019-10-02_PC_Item%209.pdf
5. [July 17, 2019 – TDM and Parking Requirements](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3)
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3
6. [May 1, 2019 – Parking Referrals](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2019-05-01_PC_Item%2010.pdf)
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2019-05-01_PC_Item%2010.pdf
7. [February 6, 2019 – Green Affordable Housing Referral](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2019-02-6_Item_10_GAH%20.pdf)
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2019-02-6_Item_10_GAH%20.pdf
8. [October 18, 2017 – Consider Close-Out Referrals](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2017-10-18_Item_10_Staff_Report_Close_Out_Complete.pdf)
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2017-10-18_Item_10_Staff_Report_Close_Out_Complete.pdf
9. [February 15, 2017 – Green Affordable Housing Package](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2017-02-15_Item%209_Green%20Affordable%20Housing-Combined.pdf)
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2017-02-15_Item%209_Green%20Affordable%20Housing-Combined.pdf
10. [October 19, 2016 – Green Affordable Housing – Refining and Focusing Direction](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2016-10-19_Item%2010-Combined.pdf)
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2016-10-19_Item%2010-Combined.pdf
11. [September 21, 2016 – Green Affordable Housing Package](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2016-09-21_Item%209_Combined.pdf)
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2016-09-21_Item%209_Combined.pdf

ORDINANCE NO. -N.S.

AMENDING TITLE 14 AND TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO MODIFY MINIMUM RESIDENTIAL OFF-STREET PARKING REQUIREMENTS, IMPOSE RESIDENTIAL PARKING MAXIMUMS IN TRANSIT RICH AREAS, INSTITUTE TRANSPORTATION DEMAND MANAGEMENT REQUIREMENTS AND AMEND THE RESIDENTIAL PREFERENTIAL PARKING (RPP) PERMIT PROGRAM

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

Section 1. That Berkeley Municipal Code Section 14.72.080 is amended to read as follows:

14.72.080 Issuance of permits.

A. Residential, local business and neighborhood-serving community facility parking permits shall be issued by the Department of Finance in accordance with requirements set forth in this chapter. Each such permit shall be designed to state or reflect thereon the identification of the particular residential, local business or neighborhood-serving community facility permit parking area for which it is issued. No more than one residential or local business parking permit shall be issued to each motor vehicle for which application is made.

B. When issuing local business and neighborhood-serving community facility permits, the Department of Finance in consultation with the traffic engineering division shall issue permits such that they will not unduly be concentrated on a specific block front in any given residential permit parking area.

C. 1. **[OPTION A]** No permits shall be issued to residents of newly constructed projects that include 5 or more dwelling units. **[OPTION B]** No permits shall be issued to residents of newly constructed projects that include 10 or more dwelling units. No permits shall be issued to residents in newly constructed residential units which do not meet the parking requirements established by the Zoning Ordinance unless a modification variance for of the parking requirements set forth in the Zoning Ordinance was issuedapproved. In the C-T Zoning District, the R-SMU Zoning District, and portions of the R-S Zoning District where no parking is required for

residential uses, no residential parking permits will be issued for occupants of residential units created after the effective date of the Southside Plan. The Current Planning division shall provide a listing of newly-constructed housing units to the Department of Finance.

2. No permits shall be issued to residents of Group Living Accommodations as defined in Chapter 23F.04 that are approved after January 1, 2012, unless the Zoning Adjustments Board specifies otherwise when it approves the GLA. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.

3. In the R-2 and R-2A zoning districts, no permits shall be issued to residents of dwelling units with more than 5 bedrooms to which new bedrooms have been added subsequent to January 1, 2012. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.

4. This subdivision shall not prevent issuance of permits to residents of permitted and legal nonconforming sororities, fraternities and student cooperatives who are not otherwise prohibited from obtaining them.

D. The Department of Finance and the traffic engineering division are authorized to issue such rules and regulations necessary to implement this chapter, and are not inconsistent with it.

E. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation.

Section 2. That Berkeley Municipal Code Section 23B.44.010 is amended to read as follows:

23B.44.010 Variances

The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property; the height of buildings; the yard setbacks of buildings the percentage of lot coverage; the lot area requirements; or the off-street parking requirements of this Ordinance; provided, however, that a use permit, rather than a variance, may be approved to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the yard setbacks of buildings; the percentage of lot coverage; or the non-residential off-street parking space requirements of this Ordinance when development is proposed on property which is located within thirty feet of an open creek and where varying from or modifying existing regulations is necessary to enable the property owner to comply with BMC Chapter 17.08, Preservation and Restoration of Natural Watercourses.

Section 3. That Berkeley Municipal Code Chapter 23C.18 is hereby added to read as follows:

Chapter 23C.18: Transportation Demand Management

Sections:

23C.18.010 Purpose

23C.18.020 Applicability of Regulations

23C.18.030 Transportation Demand Management Program Requirements

23C.18.040 Monitoring, Reporting and Compliance

Section 23C.18.010 Purpose

The purpose of this chapter is to establish a Transportation Demand Management program that supports:

- A. City Transportation Element goals of reducing vehicle trips, encouraging public transit use and promoting bicycle and pedestrian safety, and

- B. City Climate Action Plan goals to reduce private vehicle travel and promote mode shift to more sustainable transportation options.

Section 23C.18.020 Applicability of Regulations

- A. The following types of projects must comply with the requirements of this

Chapter:

1. Residential projects, including the residential portion of mixed-use projects, that include ten or more Dwelling Units that have not been issued a Building Permit by the effective date of this ordinance.

B. The following types of projects shall be exempt from the requirements of this Chapter:

1. Residential projects, including the residential portion of mixed-use projects, located in the following locations:

- a. C-DMU Downtown Mixed Use District
- b. Southside Plan Area

2. Residential projects, including the residential portion of mixed-use projects, with the majority of the units subject to recorded affordability restrictions.

23C.18.030 Transportation Demand Management Program Requirements

Any project subject to this Chapter shall:

A. Ensure that all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units, such that potential renters or buyers shall have the option of renting or buying a dwelling unit at a price lower than would be the case if there were a single price for both the dwelling unit and the parking space(s);

B. Offer at least one of the following transit benefits, at no cost to the resident, for a period of ten years after the issuance of a Certificate of Occupancy. For projects that include 99 dwelling units or fewer, the project shall provide one transit benefit per bedroom, up to a maximum of two benefits per dwelling unit. For projects of 100 dwelling units or more, the project shall provide one transit benefit for every bedroom in each dwelling unit. A notice describing these transportation benefits shall be posted in a location or locations visible to residents.

- 1. A monthly pass for unlimited local bus transit service; or
- 2. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager; and

B. Provide publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors. Provided information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.

Section 23C.18.040 Monitoring, Reporting and Compliance

- A. For projects subject to this Chapter, prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in 23C.18.020 (C) (3) and 23D.12.065 (A) have been installed. The property owner shall also provide documentation that the programmatic measures required in 23C.18.020 (C) (1) and (2) will be implemented.
- B. The property owner shall submit to the Planning Department TDM Compliance Reports in accordance with Administrative Regulations promulgated by the Zoning Officer that may be modified from time to time to effectively implement this Chapter.
- C. Property owners may be required to pay administrative fees associated with compliance with this ordinance as set forth in the City's Land Use Planning Fees schedule.

Section 4. That Berkeley Municipal Code Chapter 23C.19 is hereby added to read as follows:

Chapter 23C.19: Off-Street Parking Maximums for Residential Development

Sections:

- 23C.19.010 Purpose**
23C.19.020 Applicability of Regulations
23C.19.030 Off-street Parking Maximums
23C.19.040 Excess Off-street Parking

Section 23C.19.010 Purpose

The purpose of this chapter is to institute off-street parking maximums for residential development in order to achieve:

- A. City Transportation Element goals of reducing vehicle trips, encouraging public transit use and promoting bicycle and pedestrian safety,

B. City Climate Action Plan goals of reducing private vehicle travel and promoting mode shift to more sustainable transportation options

C. Housing Element goals for developing housing at all affordability levels by limiting the amount of on-site vehicle parking allowed.

Section 23C.19.020 Applicability of Regulations

A. [OPTION A] The provisions of this Chapter shall apply to new residential projects that have been issued a Building Permit by the effective date of this ordinance, including the residential portion of mixed-use projects, that include two or more Dwelling Units located on a parcel, any portion of which is located within 0.25 miles of a major transit stop, as defined by Section 21064.3 of the California Public Resources Code or along a transit corridor with service at 15 minute headways during the morning and afternoon peak periods.

A. [OPTION B] [The provisions of this Chapter shall apply to new residential projects that have been issued a Building Permit by the effective date of this ordinance, including the residential portion of mixed-use projects, that include ten or more Dwelling Units located on a parcel, any portion of which is located within 0.25 miles of a major transit stop, as defined by Section 21064.3 of the California Public Resources Code or along a transit corridor with service at 15 minute headways during the morning and afternoon peak periods.

B. The following project types shall be exempt from the provisions of this Chapter:

1. Residential projects, including the residential portion of mixed-use projects, with the majority of the units subject to recorded affordability restrictions.

2. [OPTION A] Projects located on a roadway with less than 26 feet in pavement width in the Hillside Overlay.

2. [OPTION B] Projects located in the Hillside Overlay.

3. Projects located in the Environmental Safety-Residential District.

Section 23C.19.030 Off-street Parking Maximums

Any project subject to this Chapter shall not include off-street residential parking at a rate higher than 0.5 parking spaces per Dwelling Unit.

Section 23C.19.040 Excess Off-street Parking

A. -Any request for off-street residential parking in excess of values specified in Section 23C.19.030 shall require an Administrative Use Permit.

B. In order to approve any Administrative Use Permit under this Chapter the Zoning Officer or Board shall make one the following Findings:

(i) Trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking permitted by this Chapter, by transit service which exists or is likely to be provided in the foreseeable future, or by more efficient use of existing on-street and off-street parking available in the area; or

(ii) The anticipated residents of the proposed project have special needs or require reasonable accommodation that relate to disability, health or safety that require the provision of additional off-street residential parking.

Section 5. That Berkeley Municipal Code Section 23D.12.010 is amended to read as follows:

23D.12.010 Purposes

The purposes of the parking regulations contained in this Chapter are:

A. To ~~prevent the worsening of the already serious deficiency of~~ efficiently allocate parking spaces ~~existing in many areas of~~ in the City.

B. To ~~require~~ regulate the provision of off-street parking spaces ~~for traffic-generating uses of land~~ within the City.

C. To reduce the amount of on-street parking of vehicles, thus increasing the safety and capacity of the City's street system.

Section 6. That Berkeley Municipal Code Section 23D.12.020 is amended to read as follows:

23D.12.020 Applicability

A. The requirements of this Chapter apply to all uses commenced hereafter, to all buildings and structures hereafter constructed or moved onto a lot in an R- District and to any modifications to existing uses and structures which enlarge or increase capacity, including, but not limited to, adding or creating dwelling units, guest rooms, floor area, seats or employees, except to the extent that provisions in the individual R- District provide otherwise.

B. In addition, no building, structure, alteration, fence, landscaping or other site feature may be constructed, erected, planted or allowed to be established that would impede the access of a vehicle to any off-street parking space required under this Chapter.

C. No Zoning Certificate or Use Permit may be granted, and no permit other than a Variance from the requirements of this Chapter may be issued or approved, for any use, building or structure, unless all requirements of this Chapter are met.

~~D. In the event a Zoning Certificate is granted, the subsequent use of such building or structure is conditional upon the unqualified continuance, availability and proper maintenance of off-street parking in compliance with this Chapter.~~

Section 7. That Berkeley Municipal Code Section 23D.12.050 is amended to read as follows:

23D.12.050 Number of Parking Spaces Required

A. **[OPTION A]** Off-street parking spaces for non-residential uses may not be reduced below or, if already less than may not be further reduced below, the requirements of this chapter for similar uses or structures. Off-street parking spaces for new residential uses may be reduced below the requirements of this Chapter with issuance of an AUP.

A. **[OPTION B]** Off-street parking spaces for non-residential uses may not be reduced below or, if already less than may not be further reduced below, the requirements of this chapter for similar uses or structures. Off-street parking spaces for new residential uses maybe reduced below the requirements of the Chapter with issuance of an AUP except as provided below:

1. Projects located in the Hillside Overlay.

2. Projects located in the Environmental Safety-Residential District.

~~B. As a condition of any Permit, the Zoning Officer and Board may require more off-street parking spaces the the minimum required by the applicable residential District, if he/she or it finds that If the expected demand for parking spaces will is found to exceed the minimum requirement, additional off-street parking may be required as a condition of approval on a Permit.~~

C. When the formula for determining the number of required off-street parking spaces results in a requirement of a fractional space, any fraction below one-half shall be disregarded and fractions including and over one-half shall be counted as requiring one parking space.

~~D. No Off-street parking space requirements under this Code may be satisfied by tandem off-street parking space(s) unless with the issuance of an AUP. approved by both the City Traffic Engineer and the Board except that a tandem space may be allowed to meet the parking requirement for an Accessory Dwelling Unit..~~

~~E. An applicant may count existing off-street parking spaces towards meeting the parking requirements of this Ordinance when both the existing use or portions of the use that is to remain and the proposed use and/or structure are used in computing the required number of off-street parking spaces.~~

Section 8. That Berkeley Municipal Code Section 23D.12.065 is hereby added to read as follows:

23D.12.065 Bicycle Parking

A. For residential projects, including the residential portion of mixed-use projects, of five or more units, in all districts, bicycle parking shall be provided as follows:

<u>Use</u>	<u>Long Term Parking¹ Requirement</u>	<u>Short-Term Parking¹ Requirement</u>
<u>Dwelling Units (1 to 4 units)</u>	<u>None required</u>	<u>None required</u>

<u>Dwelling Units (5 units or more)</u>	<u>1 space per 3 bedrooms</u>	<u>2, or 1 space per 40 bedrooms, whichever is greater</u>
<u>Group Living Accommodations, Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Transitional Housing)</u>	<u>2, or 1 space per 2.5 bedrooms, whichever is greater</u>	<u>2, or 1 space per 20 bedrooms, whichever is greater</u>
<u>¹ Long-Term Parking and Short-Term Parking shall meet the design standards included in Appendix F of the 2017 Berkeley Bicycle Plan, or as subsequently amended by the Transportation Division.</u>		

Section 9. That Berkeley Municipal Code Section 23D.16.080 is amended to read as follows:

[OPTION A]

23D.16.080 Parking -- Number of Spaces

A. A lot shall contain the following minimum number of Off-street Parking Spaces:

Table 23D.16.080	
Parking Required	
Use	Number of spaces
Dwellings	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Employees Community Care Facilities	One per two non-resident employees for a Community Care Facility*

Table 23D.16.080	
Parking Required	
Use	Number of spaces
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Rental of Rooms	One per each two roomers or boarders if project is located on a roadway less than 26 feet in width in the Hillside Overlay
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

B. Other Uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and Community Centers, shall provide the number of Off-street Parking Spaces determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.

C. Schools with a total gross floor area exceeding 10,000 square feet, shall provide off-street loading spaces at the rates of:

1. One space for the first 10,000 square feet of gross floor area; and
2. One additional space for each additional 40,000 square feet of gross floor area.

[OPTION B: No changes]

Section 10. That Berkeley Municipal Code Section 23D.20.080 is amended to read as follows:

[OPTION A]

23D.20.080 Parking -- Number of Spaces

A. The following parking requirements shall apply to new floor area or conversion of space. A lot shall contain the following minimum number of Off-street Parking Spaces:

Table 23D.20.080	
Parking Required	
Use	Number of spaces
Dwellings	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Employees Community Care Facilities	One per two non-resident employees for a Community Care Facility*
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Rental of Rooms	One per each two roomers or boarders if project is located on a roadway less than 26 feet in width in the Hillside Overlay
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

B. Other Uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and Community Centers, shall provide the number of Off-street Parking Spaces determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.

C. Schools having with a total gross floor area exceeding 10,000 square feet, shall provide off-street loading spaces at the rates of:

1. One space for the first 10,000 square feet of gross floor area; and
2. One additional space for each additional 40,000 square feet of gross floor area.

[OPTION B: No changes]

Section 11. That Berkeley Municipal Code Section 23D.28.080 is amended to read as follows:

[OPTION A]

23D.28.080 Parking -- Number of Spaces

The following parking requirements shall apply to new floor area or conversion of space

Table 23D.28.080	
Parking Required	
Use	Number of spaces
Dwellings	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Employees Community Care Facilities	One per two non-resident employees for a Community Care Facility*
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Rental of Rooms	One per each two roomers or boarders if project is located on a roadway less than 26 feet in width in the Hillside Overlay
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence.	

1. Other Uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and Community Centers, shall provide the number of Off-street Parking Spaces as determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other uses.

2. Schools, when having with a total gross floor area exceeding 10,000 square feet, shall satisfy the following off-street loading requirements:

- a. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area.
- b. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of above the first 10,000 square feet.

[OPTION B: No changes]

Section 12: That Berkeley Municipal Code Section 23D.32.080 is amended to read as follows:

[OPTION A]

23D.32.080 Parking -- Number of Spaces

A. The following parking requirements shall apply to new floor area or conversion of space

A. A lot shall contain, for each of the following uses, the following minimum number of Off-street Parking Spaces:

Table 23D.32.080	
Parking Required	
Use	Number of spaces
<p>Dwellings, Multiple Dwellings, one and two family</p>	<p>One per unit (75% less for seniors, see below.) if project is located on a roadway less than 26 feet in width in the Hillside Overlay</p> <p>One per unit</p>
<p>Employees Community Care Facilities</p>	<p>One per two non-resident employees for a Community Care Facility*</p>
<p>Libraries</p>	<p>One per 500 sq. ft. of floor area that is publicly accessible</p>
<p>Nursing Homes</p>	<p>One per each five residents, plus one per each three employees</p>
<p>Rental of Rooms</p>	<p>One per each two roomers or boarders if project is located on a roadway less than 26 feet in width in the Hillside Overlay</p>
<p>Senior Congregate Housing</p>	<p>One per each five residents plus one for manager if project is located on a roadway less than 26 feet in width in the Hillside Overlay</p>
<p>*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence</p>	

B. Other uses requiring Use Permits issued by the Board, including, but not limited to, Child Care Centers, Clubs, Lodges and Community Centers, shall provide the number of Off-street Parking Spaces as determined by the Board based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.

~~C. For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required Off-street Parking Spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.~~

~~CD. Senior Congregate Housing, Nursing Homes and Schools with, when having a total gross floor area exceeding 10,000 square feet, shall satisfy the following requirements:~~

- ~~1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area;~~
- ~~2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of above the first 10,000 square feet. (Ord. 7599-NS § 11, 2018; Ord. 7426-NS § 19, 2015; Ord. 6763-NS § 19 (part), 2003; Ord. 6478-NS § 4 (part), 1999)~~

[OPTION B: No changes]

Section 13: That Berkeley Municipal Code Section 23D.36.080 is amended to read as follows:

23D.36.080 Parking -- Number of Spaces

A. The following parking requirements shall apply to new floor area or conversion of space

A lot shall contain the following minimum number of Off-street Parking Spaces:

[OPTION A]

Table 23D.36.080

Parking Required	
Use	Number of spaces
Dormitories; Fraternity and Sorority Houses; Rooming and Boarding Houses; and Senior Congregate Housing	One per each five residents, plus one for manager <u>if project is located on a roadway less than 26 feet in width in the Hillside Overlay</u>
Dwellings, Multiple (fewer than ten)	One per unit <u>if project is located on a roadway less than 26 feet in width in the Hillside Overlay</u> (75% less for seniors, see below)
Dwellings, Multiple (ten or more)	One per 1,000 sq. ft. of gross floor area (75% less for seniors, see below) <u>if project is located on a roadway less than 26 feet in width in the Hillside Overlay</u>
Dwellings, One and Two Family	One per unit
Employees Community Care Facilities	One per two non-resident employees for a Community Care Facility*
Hospitals	One per each four beds, plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Nursing Homes	One per each five residents, plus One per each three employees
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence.	

[OPTION B]

Table 23D.36.080

Parking Required	
Use	Number of spaces
Dormitories; Fraternity and Sorority Houses; Rooming and Boarding Houses; and Senior Congregate Housing	One per each five residents, plus one for manager <u>if project is located in the Hillside Overlay</u>
Dwellings, Multiple (fewer than ten)	One per unit (75% less for seniors, see below)
Dwellings, Multiple (ten or more)	One per 1,000 sq. ft. of gross floor area (75% less for seniors, see below) <u>if project is located in the Hillside Overlay</u>
Dwellings, One and Two Family	One per unit
Employees <u>Community Care Facilities</u>	One per two non-resident employees for a Community Care Facility*
Hospitals	One per each four beds, plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Nursing Homes	One per each five residents, plus One per each three employees
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence.	

B. Other uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and Community Centers, shall provide the number of Off-street Parking Spaces determined by the Board based on the amount of traffic generated by the particular use and comparable with specified standards for other uses.

~~C. For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required Off-street Parking Spaces may be reduced to 25% of what would otherwise be required for multiple family dwelling use, subject to obtaining a Use Permit.~~

~~CD. Senior Congregate Housing, Hospitals, Nursing Homes, and Schools with, when having a total gross floor area exceeding 10,000 square feet, shall satisfy the requirements of Chapter [23E.32](#) and the following requirements:~~

- ~~1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area.~~
- ~~2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area above the first 10,000 square feet.~~

Section 14: That Berkeley Municipal Code Section 23D.40.080 is amended to read as follows:

23D.40.080 Parking -- Number of Spaces

A. The following parking requirements shall apply to new floor area or conversion of space

~~A. A lot shall contain the following minimum number of Off-street Parking Spaces:~~

[OPTION A]

Table 23D.40.080	
Parking Required	
Use	Number of spaces
Dormitories; Fraternity and Sorority Houses; Rooming and Boarding Houses; and Senior Congregate Housing	One per each five residents, plus one for manager <u>if project is located on a roadway less than 26 feet in width in the Hillside Overlay</u>

Table 23D.40.080

Parking Required

Use	Number of spaces
Dwellings, Multiple (fewer than ten)	One per unit (75% less for seniors, see Section C below) if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Dwellings, Multiple (ten or more)	One per 1,000 sq. ft. of gross floor area (75% less for seniors, see Section C below) required if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Dwellings, One and Two Family	One per unit
Employees Community Care Facilities	One per two non-resident employees for a Community Care Facility*
Hospitals	One per each four beds, plus one per each three employees
Hotels	One per each three guest rooms, plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Nursing Homes	One per each five residents, plus one per each three employees
Offices, Medical	One per 300 sq. ft. of gross floor area
Offices, Other	One per 400 sq. ft. of gross floor area; (may be reduced, see Section D below)
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence.	

[OPTION B]

Table 23D.40.080	
Parking Required	
Use	Number of spaces
Dormitories; Fraternity and Sorority Houses; Rooming and Boarding Houses; and Senior Congregate Housing	One per each five residents, plus one for manager <u>if project is located in the Hillside Overlay</u>
Dwellings, Multiple (fewer than ten)	One per unit (75% less for seniors, see Section C below)
Dwellings, Multiple (ten or more)	One per 1,000 sq. ft. of gross floor area (75% less for seniors, see Section C below) <u>if project is located in the Hillside Overlay</u>
Dwellings, One and Two Family	One per unit
Employees Community Care Facilities	One per two non-resident employees for a Community Care Facility*
Hospitals	One per each four beds, plus one per each three employees
Hotels	One per each three guest rooms, plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Nursing Homes	One per each five residents, plus one per each three employees
Offices, Medical	One per 300 sq. ft. of gross floor area
Offices, Other	One per 400 sq. ft. of gross floor area; (may be reduced, see Section D below)

Table 23D.40.080	
Parking Required	
Use	Number of spaces
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence.	

B. Other uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges and Community Centers, shall provide the number of Off-street Parking Spaces determined by the Board based on the amount of traffic generated by the particular use and comparable with specified standards for other uses.

~~C. For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required Off-street Parking Spaces may be reduced to 25% of what would otherwise be required for multiple family dwelling use, subject to obtaining a Use Permit.~~

~~D~~C. For offices, other than medical offices, the Board may reduce the parking requirement from one Off-street Parking Space per 400 square feet of gross floor area to a minimum of one parking space per 800 square feet of gross floor area, subject to making the required finding under Section 23D.40.090.C. In addition, any parking supplied jointly with multiple family residential uses shall be subject to the requirements set forth in Section 23D.12.060.B.

~~E~~D. Senior Congregate Housing, Hotels, Hospitals, Nursing Homes, Offices (including Medical Offices) and Schools with, when having a total gross floor area exceeding 10,000 square feet, shall satisfy the requirements of Chapter 23E.32 and the following requirements:

1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area.
2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of above the 10,000 square feet.

Section 15: That Berkeley Municipal Code Section 23D.44.080 is amended to read as follows:

23D.44.080 Parking -- Number of Spaces

A. The following parking requirements shall apply to new floor area or conversion of space

A lot shall contain the following minimum number of Off-street Parking Spaces:

[OPTION A]

Table 23D.44.080	
Parking Required	
Use	Number of spaces
Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Senior Congregate Housing	One per each five residents, plus one for manager <u>if project is located on a roadway less than 26 feet in width in the Hillside Overlay</u>
Dwellings, Multiple (fewer than ten)	One per unit (75% less for seniors, see Section C below) <u>if project is located on a roadway less than 26 feet in width in the Hillside Overlay</u>
Dwellings, Multiple (ten or more)	One per 1,200 sq ft of gross floor area (75% less for seniors, see Section C below) <u>if project is located on a roadway less than 26 feet in width in the Hillside Overlay</u>
Dwellings, One and Two Family	One per unit
Employees <u>Community Care Facilities</u>	One per two non-resident employees for a Community Care Facility*
Hospitals	One per each four beds, plus one per each three employees

Table 23D.44.080	
Parking Required	
Hotels	One per each three guest rooms, plus one per each three employees
Libraries	One per 500 sq ft of floor area that is publicly accessible
Nursing Homes	One per each five residents, plus one per each three employees
Offices, Medical	One per 300 sq ft of gross floor area
Offices, Other	One per 400 sq ft of gross floor area (may be reduced, see Section D below)
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

[OPTION B]

Table 23D.44.080	
Parking Required	
Use	Number of spaces
Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Senior Congregate Housing	One per each five residents, plus one for manager if project is located in the Hillside Overlay
Dwellings, Multiple (fewer than ten)	One per unit (75% less for seniors, see Section C below)
Dwellings, Multiple (ten or more)	One per 1,200 sq ft of gross floor area (75% less for seniors, see Section C)

Table 23D.44.080	
Parking Required	
	below)if project is located in the Hillside Overlay
Dwellings, One and Two Family	One per unit
EmployeesCommunity Care Facilities	One per two non-resident employees for a Community Care Facility*
Hospitals	One per each four beds, plus one per each three employees
Hotels	One per each three guest rooms, plus one per each three employees
Libraries	One per 500 sq ft of floor area that is publicly accessible
Nursing Homes	One per each five residents, plus one per each three employees
Offices, Medical	One per 300 sq ft of gross floor area
Offices, Other	One per 400 sq ft of gross floor area (may be reduced, see Section D below)
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

B. Other uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges and Community Centers, shall provide the number of Off-street Parking Spaces as determined by the Board based on the amount of traffic generated by the particular use and comparable with specified standards for other uses.

~~C. For multiple dwellings where the occupancy will be exclusively for persons over the age of 62 years, the number of required Off-street Parking Spaces may be reduced to 25% of what would otherwise be required for multiple family dwelling use, subject to obtaining a Use Permit.~~

DC. For offices, other than medical offices, the Board may reduce the parking requirement from one Off-street Parking Space per 400 square feet of gross floor area to a minimum of one parking space per 800 square feet of gross floor area, subject to making the required finding under Section [23D.44.090.C](#). In addition any parking supplied jointly with multiple family residential uses shall be subject to the requirements set forth in Section [23D.12.060.B](#).

ED. Senior Congregate Housing, Hotels, Hospitals, Nursing Homes, Offices (including Medical Offices) and Schools ~~with, when having~~ a total gross floor area exceeding 10,000 square feet, shall satisfy the requirements of Chapter [23E.32](#) and the following requirements:

1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area.
2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of above the first 10,000 square feet.

Section 16: That Berkeley Municipal Code Section 23D.48.080 is amended to read as follows:

23D.48.080 Parking -- Number of Spaces

[OPTION A]

A. All parking shall be provided in accordance with the requirements of this section and Chapter 23D.12, except as set forth in this Section.

B. The following provisions shall apply to properties within the R-S District:

1. No Off-street Parking Spaces shall be required for new Dwelling Units, Group Living Accommodations ~~rooms~~, or ~~for~~ Accessory Dwelling Units. ~~located within the Car-Free Housing Overlay. The Car-Free Housing Overlay area is as follows:~~

~~The complete block bounded by:~~

- ~~Dana, Haste, Ellsworth and Channing;~~

~~The partial blocks bounded by:~~

- ~~Bowditch, Haste, Telegraph and Channing, minus the portion of the block within 150 feet of Telegraph Avenue;~~

- ~~Dana, Channing, Ellsworth and Durant, minus the lot abutting the west side of Dana; and~~

- ~~Ellsworth, Channing, Fulton and Durant, minus the north-west corner with 130 feet of frontage along Fulton and 100 feet of frontage along Durant.~~

~~Additional properties as described below:~~

- ~~The properties abutting the east side of College Avenue between Bancroft Way and Channing Way, and including 2709 Channing Way;~~

- ~~The properties abutting both sides of Channing between Fulton and Shattuck, except those abutting Shattuck, and also excluding the parcel at 2111 - 2113 Channing;~~

- ~~The properties abutting the west side of Fulton Street from Channing Way extending north along Fulton 127.5 feet and extending south along Fulton 180 feet; and~~

- ~~The properties abutting the north side of Haste, beginning 150 feet west of Fulton Street, and extending an additional 200 feet west along Haste.~~

~~2. For properties not included in the Car-Free Housing Overlay, and for non-residential uses within the Car-Free Housing Overlay, Off-Street parking requirements shall be determined by the parking requirements of Section 23D.40.080 (R-4).~~

~~32. Bicycle parking spaces shall be provided at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.~~

C. ~~Occupants of Dwelling Units and Group Living Accommodation rooms constructed without parking after the effective date of this Chapter shall not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), under Section 14.72 of the BMC. Occupants of residential projects within the Car-Free Housing Overlay area that are constructed without parking after the effective date of this Chapter shall not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), under Chapter 14.72 of the BMC.~~

D. Existing parking spaces for Main Buildings may be reduced if approved through a Use Permit with findings that the parking reduction is consistent with the purposes of the District and meets the findings in Section 23E.28.140.

E. Any construction which results in the creation of 10,000 square feet of new or additional non-residential gross floor space shall satisfy the loading space requirements of Chapter 23E.32 as follows:

1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of non-residential space; and
2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of non-residential space above the first 10,000 square feet.

F. All Use Permits under this Chapter shall be subject to a condition of approval requiring payment of a Transportation Services Fee (TSF) if and when adopted.

[OPTION B: No changes]

Section 17: That Berkeley Municipal Code Section 23D.52.080 is amended to read as follows:

[OPTION A]

23D.52.080 Parking -- Number of Spaces

A. All parking shall be provided in accordance with the requirements of Chapter 23D.12 and this Section.

1. No Off-Street Parking Spaces shall be required for new Dwelling Units, or Group Living Accommodation rooms, or for Accessory Dwelling Units.

2. For non-residential uses and for Main Buildings with no Dwelling Units or Group Living Accommodations, Off-Street Parking Spaces shall be provided in accordance with the following requirements:

a. The minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area of commercial space. Uses listed in Table 23D.52.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area or changes of use.

Table 23D.52.080

Parking Required	
Use	Number of spaces
Hotels	One per each three guest/sleeping rooms or suites plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of gross floor area
Quick or Full Service Restaurants	One per 300 sq. ft. of gross floor area
Nursing Homes	One per each three employees. Refer to R-3 Standards, Section

b. Parking requirements for changes in use of existing floor area where the new use has a higher parking standard than the existing use may be modified as set forth in Section 23E.28.130.

cb. Other uses requiring Use Permits, including but not limited to, Child Care Centers, Clubs, Lodges and Community Centers, shall provide the number of

Off-Street Parking Spaces determined by the Board based on the amount of traffic generated by the particular use and comparable with specific standards for other uses.

3. For non-residential uses in Main Buildings that include Dwelling Units or Group Living Accommodations, parking requirements may be waived if approved through an Administrative Use Permit with a finding that the parking reduction is consistent with the purposes of the District.

4. Existing parking spaces for Main Buildings may be reduced if approved through a Use Permit with findings that the parking reduction is consistent with the purposes of the District and meets the findings in Section 23E.28.140.

5. Bicycle parking spaces shall be provided at the ratio of one space per 2,000 square feet of gross floor area of new commercial space, and in accordance with the requirements of Section 23E.28.070.

B. Occupants of Dwelling Units and Group Living Accommodation ~~rooms~~ constructed without parking after the effective date of this Chapter shall not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), under Section 14.72 of the BMC.

C. Any new construction which results in the creation of 10,000 square feet of new or additional non-residential floor space shall satisfy the loading space requirements of Chapter 23E.32 as follows:

1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of non-residential space; and

2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of non-residential space above the first 10,000 square feet.

D. All Use Permits under this Chapter shall be subject to a condition of approval requiring payment of a Transportation Services Fee (TSF) if and when adopted.

[OPTION B: No changes]

Section 18: That Berkeley Municipal Code Section 23E.28.010 is amended to read as follows:

23E.28.010 Purposes

The purposes of the parking regulations in this chapter are:

- A. To ~~prevent the worsening of the already serious deficiency of~~efficiently allocate parking spaces ~~in existing in many areas of~~ the City.
- B. To ~~require~~regulate the provision of off-street parking spaces for traffic-generating uses of land within the City.
- C. To reduce the amount of on-street parking of vehicles, and thus increase the safety and capacity of the City's street system.

Section 19: That Berkeley Municipal Code Section 23E.28.020 is amended to read as follows:

23E.28.020 Applicability

- A. The requirements of this chapter apply to all uses commenced hereafter, to all buildings and structures hereafter constructed or moved onto a lot in a C-, M- or MU-District and to any modifications to existing uses and structures which enlarge or increase capacity, including, but not limited to, adding or creating dwelling units, guest rooms, floor area, seats or employees, except to the extent that provisions in the individual C-, M- or MU- District provide otherwise.
- B. ~~N~~In addition, no building, structure, alteration, fence, landscaping or other site feature may be constructed, erected, planted or allowed to be established that would impede ~~the access of a vehicle to any~~ required off-street parking space ~~required under this Ordinance~~.
- C. ~~No Zoning Certificate or Use Permit may be granted and no permit other than a Variance from the requirements of this chapter, may be issued or approved, for any use, building or structure, unless all requirements of this chapter are met.~~

~~D. In the event a Zoning Certificate is granted, the subsequent use of such building or structure is conditional upon the unqualified continuance, availability and proper maintenance of off-street parking in compliance with this chapter.~~

Section 20: That Berkeley Municipal Code Section 23E.28.050 is amended to read as follows:

23E.28.050 Number of Parking Spaces Required

A. Off-street parking spaces provided in conjunction with a use or structure existing on October 1, 1959, on the same property or on property under the same ownership, may not be reduced below, or if already less than, may not be further reduced below, the requirements of this chapter for similar use or structure. However, required parking spaces may be removed to meet ADA compliance or traffic engineering standards.

~~B. In the case of an AUP, a Use Permit, or a variance the Zoning Officer and Board may require more off-street parking spaces than the minimum required by the applicable District, if they or it finds that If the expected demand for parking spaces will is found to exceed the minimum requirement, additional off-street parking may be required as a condition of approval on a Permit.~~

C. When the formula for determining the number of required off-street parking spaces results in a requirement of a fractional space, any fraction below one-half shall be disregarded, and fractions including and over one-half shall be counted as requiring one parking space.

~~D. One off-street parking space requirements may be satisfied by tandem off-street parking space(s) with the issuance of an AUP. under this Ordinance may be satisfied by a tandem off-street parking space, unless approved by both the City Traffic Engineer and the Board.~~

~~E. Existing off-street parking spaces shall be counted towards meeting the overall parking requirements where new floor area is added to an existing site or project. An applicant may count existing off-street parking spaces towards meeting the parking requirements of this Ordinance when both the existing use, or portions of the use that is~~

~~to remain, and the proposed use and/or structure are used in computing the required number of off-street parking spaces.~~

F. When the number of off-street parking spaces required ~~for a structure or use~~ is based on the number of employees, it shall be based upon the shift or employment period during which the greatest number of employees are present ~~at the structure or use~~.

G. When the number of off-street parking spaces required is based on the floor area for a specified use, the definition of Floor Area, Gross as set forth in Sub-title [23F](#) shall apply. In addition, unenclosed areas of a lot, including, but not limited to, outdoor dining areas, garden/building supply yards and other customer-serving outdoor areas for retail sales, shall also be counted toward the floor area for those commercial uses with specified off-street parking requirements.

Section 21: That Berkeley Municipal Code Section 23E.28.070 is amended to read as follows:

23E.28.070 Bicycle Parking

A. Bicycle parking spaces required by each District’s bicycle parking requirements shall be located in either a locker, or in a rack suitable for secure locks, and shall require location approval by the City Traffic Engineer and Zoning Officer. Bicycle parking shall be located in accordance to the design review guidelines.

B. Except in C-E and C-T Districts, Bicycle Parking shall be provided for new floor area or for expansions of existing industrial, commercial, and other non-residential buildings at a ratio of one space per 2,000 square feet of gross floor area.

C. For residential projects, including the residential portion of mixed-use projects, of five or more units, in all districts, bicycle parking shall be provided as follows:

<u>Use</u>	<u>Long Term Parking¹ Requirement</u>	<u>Short-Term Parking¹ Requirement</u>

<u>Dwelling Units (1 to 4 units)</u>	<u>None required</u>	<u>None required</u>
<u>Dwelling Units (5 units or more)</u>	<u>1 space per 3 bedrooms</u>	<u>2, or 1 space per 40 bedrooms, whichever is greater</u>
<u>Group Living Accommodations, Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Transitional Housing)</u>	<u>2, or 1 space per 2.5 bedrooms, whichever is greater</u>	<u>2, or 1 space per 20 bedrooms, whichever is greater</u>
<u>¹ Long-Term Parking and Short-Term Parking shall meet the design standards included in Appendix F of the 2017 Berkeley Bicycle Plan, or as subsequently amended by the Transportation Division.</u>		

DG. The Zoning Officer in consultation with the City Traffic Engineer may modify the requirement with an Administrative Use Permit for Tourist Hotels in the C-DMU District.

Section 21: That Berkeley Municipal Code Section 23E.64.080 is amended to read as follows:

23E.64.080 Off-Street Parking and Loading Requirements

A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28., ~~except as set forth in this section.~~

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.64.080 shall meet the requirements listed, for newly constructed floor area, except as otherwise modified in this subsection, and Subsections F through ~~H~~H below.

[OPTION A]

Table 23E.64.080	
Parking Required*	
Use	Number of spaces
Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses and Senior Congregate Housing	One per each five residents; plus one for manager <u>None required</u>
Dwelling Units	One per unit, except as modified by provisions for shared parking in Section 23E.64.080.G; 75% less for Seniors (see below). <u>None required</u>
Hospitals	One per each four beds; plus one per each three employees
Hotels	One per each three guest/sleeping rooms or suites; plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Live/Work Units	One per unit, provided, however, that if any <u>non-resident</u> workers and/or clients are permitted in any work area, there shall be one <u>additional</u> parking space for the first 1,000 sq. ft. of work area, one <u>further additional</u> parking space for each additional 750 sq. ft. subject to any additional requirements for parking pursuant to Section 23E.20.040.B
Manufacturing uses (assembly, production, storage and testing space only)	One per 1,000 sq. ft. of floor area

Table 23E.64.080	
Parking Required*	
Use	Number of spaces
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Motels	One per each guest/sleeping room; plus one space for owner or manager**
Wholesale Trade	One per 1,000 sq. ft. of floor area
*See Subsection J-1 for substitutions of up to 10% with bicycle/motorcycle parking	
**Required parking shall be on the same lot as the building it serves	

[OPTION B]

Table 23E.64.080	
Parking Required*	
Use	Number of spaces
Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses and Senior Congregate Housing	One per each five residents; plus one for manager <u>None required</u>
Dwelling Units (fewer than ten)	One per unit, except as modified by provisions for shared parking in Section 23E.64.080.G; 75% less for Seniors (see below)
Dwelling Units (<u>ten or more</u>)	<u>None required</u>
Hospitals	One per each four beds; plus one per each three employees

Table 23E.64.080	
Parking Required*	
Use	Number of spaces
Hotels	One per each three guest/sleeping rooms or suites; plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Live/Work Units (fewer than ten)	One per unit, provided, however, that if any workers and/or clients are permitted in any work area, there shall be one additional-parking space for the first 1,000 sq. ft. of work area, one further parking space for each additional 750 sq. ft. subject to any additional requirements for parking pursuant to Section 23E.20.040.B
Live/Work Units (ten or more)	If any non-resident workers and/or clients are permitted in any work area, there shall be one parking space for the first 1,000 sq. ft. of work area, one parking space for each additional 750 sq. ft. subject to any additional requirements for parking pursuant to Section 23E.20.040.B
Manufacturing uses (assembly, production, storage and testing space only)	One per 1,000 sq. ft. of floor area
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Motels	One per each guest/sleeping room; plus one space for owner or manager**
Wholesale Trade	One per 1,000 sq. ft. of floor area
*See Subsection 4-1 for substitutions of up to 10% with bicycle/motorcycle parking	
**Required parking shall be on the same lot as the building it serves	

C. Unless otherwise specified in Subsections F-~~H~~, uses designated in this chapter as Other Industrial Uses; Automobile and Other Vehicle Oriented Uses; Outdoor Uses; Residential and Related Uses or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based of the amount of parking demand generated by the particular use and comparable with specified standards for other uses.

D. The number of parking spaces provided for new commercial floor area shall not exceed four spaces per 1,000 square feet of gross floor area of the commercial use, except that up to five spaces per 1,000 square feet of gross floor area of food service uses may be provided.

E. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of non-residential space, in accordance with Section [23E.28.070](#).

F. Any automobile parking required by this section may be leased, provided that the requirements of the general regulations concerning leased parking, Section [23E.28.030](#), are met and provided that the leased parking spaces are within 500 feet of the property where the parking is required; provided that leased parking a greater distance from the property may be approved by Administrative Use Permit and that if the property is located within a designated node, the leased parking spaces are located within the same designated node as the property.

~~G. For multiple dwellings where the occupancy will be exclusively for persons over the age of 62 years, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple family dwelling use, subject to obtaining a Use Permit.~~

HG. Any mixed use building (residential and commercial) shall satisfy the off-street parking standards and requirements of this District, provided, however, that the Board or the Zoning Officer may issue a Permit to modify the off-street parking and usable open space requirements where it finds such modification promotes any of the general purposes set forth in [23E.64.020](#). The Permit required shall be an Administrative Use

Permit unless a Use Permit from the Board is required to approve the use or structure, in which case a Use Permit shall be required by the Board.

H. If a public parking facility available for use by all members of the public is within 1,000 feet of a proposed use, the Zoning Officer or Board may approve a Use Permit to allow that use to reduce or eliminate the otherwise required parking.

J. Subject to the finding in Section [23E.64.090.F](#), an Administrative Use Permit may be issued to designate up to 10% of automobile parking required for a use for bicycle and/or motorcycle parking, unless a Use Permit from the Board is required to approve any part of the application, in which case the Use Permit shall be approved by the Board. Any bicycle parking created by this designation shall be in addition to otherwise required bicycle parking.

K. Notwithstanding the requirements of Section [23E.28.080](#) (the general regulations concerning screening and landscaping of off-street parking), there shall be no requirement for screening or landscaping of that portion of any parking lot which is adjacent to Third Street (Southern Pacific Railroad).

L. No off-street automobile parking may be provided between the front property line and a main structure within a designated node. Outside of a designated node, no off-street automobile parking may be provided between the front property line and a main structure unless an Administrative Use Permit is obtained; unless a Use Permit is required to approve the use or structure, in which case the Use Permit shall be approved by the Board. In order to approve this Permit, the Zoning Officer or Board shall make the finding under Section [23E.64.090.E](#).

M. No building or site shall be altered in such a way as to deprive any leasable space which is used or designated to be used by any manufacturing or wholesale trade use of all loading spaces which meet the general regulations concerning Loading Spaces (Chapter [23E.32](#)).

N. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter [23E.32](#).

Section 23: That Berkeley Municipal Code Section 23E.68.080 is amended to read as follows:

23E.68.080 Parking -- Number of Spaces

A. All parking shall be provided in accordance with the requirements of this Section and Chapter 23E.28, except as set forth in this Section. No change of commercial use within the existing floor area of a building shall be required to meet the off-street parking requirements of this Section or Chapter 23E.28, unless the structure has been expanded to include new floor area.

B. The District minimum standard vehicle parking space requirement for all floor area is one and a half spaces per each 1,000 square feet of gross floor area or as required for the uses listed in the following table.

[OPTION A]

Use	Number of Parking Spaces Required
Dwelling Units, Single and Multi-Family Buildings	One per three dwelling units None required
Hotels and Motels, Tourist (Including Inns, Bed and Breakfast and Hostels)	One per each three guest/sleeping rooms or suites
Group Living Accommodations (Including Single Room Occupancy Residential Hotels) and Nursing Homes	One per eight sleeping rooms None required

[OPTION B]

Use	Number of Parking Spaces Required
Dwelling Units, Single and Multi-Family Buildings fewer than ten	One per three dwelling units
Dwelling Units (ten or more)	None required

Use	Number of Parking Spaces Required
Hotels and Motels, Tourist (Including Inns, Bed and Breakfast and Hostels)	One per each three guest/sleeping rooms or suites
Group Living Accommodations (Including Single Room Occupancy Residential Hotels) and Nursing Homes (fewer than ten)	One per eight sleeping rooms
Group Living Accommodations (Including Single Room Occupancy Residential Hotels) and Nursing Homes (ten or more)	None required

1. Additions up to 1,000 square feet of gross floor area, or up to twenty-five percent (25%) of existing gross floor area, whichever is less, are exempt from the parking requirements for new floor area.

2. Parking spaces shall be provided on site, or off site within 800 feet subject to securing an AUP and in compliance with Section [23E.28.030](#).

C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section [23E.28.070](#).

D. The vehicle parking space requirements of this Section may be reduced or waived through payment of an in-lieu fee to be used to provide enhanced transit services, subject to securing a Use Permit subject to the finding in section [23E.68.090.H](#) or modified with an AUP subject to the findings in [23E.28.140](#).

E. New construction that results in an on-site total of more than 25 publicly available parking spaces shall install dynamic signage to Transportation Division specifications, including, but not limited to, real-time garage occupancy signs at the entries and exits to the parking facility with vehicle detection capabilities and enabled for future connection

to the regional 511 Travel Information System or equivalent, as determined by the Zoning Officer in consultation with the Transportation Division Manager.

F. Occupants of residential units or GLA units constructed, newly constructed or converted from a non-residential use shall not be eligible for Residential Parking Permit (RPP) permits under Chapter [14.72](#) of the BMC.

G. For any new building with residential units or structures converted to a residential use, ~~required~~ parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit, unless the Board grants a Use Permit to waive this requirement for projects which include financing for affordable housing subject to the finding in section [23E.68.090.I](#).

H. For new structures or additions over 20,000 square feet, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident. A notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents.

1. A pass for unlimited local bus transit service; or
2. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.

I. For residential ~~projects that provide structures constructed or converted from a non-residential use that require~~ vehicle parking ~~under Section [23E.68.080.B](#), required parking spaces shall be designated as,~~ vehicle sharing spaces shall be provided in the amounts specified in the following table. ~~If no parking spaces are provided pursuant to Section [23E.68.080.D](#), no vehicle sharing spaces shall be required.~~

Number of Parking Spaces <u>Provided</u> Required	Minimum Number of Vehicle Sharing Spaces
0 – 10	0
11 – 30	1

Number of Parking Spaces <u>Provided</u> Required	Minimum Number of Vehicle Sharing Spaces
30 – 60	2
61 or more	3, plus one for every additional 60 spaces

1. The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost.
2. The vehicle sharing spaces required by this Section shall remain available to a vehicle sharing service provider as long as providers request the spaces. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles. When a vehicle sharing service provider requests such space, the property owner shall make ~~the~~a space available within 90 days.

J. For residential structures constructed or converted from a non-residential use subject to Sections 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I, prior to issuance of a Certificate of Occupancy, the property owner shall submit to the Department of Transportation a completed Parking and Transportation Demand Management (PTDM) compliance report on a form acceptable to the City, which demonstrates that the project is in compliance with the applicable requirements of 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I. Thereafter, the property owner shall submit to the Department of Transportation an updated PTDM compliance report on an annual basis.

K. Any construction which results in the creation of more than 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32.

Section 23: That Berkeley Municipal Code Section 23E.80.080 is amended to read as follows:

23E.80.080 Off-Street Parking and Loading Requirements

A. For each of the following uses the minimum number of off-street parking spaces shall be provided and in accordance with Chapter 23E.28 except as set forth in Section 23E.80.080.E. Construction of new floor area and changes of use of existing floor area shall satisfy the parking requirements of this section.

[OPTION A]

Table 23E.80.080	
Parking Required*	
Use	Number of spaces
Art/Craft Studio	One per 1,000 sq. ft. of floor area
Laboratories	One per 650 sq. ft. of floor area
Live/Work Units	One per unit; provided however, that if any non-resident employees and/or customers and clients are permitted in any work area, there shall be one additional parking space for each 1,000 sq. ft. of such work area
Manufacturing uses (assembly, production, storage and testing space only), Storage, Warehousing and Wholesale Trade	One space per 1,000 sq. ft. of floor area for spaces of less than 10,000 sq. ft.; one space per 1,500 sq. ft. of floor area for spaces of 10,000 sq ft or more
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
All other non-residential uses, unless otherwise specified in Subsection B	Two per 1,000 sq. ft. of floor area
* See Subsection E for substitutions of up to 10% with bicycle/motorcycle parking	

[OPTION B]

Table 23E.80.080	
Parking Required*	
Use	Number of spaces

Art/Craft Studio	One per 1,000 sq. ft. of floor area
Laboratories	One per 650 sq. ft. of floor area
Live/Work Units (fewer than ten)	One per unit; provided however, that if any non-resident employees and/or customers and clients are permitted in any work area, there shall be one additional parking space for each 1,000 sq. ft. of such work area
Live/Work Units (ten or more)	If any non-resident employees and/or customers and clients are permitted in any work area, there shall be one parking space for each 1,000 sq. ft. of such work area
Manufacturing uses (assembly, production, storage and testing space only), Storage, Warehousing and Wholesale Trade	One space per 1,000 sq. ft. of floor area for spaces of less than 10,000 sq. ft.; one space per 1,500 sq. ft. of floor area for spaces of 10,000 sq ft or more
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
All other non-residential uses, unless otherwise specified in Subsection B	Two per 1,000 sq. ft. of floor area
* See Subsection E for substitutions of up to 10% with bicycle/motorcycle parking	

B. Unless otherwise specified in Subsection A, uses designated in this chapter as Other Industrial Uses; Automobile and Other Vehicle Oriented Uses; Outdoor Uses; Residential and Related Uses or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based of the amount of off-street parking demand generated by the particular use and comparable with specified standards for other uses.

C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of non-residential space, in accordance with Section [23E.28.070](#).

D. Off-street parking required by this section may be satisfied by the provision of leased spaces, provided that the requirements of Section [23E.28.030](#) are met; however, the leased parking spaces may be within 500 feet of the property it serves, provided that leased parking at a distance greater than 500 feet may be approved by an Administrative Use Permit.

E. Subject to the finding in Section [23E.80.090.H](#), an Administrative Use Permit may be issued to designate up to 10% of automobile parking required for a use for bicycle and/or motorcycle parking, unless a Use Permit from the Board is required to approve any part of the application, in which case the Use Permit shall be approved by the Board. Any bicycle parking created by this designation shall be in addition to otherwise required bicycle parking.

F. Notwithstanding the requirements of Section [23E.28.080](#) (the general regulations concerning screening and landscaping of off-street parking), there shall be no requirement for screening or landscaping of that portion of any parking lot which is adjacent to Third Street (Southern Pacific Railroad).

G. In buildings with one or more manufacturing, wholesale trade or warehouse use, all uses shall satisfy the loading space requirements of Chapter [23E.32](#). All uses which have one or more loading spaces shall retain at least one such space.

H. Any construction which results in the creation of 10,000square feet of new or additional commercial or manufacturing gross floor area shall satisfy Chapter [23E.32](#).

Section 24: That Berkeley Municipal Code Section 23E.84.080 is amended to read as follows:

23E.84.080 Off-Street Parking and Loading Requirements

A. Unless otherwise specified in Subsections ~~B or F~~, or in Table [23E.84.080](#), the district minimum standard parking requirement is two spaces per 1,000 square feet of gross floor area of non-residential space, in accordance with the requirements of Chapter [23E.28](#).

[OPTION A]

Table 23E.84.080	
Parking Required*	
Use	Number of spaces
Art/Craft Studio	One per 1,000 sq. ft. of floor area
Community Care Facilities	One per two non-resident employees
Dwelling Units	One per unit, except as provided in Section 23E.84.080.E; 75% less for Seniors (see Subsection E) None required
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Live/Work Units	One per unit; provided however, that If any non-resident employees and/or clients are permitted in any work area there shall be one parking space for the first 1,000 sq. ft. of work area and one additional parking space for each additional 750 sq. ft. of work area.
Manufacturing Uses (assembly, production, storage and testing space only)	One per 1,000 sq. ft. of floor area
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Nursing Homes	One per each five residents; plus o One per each three employees
Restaurants and Food Service	One per 300 sq. ft. of floor area
Storage, Warehousing and Wholesale Trade	One per 1,000 sq. ft. of floor area for spaces of less than 10,000 sq.ft.; one per 1,500 sq. ft. for spaces of 10,000 sq. ft. or more

Table 23E.84.080	
Parking Required*	
Use	Number of spaces
*See Subsection H-G for substitutions of up to 10% with bicycle/motorcycle parking	

[OPTION B]

Table 23E.84.080	
Parking Required*	
Use	Number of spaces
Art/Craft Studio	One per 1,000 sq. ft. of floor area
Community Care Facilities	One per two non-resident employees
Dwelling Units (fewer than ten)	One per unit, except as provided in Section 23E.84.080.E; 75% less for Seniors (see Subsection E)
Dwelling Units (ten or more)	None required
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Live/Work Units (fewer than 10)	One per unit; provided however, that if any non-resident employees and/or clients are permitted in any work area there shall be one parking space for the first 1,000 sq. ft. of work area and one additional parking space for each additional 750 sq. ft. of work area.
Live/Work Units (ten or more)	If any non-resident employees and/or clients are permitted in any work area there shall be one parking space for the first

Table 23E.84.080	
Parking Required*	
Use	Number of spaces
	1,000 sq. ft. of work area and one additional parking space for each additional 750 sq. ft. of work area.
Manufacturing Uses (assembly, production, storage and testing space only)	One per 1,000 sq. ft. of floor area
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Nursing Homes	One per each five residents; plus o One per each three employees
Restaurants and Food Service	One per 300 sq. ft. of floor area
Storage, Warehousing and Wholesale Trade	One per 1,000 sq. ft. of floor area for spaces of less than 10,000 sq.ft.; one per 1,500 sq. ft. for spaces of 10,000 sq. ft. or more
*See Subsection <u>H-G</u> for substitutions of up to 10% with bicycle/motorcycle parking	

B. Unless otherwise specified in Subsection H-G or in Table 23E.84.080, uses designated in this chapter as Automobile and Other Vehicle Oriented Uses; Outdoor Uses; or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based on the amount of parking demand generated by the particular use and comparable with specified standards for other uses.

C. Bicycle parking spaces shall be provided at the ratio of one space per 2,000 square feet of gross floor area of non-residential space, and in accordance with the requirements of Section 23E.28.070.

D. Off-street parking required by this section may be satisfied by the provision of leased spaces, provided that the requirements of Section [23E.28.030](#) are met; however, the leased parking spaces may be within 500 feet of the property it serves, provided that leased parking at a distance greater than 500 feet may be approved by an Administrative Use Permit.

~~E. For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple family dwelling use, subject to obtaining a Use Permit.~~

~~FE.~~ If the Zoning Officer or Board finds that existing evening parking supply is adequate and/or that other mitigating circumstances exist on the property, the requirement for an additional off-street parking space may be waived through a Use Permit when an additional residential unit is added to a property with one or more residential units.

~~GF.~~ No off-street parking space which is required by this Ordinance, including Use Permits issued under this Ordinance, shall be removed; provided, however, any off-street parking spaces which are provided in excess of the number required at the time of application may be removed.

~~HG.~~ Subject to the finding in Section [23E.84.090.J](#), an Administrative Use Permit may be issued to designate up to 10% of automobile parking required for a use for bicycle and/or motorcycle parking, unless a Use Permit from the Board is required to approve any part of the application, in which case the Use Permit shall be approved by the Board. Any bicycle parking created by this designation shall be in addition to otherwise required bicycle parking.

~~IH.~~ In buildings with manufacturing, wholesale trade or warehouse uses, loading spaces shall be maintained so as to meet the requirements of Chapter [23E.32](#).

~~JL.~~ Any construction which results in the creation of 10,000 square feet of new or additional commercial or manufacturing gross floor area shall satisfy Chapter [23E.32](#).

Section 25. 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.

OCT 27 2015

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

ACTION CALENDAR
October 27, 2015
(continued from October 6, 2015)

To: Honorable Mayor and Members of the City Council
From: Councilmember Lori Droste
Subject: Councilmember Lori Droste's Green Affordable Housing Package - Amendments

RECOMMENDATION

Request that the Planning Commission and City Manager investigate the feasibility of reducing barriers for the creation of new affordable housing. City Council requests that commissions and staff address and propose solutions and/or an implementation plan using the following recommendations by October 1, 2016.

Policy 1: Designate units and funding for affordable housing by prioritizing housing over parking spaces in new developments

1. Reduce or eliminate minimum residential parking requirements if car-sharing spaces, shared mobility devices, or transit passes or other TDM measures are provided.
2. Consider a cap on residential parking maximums.
3. Reduce or eliminate minimum parking requirements for new housing that serves populations that do not have high rates of car ownerships.
4. Reduce or eliminate minimum parking requirements for transit-intensive housing.
 - Transit-intensive housing is defined as within 1,200 feet of a transit center or within 1,200 feet of an overlap between major transit corridor and a commercial or mixed-use district.
 - Broadly defined, a *transit corridor* generally refers to a geographic area that accommodates travel or potential travel. A transit corridor is best defined as the areas around all of the stations along a transit line that have destinations or residences within reasonable distance for walking, biking, or other transit connections. ■
 - Broadly defined, a *transit hub* refers to a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or a major bus route with frequencies of service intervals of 15 minutes or less during the morning and afternoon peak commute periods. ■
5. Re-evaluate and/or reduce parking space requirements per new residential unit in areas within ½ mile of a transit hub.

Determine a process whereby the costs saved by parking reductions will be designated for affordable units or the Affordable Housing Trust Fund.

Evaluate and account for impacts of parking policies on access and routes for emergency vehicles and evacuations.

Policy 2: Remove the structural barriers to creating more housing

1. Improve and streamline the development review process, particularly for permanently affordable housing projects. ~~and smaller residential housing proposals~~ Review and compare Berkeley's process to that of neighboring cities.



Jesse Arreguín
 City Councilmember, District 4

ACTION CALENDAR
 April 26, 2016

To: Honorable Mayor and Members of the City Council
 From: Councilmember Jesse Arreguín
 Subject: Referral to Planning Commission: City-Wide Green Development Requirements

RECOMMENDATION

Refer to the Planning Commission to draft an ordinance requiring the same Green Building and Transportation Demand Management (TDM) measures required in the Commercial Downtown Mixed Use District (C-DMU) for projects of 75 units or more throughout the City of Berkeley’s commercial zoning districts.

The following standards would apply to larger projects city-wide:

1. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.

Number of Parking Spaces Required	Minimum Number of Vehicle Sharing Spaces
0-10	0
11-30	1
30-60	2
61 or more	3, plus one for every additional 60 spaces

- For residential structures constructed or converted from a non-residential use that require vehicle parking under Section 23E.68.080.B, required parking spaces shall be designated as vehicle sharing spaces in the amounts specified in the adjacent table. If no parking spaces are provided pursuant to Section 23E.68.080.D, no vehicle sharing spaces shall be required.

- The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost.

2. The vehicle sharing spaces required by this section shall remain available to a vehicle sharing service provider as long as providers request the spaces. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles. When a vehicle sharing service provider requests such space, the property owner shall make the space available within 90 days.

3. Occupants of residential units or GLA units constructed, newly constructed or converted from a non-residential use shall not be eligible for Residential Parking Permit (RPP) permits under Chapter 14.72 of the BMC.
4. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit, unless the Board grants a Use Permit to waive this requirement for projects which include financing for affordable housing subject to the finding in section 23E.68.090.I.
5. Construction of new developments of at least 75 units shall attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.
6. New developments of at least 75 units shall be required to meet all applicable standards of the Stopwaste Small Commercial Checklist, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction.
7. New developments of at least 75 units, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident. A notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents.
 - A pass for unlimited local bus transit service; or
 - A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.

BACKGROUND:

One of the main goals of the 2012 Downtown Area Plan (DAP) is promoting sustainability in the Downtown by “*Integrat[ing] environmentally sustainable development and practices in the Downtown, and in every aspect of the Downtown Area Plan*” and to “*Model best practices for sustainability*”.¹

The DAP and its implementing zoning includes a number of green building and sustainable transportation requirements for new projects throughout the Downtown. These green measures are resulting in sustainable projects with bike and car share parking, and meeting LEED Gold standards. These forward thinking policies go a long way in helping Berkeley meet its climate action goals, but they only apply to projects in the Downtown area. Large projects throughout the city should be held to the same standard. This will result in further reducing greenhouse gases from transportation and building energy use.

¹ 2012 Downtown Area Plan, page IN-18

An update on the Climate Action Plan (CAP) presented to the City Council in November 2015 showed that the City is not on track to achieve the goals set by the Plan. While Berkeley has achieved more reductions compared to the rest of the State, despite population increases, it is clear that more must be done if we are to reach the targets set forward in the CAP. By holding large developments to the same standards as those in Downtown, we can achieve the goals of sustainability by reducing greenhouse gases.

FINANCIAL IMPLICATIONS:

Staff time to prepare zoning amendments for Planning Commission consideration.

ENVIRONMENTAL SUSTAINABILITY

Applying the same standards to large developments citywide can significantly improve the City's ability to meet the goals of the Climate Action Plan.

CONTACT PERSON

Jesse Arreguin, City Councilmember, District 4

510-981-7140



MEMORANDUM

To: Justin Horner, City of Berkeley
From: Nelson\Nygaard Team
Date: November 25, 2019
Subject: Berkeley Residential Parking Capacity Study

INTRODUCTION AND STUDY PURPOSE

By analyzing actual usage (i.e. occupancy) of residential parking, the purpose of this study is to “right size” off-street parking requirements to meet the City of Berkeley’s goals of developing more housing at all affordability levels and encouraging more sustainable transportation modes. In addition to studying off-street parking behavior, compared to what is provided, assessing the efficiency of on-street parking facilities is intended to help meet the City of Berkeley’s goals of encouraging more sustainable transportation modes.

The overall purpose of this assessment is to analyze the parking required, provided and utilized at these buildings in order to determine how existing off-street parking regulations match actual usage.

METHODOLOGY

Property Selection Process

The City identified residential properties located within a variety of neighborhoods.

City Staff made initial contact with property’s/property managers to request they take a short survey about the property and secondly confirm whether they would allow access to the property for on-site parking survey. A total of 28 survey responses were received, and of that 20 properties were selected for further data collection multi-unit residential buildings (with 10 units or more) in consultation with the city. Selection criteria included:

- Geographical distribution within multifamily zoned areas
- Mix of affordable/inclusionary and 100% market rate facilities; and
- A range of property sizes (by number of units)

Berkeley Residential Capacity Study
City of Berkeley

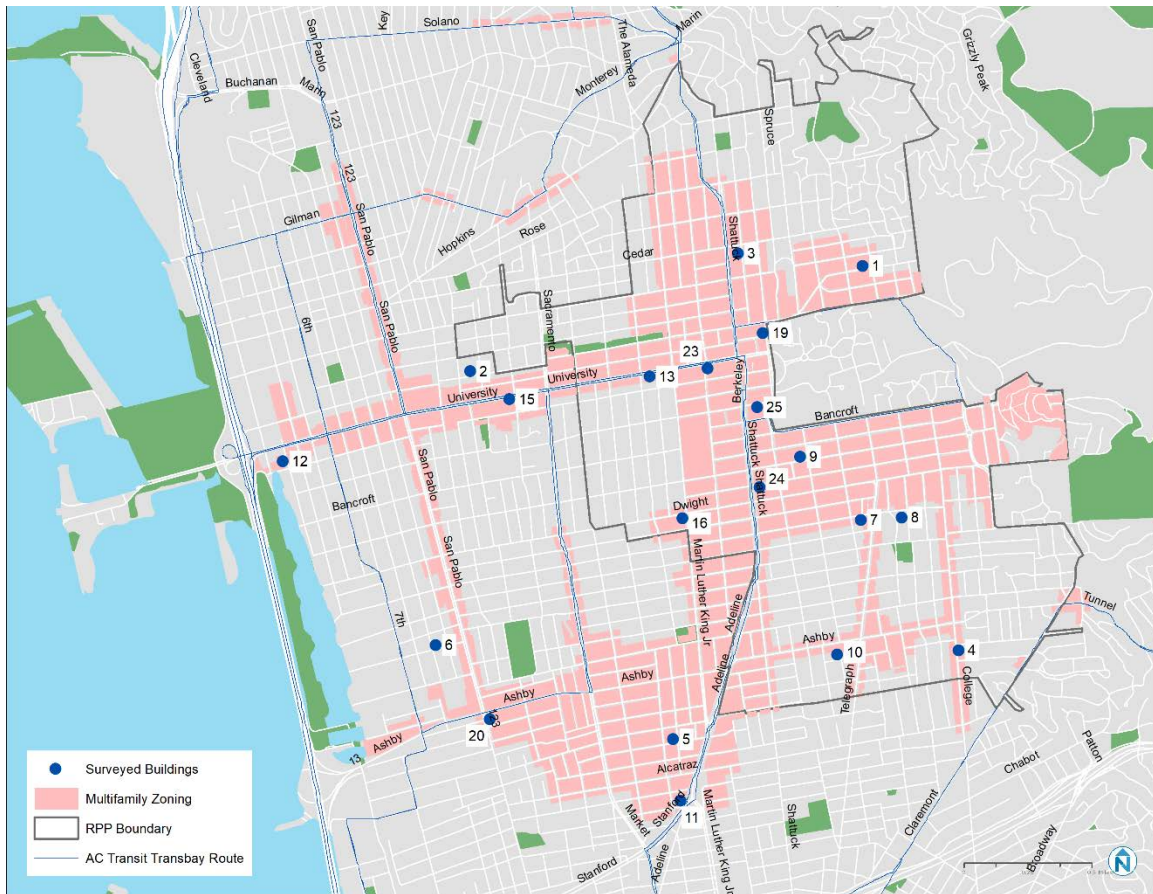
The surveyed properties are listed in Table 1 and displayed on the Figure 1 on the following page.

Table 1 - Surveyed Properties

ID	Address	Total Units	% Affordable Housing
1	2575 Le Conte Avenue	11	0%
2	1277 Hearst Avenue	8	0%
3	1612 Walnut Street	9	0%
4	3001 College Avenue	10	0%
5	3140 Ellis Street	10	0%
6	2777 Ninth Street	21	0%
7	2414 Parker Street	16	0%
8	2610 Hillegass Avenue	23	0%
9	2239 Channing Way	14	0%
10	2321 Webster Street	18	0%
11	3380 Adeline Street	14	0%
12	651 Addison Street	94	4%
13	1812 University Avenue	44	9%
15	1370 University Avenue	71	97%
16	2500 Martin Luther King Jr Way	10	20%
19	1910 Oxford Street	56	20%
20	3015 San Pablo Avenue	98	15%
23	2004 University Avenue	35	20%
24	2110 Haste Street	100	20%
25	2116 Allston Way	91	20%

Berkeley Residential Capacity Study
City of Berkeley

Figure 1 - Study Area Map



Note: The number label in each surveyed property in the map corresponds to the ID number in Table 1

Residential Property Manager Survey

A short on-line survey was developed and distributed for the residential property managers to get basic information about their buildings, including total units, total parking spaces, unit vacancies, the number of affordable units, unbundled parking and transportation demand management programs available to residents. A copy of the survey instrument is included in the appendix.

Parking Data Collection

A parking survey was conducted at each property including off-street inventory of parking spaces and total vehicles observed. The survey was conducted when UC Berkeley was in session on a typical weekday evening, between midnight and 5:00am in order to more reliably reflect a time when most residents would be at home.

On-street parking capacity (inventory and occupancy) in the areas around selected buildings was surveyed on the two blockfaces nearest the immediate pedestrian entrance

to each property.¹ This data was collected to help understand neighborhood parking, potential spillover and local context.

Vehicle Registration

The City provided anonymized DMV (Department of Motor Vehicle) and RPP (Residential Parking Permits) data associated with each of the residential properties. The purpose of the analysis was to determine how many vehicles are associated with each property and how many vehicles take advantage of the available Residential Preferential Permit Program rather than parking on the property.

Socioeconomic Assessment

In addition to the property related data collected, a socioeconomic assessment of multifamily housing was performed. It focused on aspects related to vehicle ownership and commute choices in areas zoned for multifamily housing. The team used 2017 ACS 5-year data at census block group (CBG) level and compared ownership and rental tenure, and income.

KEY FINDINGS

Property Survey

- Surveyed properties averaged 41.5 units per building. The median apartment building surveyed had 23 housing units.
- The residential usage rate was relatively high, ranging from 94% to 100%.
- 9 of the 20 buildings studied contained some affordable housing units, with most around 15-20% affordable.
- All 20 properties were within a reasonable walking distance (half mile or less) and 17 within very walkable distance (quarter of mile or less) of high-frequency transit service (BART or Transbay Bus).
- The average built parking ratio was 0.82 per unit.
- Properties with the fewest vehicle registrations per unit appear to be closer to downtown Berkeley.

Parking Survey

- The average parking occupancy across all properties, both on and off-street, is 55%

¹ In some cases where there were multiple entrances, the immediate blockfaces on each entrance were collected.

- There are slightly less than 0.5 vehicles registered per unit on average, yet there is an average 0.82 parking spaces per unit off-street.
- The average and median off-street occupancy for all properties is 0.45 and 0.53 per unit respectively.
- The average and median on-street occupancy for all properties was 60% and 61% respectively.

Socioeconomic Analysis

- In multifamily areas less than 25% of people drive to work alone as opposed to more than 40% in single-family areas.
- In multifamily areas slightly more than 30% of people walk to work as opposed to approximately 7% in single-family areas.
- In general, the share of zero car households in multifamily areas is higher than in single family areas.
- Of the total households in multifamily areas, 40% of renter households do not own a car and about 10% of owner households do not own a car.
- There is more available on-street and off-street parking (particularly near Downtown Berkeley) in those areas that have more renters, have fewer cars and have more residents that commute either on-foot or on transit.

PROPERTY ANALYSIS

Property managers responded to an online survey, providing relevant details for this analysis. The number of housing units in these properties ranges from 8 to 100, with an average of 41.5 units per building. The median apartment building surveyed had 23 housing units. Table 1, above, provides the number of units in each surveyed building. While there are a few vacant units in these properties, the occupancy rate is relatively high, ranging from 94% to 100%. Additionally, 9 of the 20 buildings studied contained some affordable housing units. The share of affordable housing ranged from 4% of the total units to 97%, with most around 15-20% of all units being affordable.

Ninety percent of surveyed properties had unbundled parking, meaning that the cost of parking charged separately from the apartment lease. Only two out of the twenty surveyed buildings did not charge separately for parking. Properties with unbundled parking all reported charging more than \$50 per month for a parking space.

All 20 properties were within a reasonable walking distance of high-frequency BART and AC Transit Transbay service.

Sixteen (16) of the properties included secure bike parking within their premises. The number of bicycles these facilities can store ranges from 4 (for a 10-unit apartment building) to 60 (for a 98-unit apartment building). In terms of per-unit bicycle storage, buildings that included secure parking ranged from 0.3 spaces unit to 3 spaces per unit.

All the surveyed properties include parking. The parking supply ranged from 10 parking spaces to 129 parking spaces. The following table summarizes parking supply in per-unit basis. The average built parking spaces was 0.82 per unit.

Table 2 - Built Parking Spaces per Unit

	Median	Mean	Min	Max	20 th percentile	80 th percentile
Parking Spaces	0.82	0.84	0.20	1.70	0.54	1.15

Similarly,

summarizes DMV vehicle registrations per unit for the surveyed properties. Registrations range from 0 to 69 vehicles per property, with an average of 0.49 vehicle registrations per unit. The data indicate a wide distribution. Figure 2 illustrates the distribution of vehicle registrations per unit across the 20 study properties. Red dots indicate a property with no vehicle registrations, while a large blue dot indicates a ratio of over one (1) vehicle per unit.

Table 3 - DMV Registrations per Unit

	Median	Mean	Min	Max	20 th percentile	80 th percentile
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Berkeley Residential Capacity Study
City of Berkeley

Vehicle Registrations	0.38	0.49	0	1.80	0.25	0.71
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A handful of properties have 15 or more registrations while many have very few. Those properties with the least vehicle registrations per unit as illustrated in Figure 2 appear to be closer to downtown Berkeley.

Figure 2 – Vehicle Registrations per Unit

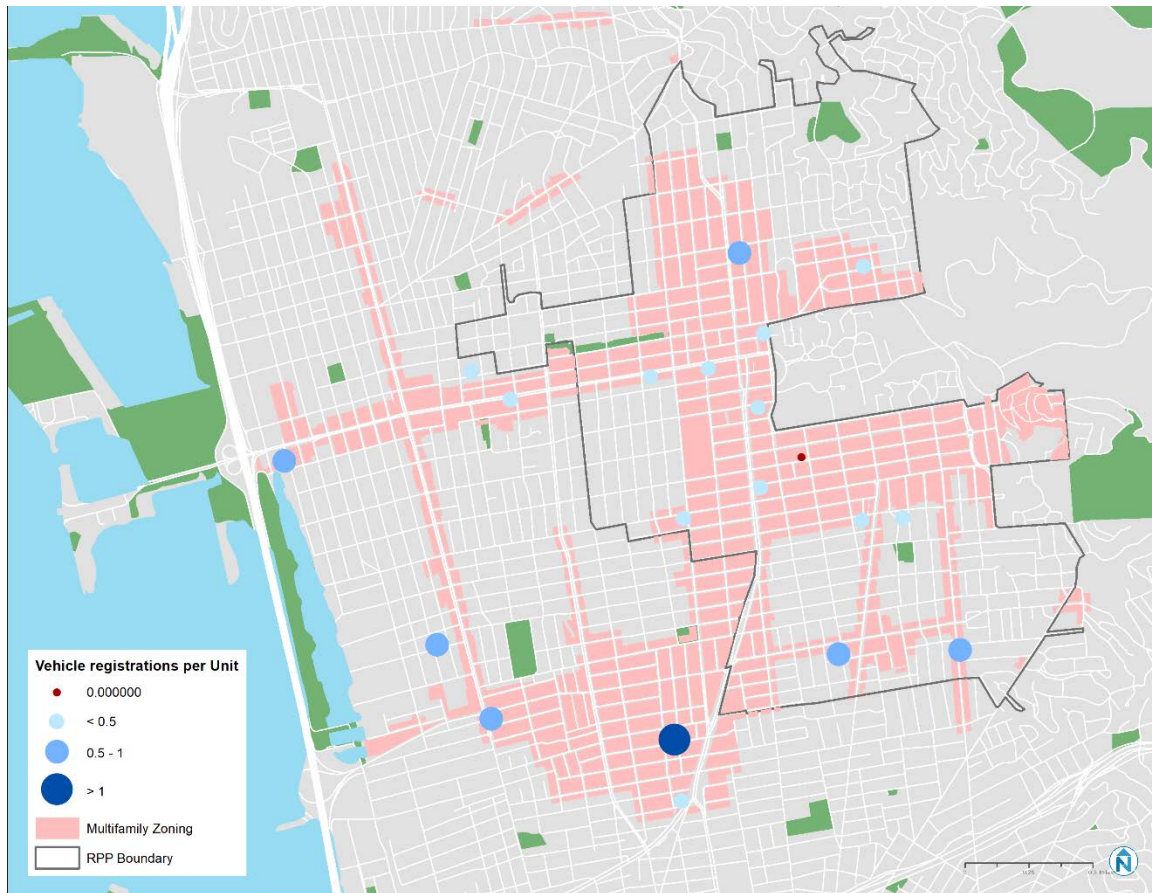
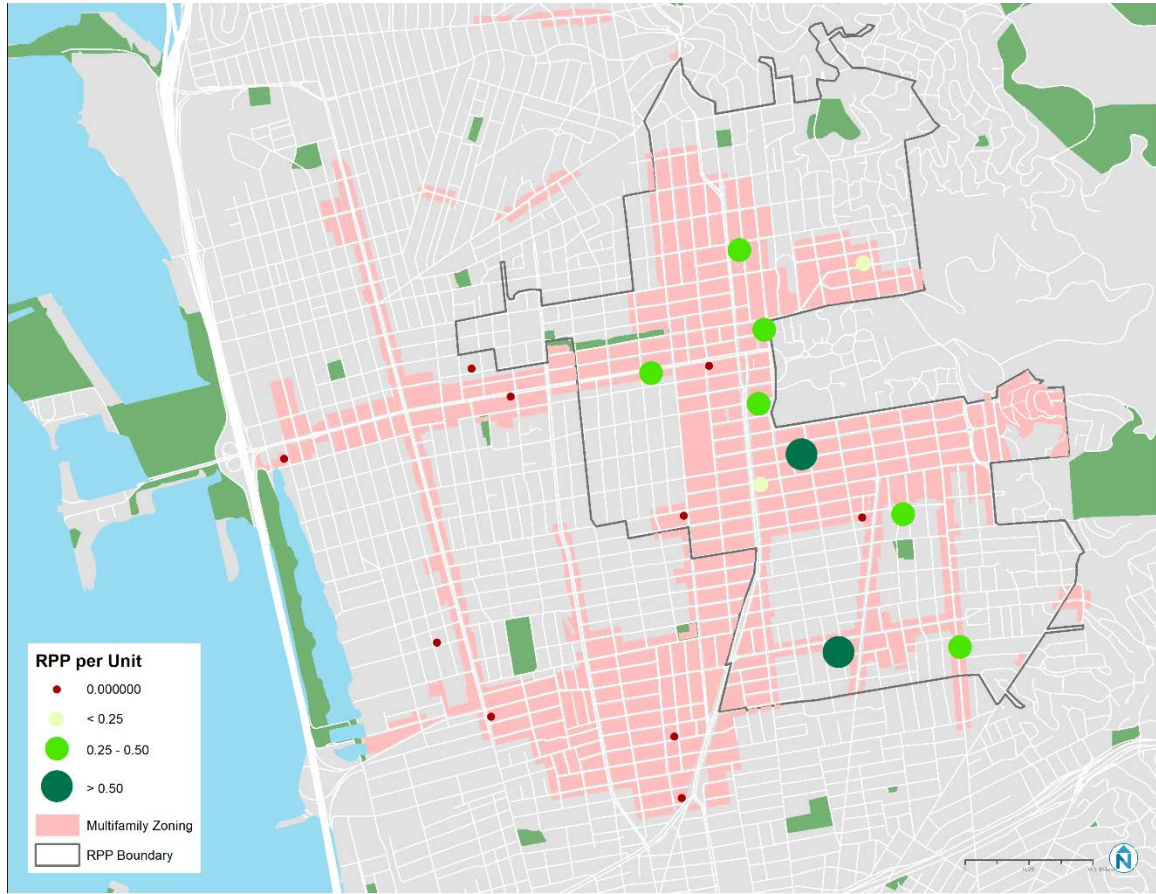


Figure 3 illustrates the distribution of residential preferential permit registrations per unit across the 20 study properties. Red dots indicate a property with no permits, while a large dark green dot indicates a ratio of more than 0.5 permit per unit. As to be expected, only properties within the RPP boundary are associated with residential permit registrations.

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Figure 3 - RPP per Unit



PARKING ANALYSIS

The following analysis combines the different data sources and studies trends and patterns on parking supply and parking usage within the surveyed properties and their adjacent streets.

Occupancy

The average parking occupancy across all properties is summarized in Table 4 at 55%. Diving deeper into per unit occupancy and occupancy rates illustrates greater differences in properties with affordable and market rate units.

Table 4 – Parking Occupancy Across all Properties

	Total # Spaces	Occupancy	Occupancy (%)
On-Street	448	297	61%
Off-Street	592	279	54%
Total	1040	576	55%

Off-Street

Table 5 shows parking occupancy and supply by unit. Properties with affordable units also lower occupancy across all categories as compared to purely market rate. This is corroborated with research indicating that lower income/ affordable housing residents are more transit dependent and less likely to own a vehicle.²

Table 5 – Off-Street Parking Occupancy and Supply per Unit

	Off-Street Supply	Off-Street Usage
Average	0.84	0.45
Market rate	0.89	0.55
Affordable/ Inclusionary	0.78	0.33

Table 6 summarizes the range of occupancies across the properties. The mean and median off-street occupancy for all properties is 0.45 and 0.54 per unit respectively.

² <https://www.jtlu.org/index.php/jtlu/article/view/1129/986>

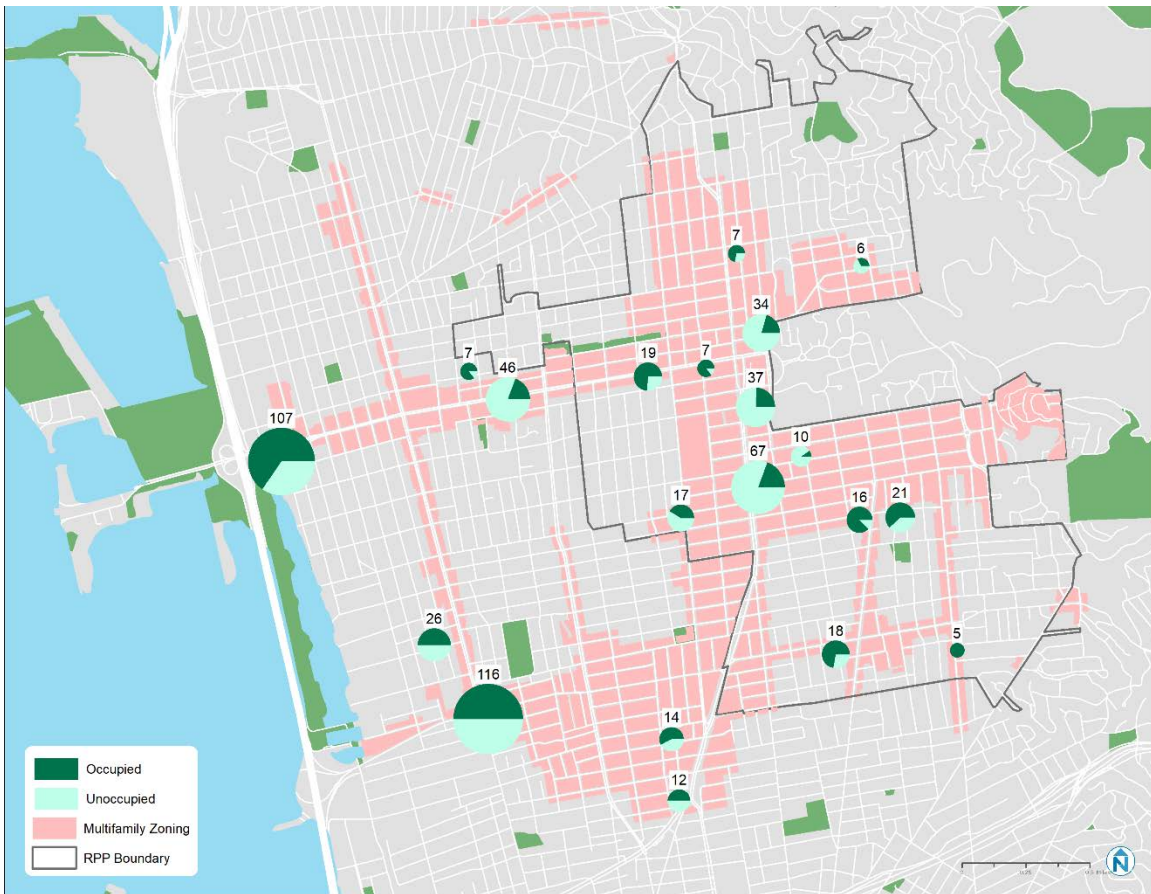
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Table 6 – Off-Street Parking Occupancy and Supply per Unit

	Median	Mean	Min	Max	20 th percentile	80 th percentile
Supply	0.82	0.84	0.20	1.17	0.54	1.15
Occupancy	0.53	0.45	0.07	0.88	0.13	0.73

Figure 4 shows the distribution of off-street occupancy counts collected at the 20 study properties. The size of the pie chart indicates the total inventory of off-street parking available at the site and the dark green vs. light green is an indication of how much parking was occupied. There appears to be a larger proportion of unoccupied off-street parking when the buildings are located closer to UC Berkeley campus and the downtown area, which could be explained by student populations and proximity to BART.

Figure 4 - Off-Street Parking

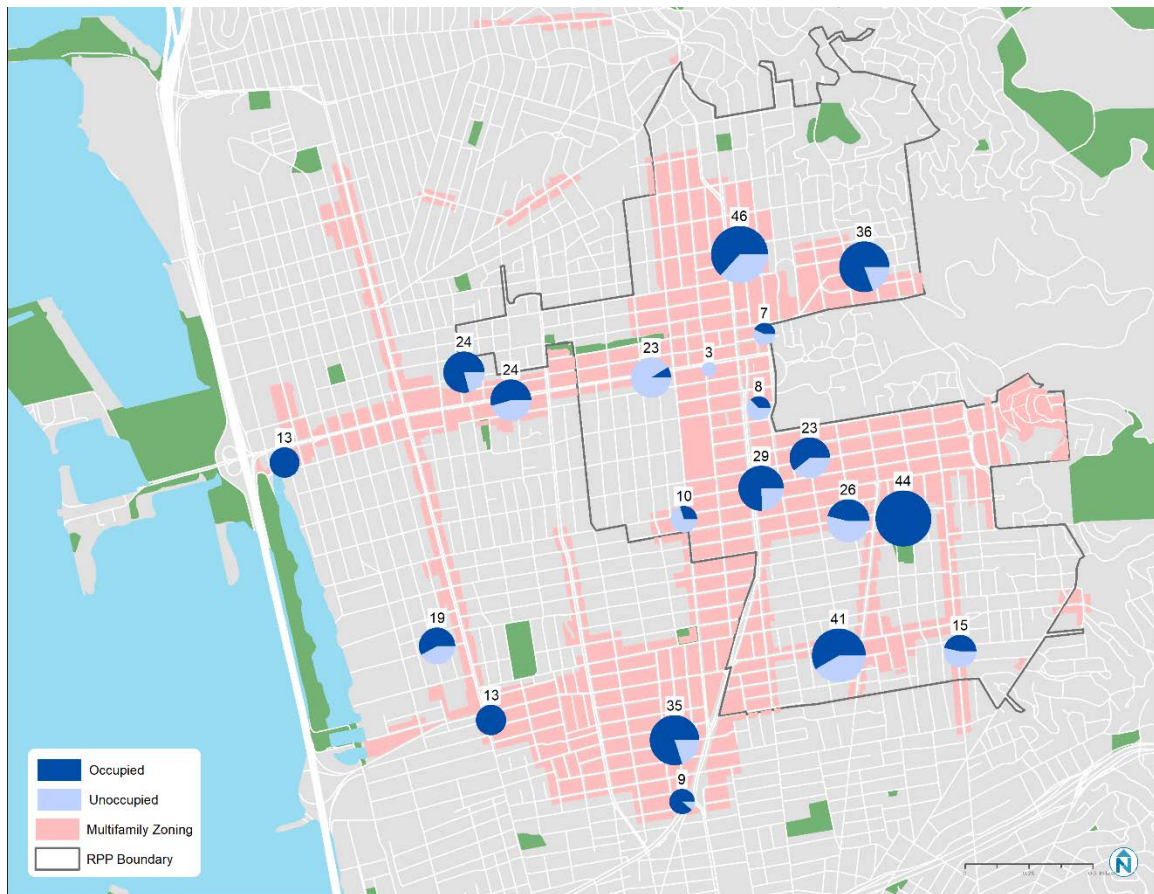


Note: Size of the pie chart and number on top indicate the total parking spaces

On-Street

Figure 5 shows the distribution of on-street occupancy counts collected at the 20 study properties. On-street parking capacity in the areas around selected buildings was surveyed on the two blockfaces nearest the immediate pedestrian entrance to each property.³ The size of the pie chart indicates the total inventory of on-street parking counted at the site and the dark blue vs. light blue is an indication of how much parking was occupied. Table 6 summarizes the range of occupancies across the properties. The average on-street occupancy for all properties was 61%. There did not appear to be any noticeable on-street occupancy pattern based on neighborhood.

Figure 5 - On-Street Parking



Note: Size of the pie chart and number on top indicate the total parking spaces

³ In some cases where there were multiple entrances, inventory and occupancy at the immediate blockfaces on each entrance were collected.

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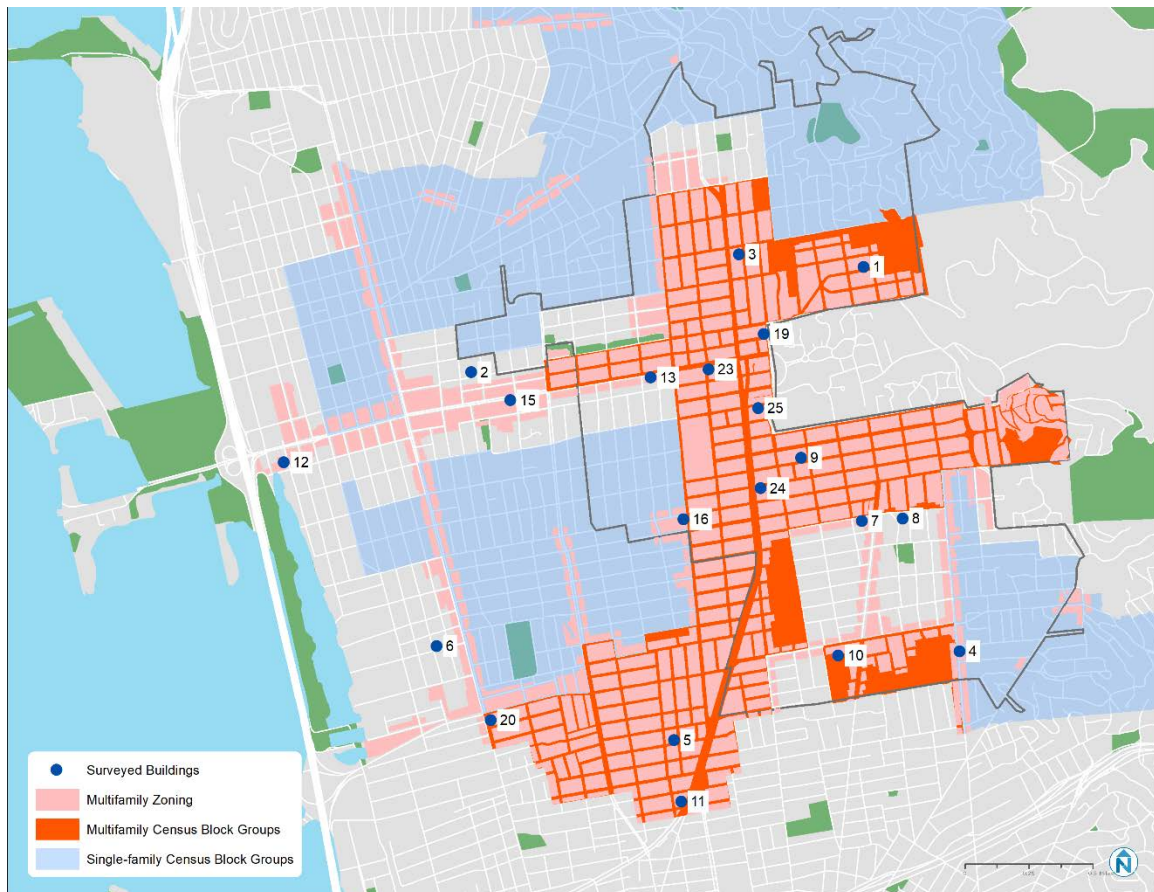
Table 7 – On-Street Parking Occupancy and Supply (# vehicles/ # spaces %)

	Median	Mean	Min	Max	20 th percentile	80 th percentile
Supply (#)	23	22	3	46	9.8	35.2
Occupancy (#)	13	14.9	0	44	3	24.8
Occupancy (%)	60%	61%	0%	100%	42%	82%

SOCIOECONOMIC ASSESSMENT

The project team evaluated characteristics of multifamily and single-family housing in Berkeley. This city-level assessment focused on aspects related to car-ownership that could provide context to the results of the parking capacity survey analysis. The team used 2017 American Community Survey (ACS) 5-year data at a census block group (CBG) level. A qualitative assessment was made to define CBGs as “multifamily housing” or “single-family housing,” based on the City of Berkeley zoning areas. CBGs were defined as either multifamily or single-family if one of the two types of land use covered most of the CBG. CBGs with an ambiguous mix of single-family and multifamily were excluded from the analysis. Figure 6 shows that most of the surveyed buildings (16) are located within multifamily zoning and in CBGs that the project team defined as multifamily. As a result, the socioeconomic assessment of the multifamily CBG (and its differences with single family areas) complement the conclusions from the survey and observation analysis.

Figure 6 – Multifamily Zoning and Census Block Groups



Note: Census block groups along the University corridor were neither defined as single nor multifamily since it was not clear the dominant zoning type in that CBG.

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Figure 7 indicates that more than 40% of workers living in single-family CBGs drive alone to work as opposed to slightly more than 20% in multifamily CBGs. ACS data also shows that the share of workers walking to work in multifamily CBGs is higher (30%) than those living in single-family areas (7%).

Figure 7 - Means of transportation to work, multifamily vs single-family CBG

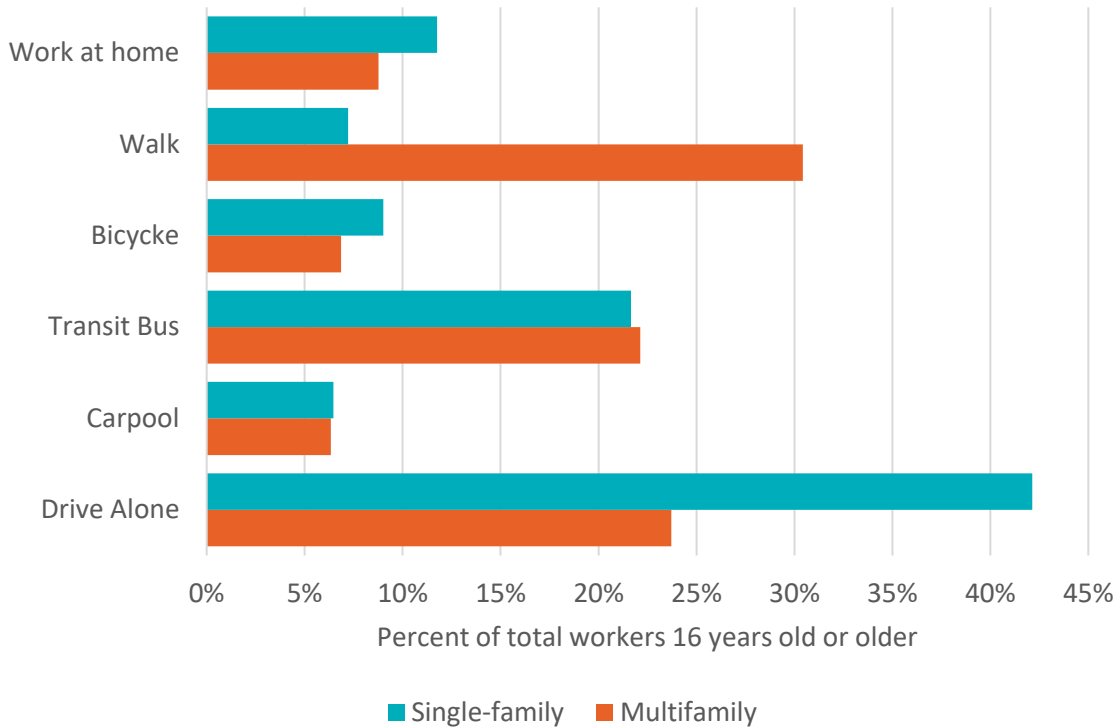


Figure 8 and Figure 9 show car-ownership by tenure in multifamily and single-family areas respectively. Approximately 40% of renters in multifamily areas do not have a car, double that of renters in single-family areas. Interestingly, homeowners show a similar car ownership pattern regardless of housing type. In multifamily housing areas, 89% of owners have at least one car, which is very close to the 95% of owners in single-family areas.

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Figure 8 – Vehicle ownership by tenure, multifamily CBG

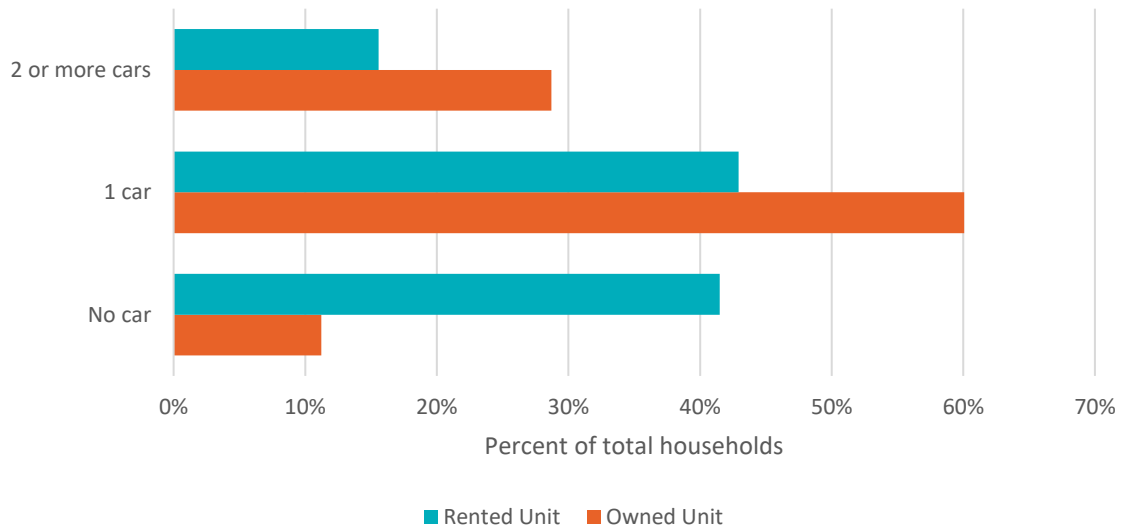
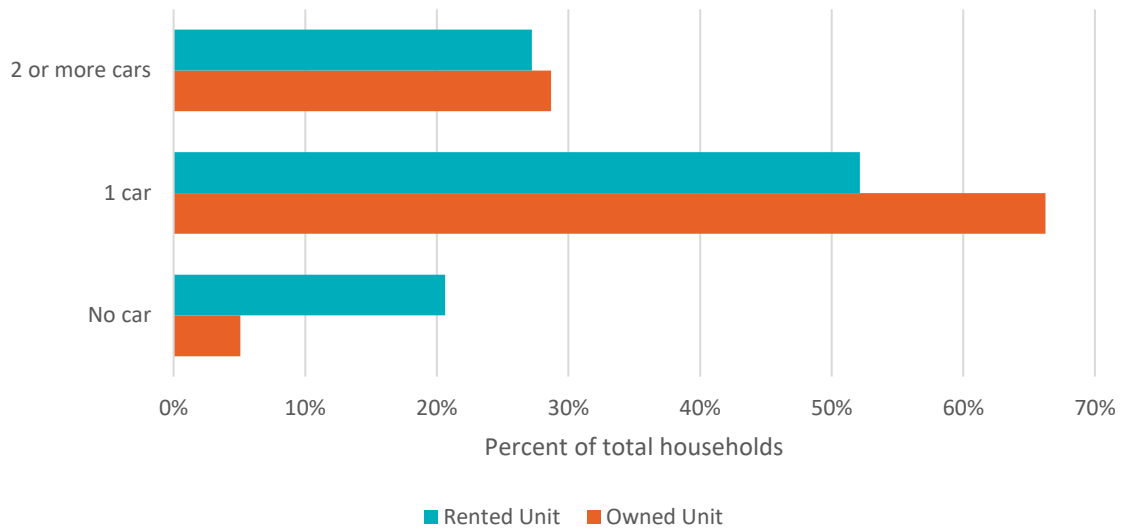


Figure 9 – Vehicle ownership by tenure, single-family CBG



APPENDICES

- A. Property Survey Instrument
- B. Property Survey Parking Data



Berkeley Parking Utilization Survey

Thank you very much for helping the Berkeley Planning Department by completing this survey. We expect this survey to only take about 5-10 minutes. After you submit the survey, we will contact you to arrange a visit to your building for a one-time parking count. If you have any questions about the survey or need any assistance, please contact Justin Horner, Associate Planner, at 510-981-7476 or jhorner@cityofberkeley.info

* 1. Residential Building Address

* 2. Site Contact Name

* 3. Site Contact Email

* 4. Is there a Property Management Company?



Berkeley Parking Utilization Survey

5. Name of the Management Company



Berkeley Parking Utilization Survey

* 6. Total Number of Residential Units

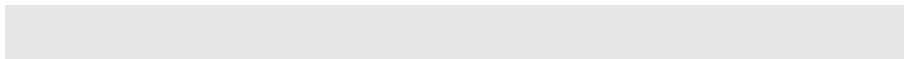
* 7. Total Number of Occupied Residential Units

* 8. Does this building have affordable residential units?



Berkeley Parking Utilization Survey

* 9. Total Number of Affordable Residential Units





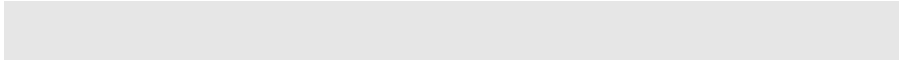
Berkeley Parking Utilization Survey

* 10. Do you know how many residential units are occupied with residents that have vehicles?



Berkeley Parking Utilization Survey

* 11. Total number of residential units occupied by residents with vehicles





Berkeley Parking Utilization Survey

* 12. Total number of parking spaces designated for residential use

* 13. Are there any parking spaces designated for residential use that are used by non-residents



Berkeley Parking Utilization Survey

* 14. Total number of spaces designated for residents that are used by non-residents



Berkeley Parking Utilization Survey

* 15. Do residents pay for on-site vehicle parking under separate agreement?

- Yes. Parking is rented/deeded separately
- No. Parking is free or included in rent or condo fee



Berkeley Parking Utilization Survey

* 16. Is the monthly cost of parking less or more than \$50/month?

- Less Than \$50
- More Than \$50
- N/A



Berkeley Parking Utilization Survey

* 17. Does your building offer any of the following benefits? (select all that apply)

- Secure Bike Parking
- Discounted Transit Passes for Residents
- On-site Car-share vehicles
- None of the Above
- Other (please specify)



Berkeley Parking Utilization Survey

* 18. What is the capacity of of your on-site bike parking (i.e. how may bikes can park)?



Berkeley Parking Utilization Survey

* 19. Do you think there are residents with cars who are parking off-site?

* 20. Is there anything special or particular about residential parking in your building that you believe would be helpful for us to understand your building's situation better?

ID	Residential Building Address	Name of the Management Company	Total Number of Residential Units	Total Number of Occupied Residential Units	Does this building have affordable residential units?	Total Number of Affordable Residential Units	Do you know how many residential units are occupied with residents that have vehicles?	Total number of residential units occupied by residents with vehicles	Total number of parking spaces designated for residential use	Are there any parking spaces designated for residential use that are used by non-residents	Total number of spaces designated for residents that are used by non-residents	Do residents pay for on-site vehicle parking under separate agreement?	Is the monthly cost of parking less or more than \$50/month?	Does your building offer any of the following benefits? (select all that apply)
ID	Open-Ended Response	Open-Ended Response	Open-Ended Response	Open-Ended Response	Response	Open-Ended Response	Response	Open-Ended Response	Open-Ended Response	Response	Open-Ended Response	Response	Response	Secure Bike Parking
1	2575 Le Conte Ave.	Premium Properties	11	11	No		Yes	4	8	No		Yes. Parking is rented/d	More Than \$50	
2	1277 Hearst St.	Premium Properties	8	8	No		Yes	5	15	No		Yes. Parking is rented/d	More Than \$50	
3	1612 Walnut St.	Premium Properties	9	9	No		Yes	5	9	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
4	3001 College Ave.	Premium Properties	10	10	No		Yes	6	10	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
5	3140 Ellis St.	Premium Properties	10	10	No		Yes	5	7	No		Yes. Parking is rented/d	More Than \$50	
6	2777 9th St.	Premium Properties	21	21	No		Yes	20	21	No		No. Parking is free or included in rent or cond		Secure Bike Parking
7	2414 Parker St.	Premium Properties	16	16	No		Yes	9	16	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
8	2610 Hillegass Ave.	Premium Properties	23	23	No		Yes	10	22	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
9	2239 Channing Way	Premium Properties	14	14	No		Yes	0	6	Yes	4	Yes. Parking is rented/d	More Than \$50	
10	2321 Webster St.	Premium Properties	18	18	No		Yes	13	18	Yes	1	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
11	3380 Adeline St.	Premium Properties	14	14	No		Yes	6	12	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
12	651 Addison St, Berkeley, CA 94710	Avalonbay Communities	94	89	Yes	4	Yes	85	101	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
13	1812 University Avenue Berkeley, CA 94703	SG Real Estate	44	44	Yes	4	No		17	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
15	1370 university Ave	Equity Residential	71	67	Yes	69	No		61	Yes	4	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
16	2500 Martin Luther King Jr., Way		10	10	Yes	2	Yes	9	10	No		No. Parking is free or included in rent or cond		Secure Bike Parking
19	1910 Oxford Street Berkeley CA 94704	The Dinerstein Companies	56	56	Yes	11	No		36	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
20	3015 San Pablo Ave	Gerding Edlen	98	92	Yes	15	No		100	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
23	2004 University Ave. Berkeley CA, 94704	The Dinerstein Companies	35	35	Yes	7	No		6	No	unknown	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
24	2110 Haste St. Berkeley CA, 94704	The Dinerstein Companies	100	100	Yes	20	No		64	Yes	unknown	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
25	2116 Allston Way	The Dinerstein Companies	91	91	Yes	18	No		40	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
x	2002 Addison St, Berkeley CA, 94704	The Dinerstein Companies	27	27	Yes	4	No		18	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
x	2020 Bancroft Way - 2025 Durant Avenue	Everest Properties	105	104	No		Yes	51	106	Yes	40	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
x	1627 University Ave Berkeley CA 94703	The Dinerstein Companies	34	32	Yes	6	No		21	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
x	1901 Dwight Way Berkeley, CA 94704	SG Real Estate	21	21	Yes	3	Yes	12	14	No		Yes. Parking is rented/d	More Than \$50	
x	2121 Dwight Way	Greystar	99	96	Yes	9	No		41	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking

ID	Residential Building Address					Capacity of of your on-site bike parking?	Are there residents with cars who are parking off-site?	Is there anything special or particular about residential parking in your building that you believe would be helpful for us to understand your building's situation better?	OFF Street	OFF Street	ON Street	ON Street
ID	Open-Ended Response	Discounted Tra	On-site Car-s	None of the Ab	Other (pleas	Open-End	Response	Open-Ended Response	TOTAL Supply	TOTAL Occupancy	TOTAL S	TOTAL Occupancy
1	2575 Le Conte Ave.			None of the Above			Yes	No	6	2	36	29
2	1277 Hearst St.			None of the Above			Yes	No	7	6	24	19
3	1612 Walnut St.					4-5	Yes	No	7	5	46	29
4	3001 College Ave.					2-3	Yes	No	5	5	15	7
5	3140 Ellis St.			None of the Above			Yes	No	14	8	35	28
6	2777 9th St.					Not sure	Yes	No	26	13	19	11
7	2414 Parker St.					Not sure	Yes	No	16	14	26	12
8	2610 Hillegass Ave.					Not sure	Yes	No	21	13	44	44
9	2239 Channing Way			None of the Above			Yes	No	10	1	23	14
10	2321 Webster St.					Not sure	Yes	No	18	13	41	24
11	3380 Adeline St.					Not sure	Yes	No	12	6	9	8
12	651 Addison St, Berkeley, CA 94710					27	Yes	All parking spaces are in the garage & 42 are standard parking spaces with 8 spaces with EV charging stations & 59 stack parking spaces	107	70	13	13
13	1812 University Avenue Berkeley, CA 94703					50	Yes	Thank you	19	14	23	2
15	1370 university Ave					40	Yes	Parking is \$150 per month in our building. Residents are all in affordable units so most residents park on the street surround building	46	9	24	13
16	2500 Martin Luther King Jr., Way					30	We ha	No	17	7	10	3
19	1910 Oxford Street Berkeley CA 94704					20	Yes	Parking is located in the garage which is gate controlled access. We have a Klaus system that allows multiple cars to park in the same space	34	7	7	3
20	3015 San Pablo Ave					60	Yes	matrix system - Matthews Mechanical	116	58	13	13
23	2004 University Ave. Berkeley CA, 94704					unknown	Yes	We utilize a Klaus machine to optimize garage space	7	6	3	0
24	2110 Haste St. Berkeley CA, 94704					unknown	Yes	utilize Klaus machine to optimize space in garage	67	13	29	22
25	2116 Allston Way					unknown	Yes	our building have a Klaus machine to optimize garage space	37	9	8	3
x	2002 Addison St, Berkeley CA, 94704					unknown	Yes	We utilize a Klaus machine to optimize garage space	NA	NA	NA	NA
x	2020 Bancroft Way - 2025 Durant Avenue					40	No	Mix of outdoor and indoor spaces.	NA	NA	NA	NA
x	1627 University Ave Berkeley CA 94703					20	Yes	Gated garage	NA	NA	NA	NA
x	1901 Dwight Way Berkeley, CA 94704			None of the			Yes	Thank you	NA	NA	NA	NA
x	2121 Dwight Way	Discounted Transit Passes for Residents				50 +	Yes	spots	NA	NA	NA	NA

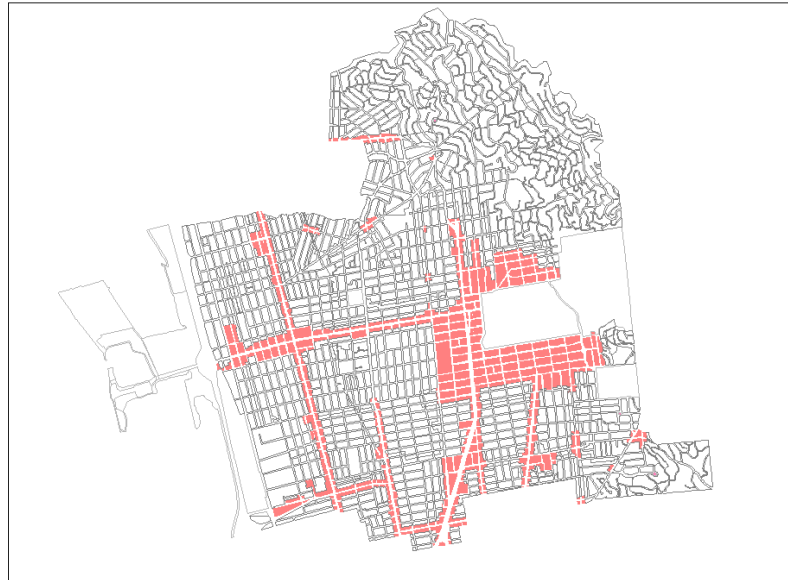
Parking Minimums At-A-Glance

- Excessive off-street parking requirements in multi-unit residential buildings have been associated with:
 - [Decreased residential densities](https://www.tandfonline.com/doi/abs/10.1080/10511482.2013.767851) -- parking spaces utilize developable square footage that could be used for dwelling units
<https://www.tandfonline.com/doi/abs/10.1080/10511482.2013.767851>;
 - [Increased development costs](http://shoup.bol.ucla.edu/HighCost.pdf) -- off-street parking can be expensive to build and adds to the overall cost of a project
<http://shoup.bol.ucla.edu/HighCost.pdf>;
 - [Increased private vehicle ownership and use](https://nyuscholars.nyu.edu/en/publications/does-residential-parking-supply-affect-household-car-ownership-th) – convenient (and inexpensive) parking may encourage car ownership and use
<https://nyuscholars.nyu.edu/en/publications/does-residential-parking-supply-affect-household-car-ownership-th>.

- Surveys from across the country have indicated that multi-unit residential buildings generally include unused required off-street parking spaces.
 - King County, WA. [Right Sized Parking Survey](https://metro.kingcounty.gov/programs-projects/right-size-parking/pdf/rsp-final-report-8-2015.pdf): 38% of required parking was unused
<https://metro.kingcounty.gov/programs-projects/right-size-parking/pdf/rsp-final-report-8-2015.pdf>
 - Washington DC. [Parking Utilization Study](https://planning.dc.gov/page/parking-utilization-study): 40% of required parking was unused
<https://planning.dc.gov/page/parking-utilization-study>
 - Chicago. [Stalled Out](https://www.cnt.org/sites/default/files/publications/CNT_Stalled%20Out_0.pdf): 35% of required parking was unused
https://www.cnt.org/sites/default/files/publications/CNT_Stalled%20Out_0.pdf

- Berkeley conducted a [Parking Utilization Study](#) in October 2019 that focused on multi-unit residential projects of 10 or more units. These types of projects are only permitted in high-density residential districts (R-3 and above) and Commercial districts (see map below) – areas with access to transit and/or a mix of land uses and high walkability.

[https://cityofberkeley.info/uploadedFiles/PLANNING - New/Att%204_Parking%20Study.pdf](https://cityofberkeley.info/uploadedFiles/PLANNING_-_New/Att%204_Parking%20Study.pdf)



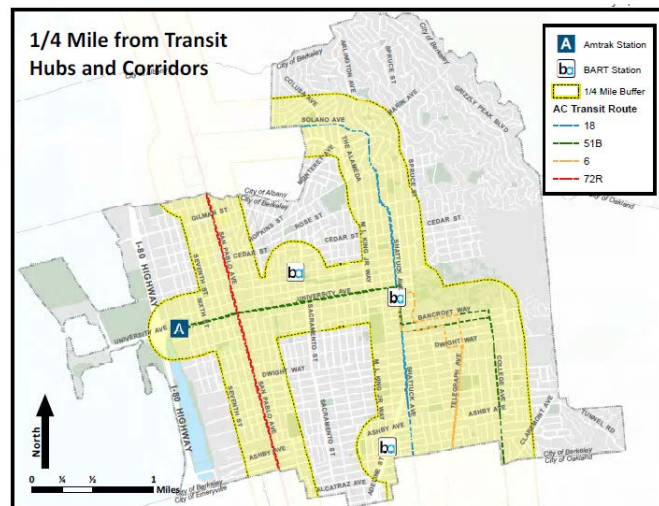
- Berkeley's *Parking Utilization Study* showed that only 54% off-street parking was occupied. It also showed that 60% of on-street parking spaces near surveyed buildings were occupied – suggesting that on-street parking “spillover” was not a concern.
- The *Parking Utilization Study* found that vehicle registration for surveyed buildings was 0.5 registrations per unit. This suggests that car-ownership in these areas of the city is lower than 1 car per unit, regardless of the number of residents in a unit.
- Reducing parking minimums does not mean that parking cannot be built; only that it is not required.

Parking Maximums At-A-Glance

- Parking maximums limit the amount of land or building area that can be used for off-street vehicle parking. As with parking minimums, parking maximums encourage increased residential densities and can potentially lower the overall cost of development projects.
- Parking maximums are more commonly instituted for commercial development, although some jurisdictions have instituted residential parking maximums. Jurisdictions with residential parking maximums include:

City	Maximum	Notes
Minneapolis, MN	1.5 – 2/unit	Maximums only apply to downtown zoning districts.
Pasadena, CA	2/unit	Maximum only applies to Sierra Madre Villa Station TOD Area
Pasadena, CA	1.75/unit	Maximum only applies to TOD Areas and Central District
Pittsburgh, PA	2/unit	Maximum only applies to 1,000 acre Uptown Ecolnnovation District
San Francisco, CA	0.5 -1.5/unit	Maximum depends on zoning district. Maximum is 1.5/unit in most cases
Vancouver, Canada	125% of base zone standard	Maximums apply in Transit Overlay District only (urban centers and transit nodes)

- There is no standard methodology for setting parking maximums, although they are typically somewhere in a range of 1.5 to 2 spaces per unit. Note that these levels generally exceed Berkeley's existing parking minimums. Donald Shoup, Professor of Urban Planning at UCLA and author of the *High Cost of Free Parking*, suggested changing off-street parking minimums to parking maximums as a simple measure to achieve more progressive parking regulations.
- Parking maximums are usually associated with specific zoning districts and/or in areas near transit. Below is a map showing areas of Berkeley within ¼ mile of high-frequency transit.

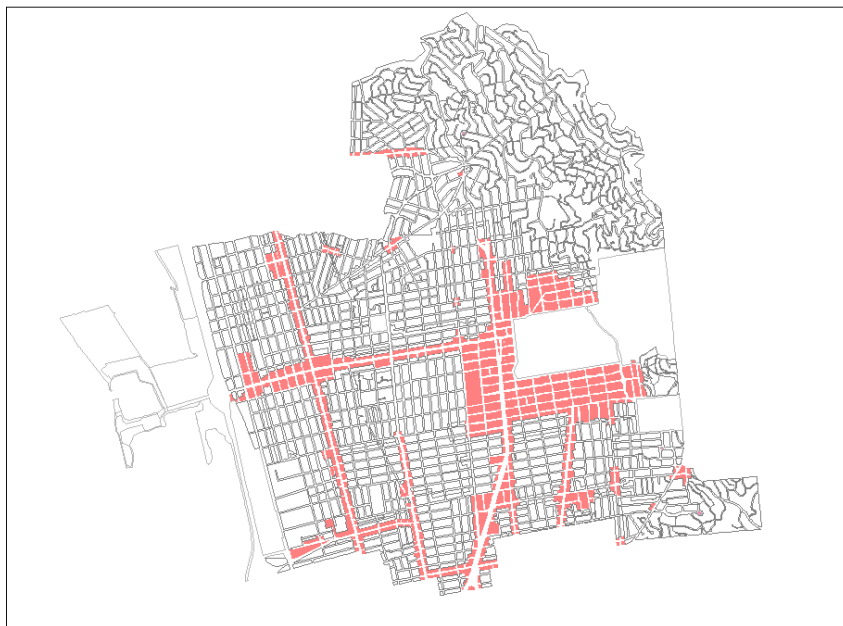


Transportation Demand Management (TDM) At-A-Glance

- Transportation Demand Management (TDM) measures are intended to provide sustainable transportation alternatives for residents while reducing reliance on private vehicles. TDM measures are often implemented as part of parking reform packages to encourage, incentivize and sometimes subsidize, the shift from one transportation mode to another.
- TDM measures are already required in Berkeley for projects in the C-DMU district that do not supply required off-street parking. The City Council's 2016 [Green Development Requirements](https://www.cityofberkeley.info/uploadedFiles/PLANNING_-_New/Att2_GreenDevReferral.pdf) (https://www.cityofberkeley.info/uploadedFiles/PLANNING_-_New/Att2_GreenDevReferral.pdf) referral specifically called for the expansion of the C-DMU's TDM measures citywide on large residential projects.
- Planning Commission considered two main approaches to TDM: 1) a menu-based approach, similar to [San Francisco's TDM program](https://sfplanning.org/transportation-demand-management-program) (<https://sfplanning.org/transportation-demand-management-program>), which allows a project sponsor to pick among a number of TDM measures; and 2) a proscriptive approach, which dictates which TDM measures would be required. They also considered Transform's [GreenTRIP Certification](https://www.transformca.org/landing-page/greentrip-certification-program) (<https://www.transformca.org/landing-page/greentrip-certification-program>) program.
- Planning Commission selected a proscriptive approach that provides clarity to applicants and residents, screened the required TDM measures for effectiveness, and ensured that the program would be relatively easy for staff to administer.
- The four TDM measures proposed as part of Berkeley Parking Reform package are listed below with a brief rationale:
 - **Off-street bicycle parking will be required for residential projects.** These requirements are taken directly from the recommendations included in the adopted 2017 *Berkeley Bike Plan*.
 - **Transit passes will be required for building residents.** This TDM measure is already established in the C-DMU district. Provision of transit passes has been shown to be an [effective tool in reducing private vehicle use](http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf) (<http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>) and a welcome benefit by residents.
 - **Off-street parking will need to be "unbundled" from housing costs.** The required sale or rental of off-street parking, separate from the cost of a dwelling unit, mirrors a TDM measure already required in the C-DMU district. The City's *Parking Utilization Study* revealed that unbundled parking is a common practice among multi-unit building owners in Berkeley, but it is currently not a requirement in all projects.
 - **Real-time transportation information monitors will be required.** This is a simple, and easily implemented, low-cost method to provide transportation options to building residents and visitors using web-based information services.

Residential Preferential Parking (RPP) Permits At-A-Glance

- The [RPP program](https://www.cityofberkeley.info/Customer_Service/Home/RPP_Residential_Preferential_Parking.aspx) is administered by the Transportation Division in the Department of Public Works. https://www.cityofberkeley.info/Customer_Service/Home/RPP_Residential_Preferential_Parking.aspx
- The cost of an RPP parking permit, available to residents with cars registered to Berkeley addresses, is \$66 per year. Residents may request up to three parking permits per dwelling unit – and may request to exceed this limit through an appeal process. RPP permits are also available to merchants and in-home care providers.
- The City of Berkeley currently limits RPP permits in [BMC 14.72.080.C](https://www.codepublishing.com/CA/Berkeley/html/Berkeley14/Berkeley1472/Berkeley1472080.html#14.72.080) for projects that provide less parking than required to mitigate any potential impacts to on-street parking. <https://www.codepublishing.com/CA/Berkeley/html/Berkeley14/Berkeley1472/Berkeley1472080.html#14.72.080>
- In the C-DMU and the Car-Free Housing Overlay in the Southside Plan Area, residents of new projects that do not include parking cannot obtain RPP permits.
- If the City Council eliminates minimum parking requirements for projects of 10 or more units in high density residential and commercial districts citywide, restrictions on RPP permits should be similarly expanded to apply existing policy consistently.
- Berkeley conducted a [Parking Utilization Study](https://cityofberkeley.info/uploadedFiles/PLANNING_-_New/Att%204_Parking%20Study.pdf) (October 2019) that focused on multi-unit residential projects of 10 or more units. These types of projects are only permitted in high-density residential districts (R-3 and above) and Commercial districts (see map below) – districts with access to transit and/or a mix of land uses and high walkability. https://cityofberkeley.info/uploadedFiles/PLANNING_-_New/Att%204_Parking%20Study.pdf



- Berkeley's *Parking Utilization Study* showed that only 54% off-street parking was occupied. It also showed that 60% of on-street parking spaces near surveyed buildings were occupied – suggesting that on-street parking “spillover” was not a concern when residential projects are not fully parked.



Planning Commission

**FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
March 4, 2020**

The meeting was called to order at 7:02 p.m

Location: South Berkeley Senior Center, Berkeley, CA

1. ROLL CALL:

Commissioners Present: Benjamin Beach (left at 9:15pm), Robb Kapla, Shane Krpata, Mary Kay Lacey, Steve Martinot, Christine Schildt (left at 9:15pm), Jeff Vincent, Brad Wiblin (arrived at 7:10), and Rob Wrenn.

Commissioners Absent: None.

Staff Present: Secretary Alene Pearson, Katrina Lapira, and Justin Horner.

2. ORDER OF AGENDA: No changes.

3. PUBLIC COMMENT PERIOD: 0

4. PLANNING STAFF REPORT:

- ZORP Subcommittee Meeting - February 24, 2020
- JSISHL Commission Meeting - February 26, 2020
- Next Adeline Corridor Subcommittee Meeting - March 18, 2020
- Recommended Zoning Ordinance Amendments at City Council - March 24, 2020
- Next Planning Commission Meeting - April 1, 2020
- Emergency Operations Center (EOC) activation in response to COVID- 19. Visit <https://www.cityofberkeley.info/coronavirus/> for most up-to-date information.

Information Items:

- Comprehensive Cannabis
 - City Council Meeting Annotated Agendas – January 28 + February 11, 2020
 - City Council Staff Report – January 28, 2020

Communications:

- February 6 – Dumler, Southside EIR
- February 13 – Gold, Parking Reform
- February 13 – Trauss, Southside EIR
- February 21 – Siegel, Parking Reform

- February 25 – Hyde- Wang, Parking Reform

Late Communications (Received after the Packet deadline): *None*.

- March 3 – UCB Democrats, Parking Reform

Late Communications (Received and distributed at the meeting):

- March 4 – Staff Presentation, Item 9
- March 4 – Staff Presentation, Item 10
- March 4 – Hansen, Parking Reform
- March 4 – Clarke, Parking Reform

5. CHAIR REPORT: *None*.

6. COMMITTEE REPORT: Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- Zoning Ordinance Revision Project (ZORP): February 24 meeting continued to a date to be determined in March.
- Joint Subcommittee for the Implementation of State Housing Laws (JSISHL): At the meeting on February 26, JSISHL discussed objective standards for shadows, design, and density.
- Adeline Corridor Specific Plan Subcommittee: The next meeting is on March 18.

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Krpata/Vincent) to approve the Planning Commission Meeting Minutes from February 5, 2020 with the discussed edits to Item 9 and Item 10.

Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS: To be discussed with Item 11.

AGENDA ITEMS

9. Action: **Public Hearing: Parking Reform**

Staff discussed proposed Zoning Ordinance amendments that eliminate parking requirements, establish parking maximums, establish transportation demand management (TDM) requirements, and codify bicycle parking requirements from the 2017 Berkeley Bicycle Plan. The Commission adopted the majority of the proposed draft Zoning Ordinance amendments with modifications noted in the motions. Planning Commission asked to revisit accessibility parking requirements at a future date.

Motion/Second/Carried (Wrenn/Vincent) to adopt proposed draft Zoning Ordinance amendments to eliminate parking minimums with modifications to 1) maintain off-street parking requirements for residential projects in the Hillside Overlay on roads less than 26 feet in width; and 2) provide an option to waive these requirements with the approval of an Administrative Use Permit if conditions outlined by the Fire Department are met.

Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (Vincent/Wrenn) to adopt proposed draft Zoning Ordinance amendments to implement parking maximums with modifications to 1) exempt projects with a majority of deed-restricted affordable units; and 2) exempt projects in the Hillside Overlay on streets that are less than 26 feet in width.

Ayes: Kapla, Krpata, Lacey, Martinot, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: Beach and Schildt. (7-0-0-2)

Motion/Second/Carried (Wrenn/Kapla) to adopt proposed draft Zoning Ordinance amendments to implement transportation demand management (TDM) requirements with modifications to 1) require 1 monthly transit pass per bedroom, with a maximum of 2 passes for projects with less than 100 units; 2) require 1 transit pass per bedroom for projects with 100 units or more; and 3) exclude, in all zoning districts, new projects of 5 or more units from the Residential Preferential Parking (RPP) program.

Ayes: Kapla, Krpata, Lacey, Martinot, Vincent, and Wrenn. Noes: Wibilin. Abstain: None. Absent: Beach and Schildt. (6-1-0-2)

Motion/Second/Carried (Kapla/Wiblin) to adopt proposed draft Zoning Ordinance amendments to accept technical edits and minor changes to the Variance Chapter.

Ayes: Kapla, Krpata, Lacey, Martinot, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: Beach and Schildt. (7-0-0-2)

Public Comments: 8

10. Discussion: Planning Commission Workplan

Staff gave an overview of agenda materials.

Public Comments: 0

11. Discussion: May 20, 2020 Special Meeting

Planning Commission discussed potential dates for a Special Meeting to discuss the Adeline Corridor Specific Plan. Staff will poll Commissioners and announce final date via email.

Public Comments: 0

Motion/Second/Carried (Kapla/Wiblin) to close the public hearing at 10:17pm.

Ayes: Kapla, Krpata, Lacey, Martinot, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None.
Absent: Beach and Schildt. (7-0-0-2)

The meeting was adjourned at 10:33pm

Commissioners in attendance: 9

Members in the public in attendance: 13

Public Speakers: 8 speakers

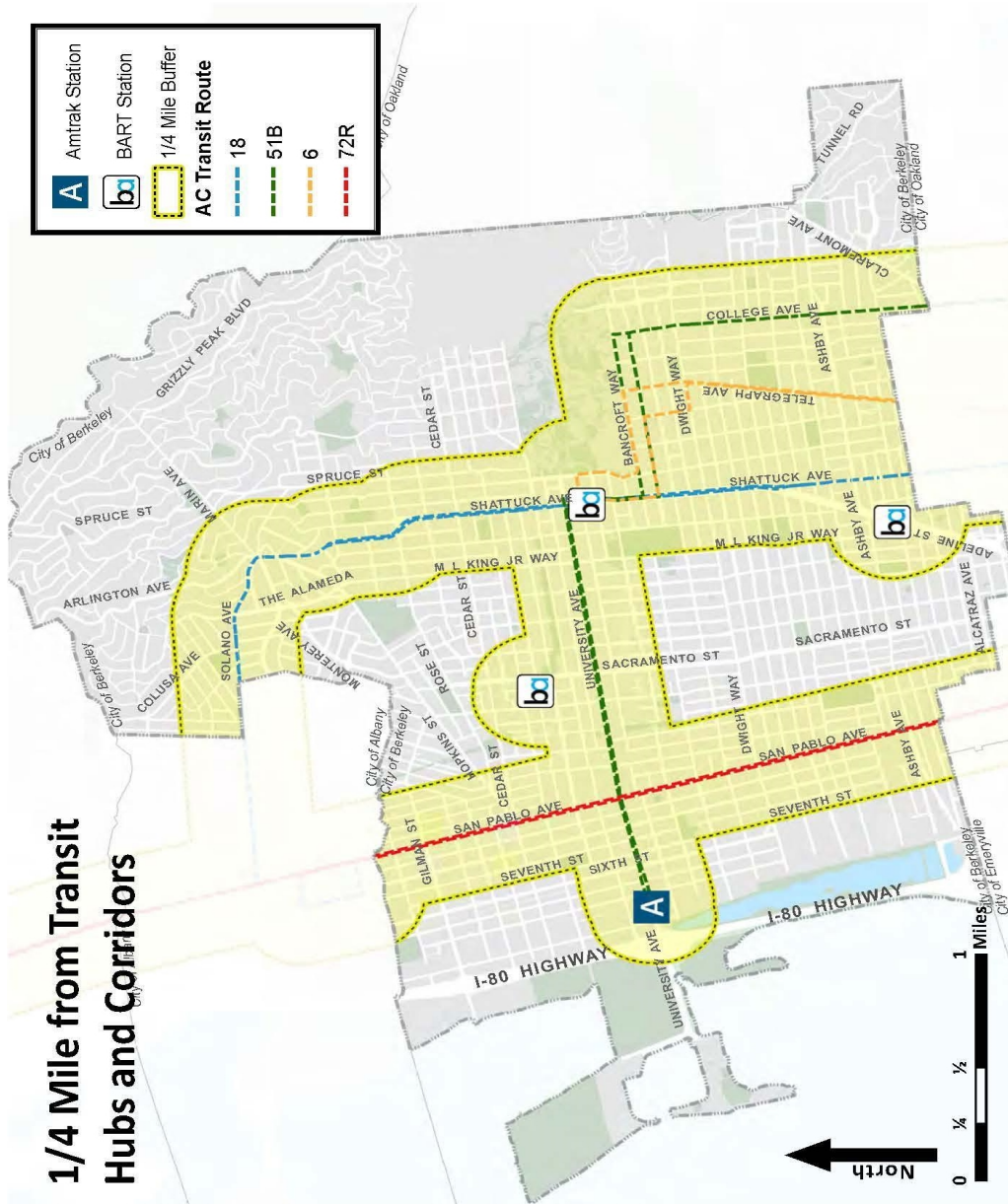
Length of the meeting: 3 hours and 31 minutes

Alene Pearson

Alene Pearson
Planning Commission Secretary

7/6/2020

Date



**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

AMENDING TITLE 14 AND TITLE 23 TO MODIFY MINIMUM RESIDENTIAL OFF-STREET PARKING REQUIREMENTS, IMPOSE RESIDENTIAL PARKING MAXIMUMS IN TRANSIT-RICH AREAS, INSTITUTE TRANSPORTATION DEMAND MANAGEMENT (TDM) REQUIREMENTS AND AMEND THE RESIDENTIAL PREFERENTIAL PARKING (RPP) PERMIT PROGRAM

The hearing will be held on December 1, 2020 at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor's Executive Order N-29-20.

The Department of Planning and Development is proposing to amend the Berkeley Municipal Code in order to encourage housing development and the use of sustainable transportation options by:

- 1) Modifying minimum residential off-street parking requirements;
- 2) Imposing parking maximums in transit-rich areas;
- 3) Instituting Transportation Demand Management (TDM) requirements; and
- 4) Amending the Residential Preferential Parking (RPP) permit program.

The ordinance would modify BMC Chapters 14.72, 23B.44, 23D.12, 23D.16, 23D.20, 23D.28, 23E.28, 23D.32, 23D.36, 23D.40, 23D.44, 23D.48, 23D.52, 23E.28, 23E.64, 23E.68, 23E.80, and 23E.84, and would create two new BMC Chapters 23C.18 [Transportation Demand Management] and 23C.19 [Off-street Parking Maximums for Residential Development].

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **November 19, 2020**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Alene Pearson, Principal Planner, Planning and Development Department at 510-981-7489 or apearson@cityofberkeley.info.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to council@cityofberkeley.info 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. 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: November 20, 2020 – The Berkeley Voice

~~~~~  
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 November 19, 2020.

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



Office of the City Manager

PUBLIC HEARING  
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Interim Director, Planning and Development Department

Subject: Referral Response: Amendments to the Home Occupations Ordinance;  
Amending BMC Sub-Titles 23C, 23D, 23E, and 23F

#### RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending the Zoning Ordinance to streamline the permitting process for Home Occupations and amending Berkeley Municipal Code Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions, Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts.

#### SUMMARY

Home Occupations (HOs) are small-scale businesses conducted on residential property as an incidental or secondary land use. They are regulated by BMC Chapter 23C.16 [Home Occupations], which accommodates persons wishing to conduct small, neighborhood compatible businesses from home. Planning Commission's recommended amendments focus on meeting the needs of HOs, while ensuring neighborhood compatibility. Zoning Ordinance amendments presented in this report reclassify HO to reflect levels of activity in relations to customer visits, and set clear guidance on allowance of non-resident employees, hours of operation, advertising signs, and handling of goods. Amendments also restructure and organize the ordinance, as well as update the HO definition for consistency with the BMC, expand flexibility on where HOs can locate within a residence, and allow HO wherever residential uses are permitted. City Council is asked to consider these amendments for adoption.

#### FISCAL IMPACTS OF RECOMMENDATION

Recommended Zoning Ordinance amendments will have minimal financial impacts on the City. Permit fees compensate the City for review expenses. In addition, zoning

changes are expected to reduce barriers and costs to those interested in operating Home Occupations, which could have an economic benefit to the City.

### CURRENT SITUATION AND ITS EFFECTS

Current regulations place the following minimum standards on all HOs:

1. HOs must be conducted entirely within a Dwelling Unit or Group Living Accommodation room.
2. HOs must occupy less than 20% or 400 square feet of the unit, whichever is less.
3. HOs must not generate offensive noise, odors or other nuisances.
4. HOs must not handle or generate hazardous materials.
5. HOs must not have employees from outside of the household.

HOs are classified into three categories, requiring different permits, based on the number of customer visits received, as presented in Table 1.

**Table 1: Summary of Existing Home Occupation Categories**

| HO Category             | Customer Visits                          | Permit <sup>1</sup> |
|-------------------------|------------------------------------------|---------------------|
| <b>Low-Impact</b>       | Not Allowed                              | ZC                  |
| <b>Teaching-Related</b> | Four or fewer students allowed at a time | AUP                 |
| <b>Moderate-Impact</b>  | Allowed                                  | UP(PH)              |

On December 6, 2011 the City Council adopted a referral to the City Manager, sponsored by then-Councilmember Maio, to align permit requirements for Moderate-Impact HOs and Teaching-Related HOs and to streamline the permitting process for all HOs (see Attachment 2). The Zoning Ordinance amendments recommended in this report also address administrative issues, such as consistency in language and improvements to ordinance organization and structure.

### **Planning Commission Recommendations**

On September 16, 2020 the Planning Commission held a public hearing and unanimously recommended a set of Zoning Ordinance amendments. See Attachment 3 for meeting minutes and Links 1 and 2 (at the end of this report) for Planning Commission staff reports and attachments.

Since the City Council referral was made, a surge in Accessory Dwelling Units and a shift to home businesses have warranted additional considerations. The Planning Commission met four times to discuss options that would meet the operational needs of Berkeley's small home businesses. Its recommendation reflects a simple permitting scheme that is protective of neighborhoods yet accessible to business owners.

<sup>1</sup> ZC = Zoning Certificate; AUP = Administrative Use Permit; UP(PH) = Use Permit with Public Hearing

A summary of Planning Commission's recommendations are provided in **Table 2 and Table 3** and described below.

**Table 2: Summary of Recommended HO Categories**

| HO Category | Permit | Customer <sup>2</sup> Visits                                            | Non-resident Employee | Shipping from the Subject Residence |
|-------------|--------|-------------------------------------------------------------------------|-----------------------|-------------------------------------|
| Class I     | ZC     | Up to five visits per day, with no more than one customer at a time     | Not Allowed           | Not Allowed                         |
| Class II    | AUP    | Up to ten visits per day, with no more than four customers at a time    | One Allowed           | Not Allowed                         |
| Class III   | UP(PH) | More than 10 visits per day, with no more than four customers at a time | One Allowed           | Allowed                             |

**Table 3: Summary of Recommended General Requirements**

| Regulation                                                                         | Current                         | Proposed                                |
|------------------------------------------------------------------------------------|---------------------------------|-----------------------------------------|
| Storage, services and repair of goods                                              | Not Allowed                     | Allowed Indoors                         |
| Operation of a HO in an Accessory Building or Accessory Dwelling Unit              | Not Allowed                     | Allowed                                 |
| Advertising Signs                                                                  | Not Allowed                     | Not Allowed                             |
| Visiting Hours                                                                     |                                 |                                         |
| ZC                                                                                 | Not Allowed                     |                                         |
| AUP                                                                                | Allowed<br>(10:00 am – 10:00pm) | Allowed for all<br>(10:00 am – 8:00 pm) |
| UP(PH)                                                                             | Allowed                         |                                         |
| Findings – HO customer visits and shipping must not cause a significant impact to: |                                 |                                         |
| Parking availability                                                               | Addressed                       | Addressed                               |
| Pedestrian and bicyclist safety                                                    | Not Addressed                   | Addressed                               |

## 1. Customer Visits

- Reclassify Low and Moderate-Impact HOs to Class I and Class II HOs.

<sup>2</sup> A "customer" includes, for example, a parent and child attending a lesson, or more than one person simultaneously receiving services at the HO but paying as a single customer.

- Allow Class I HOs to have no more than five visits per day -- with no more than one customer at a time -- with a Zoning Certificate (ZC).
- Allow Class II HOs to have a maximum of ten visits per day -- with no more than four customers at a time -- with an Administrative Use Permit (AUP) subject to specific findings that address impacts on pedestrian and bicyclist safety, as well as parking availability.
- Create a Class III HO category to allow more than ten visits per day – with no more than four customers at a time – with a Use Permit / Public Hearing (UP(PH)) subject to specific findings that address shipping as well as impacts on pedestrian and bicyclist safety and parking availability.

Recommendations reclassify HO categories to numerical classes (i.e. Class I, II or III) for consistency with conventions currently used in the BMC and to reflect levels of activity. Proposed amendments cap the number of visits allowed with a Class I (formerly Low-Impact) or Class II (formerly Moderate-Impact) HO permit, and introduce a Class III HO category to consider HOs that require more than 10 visits per day. With these changes, the Teaching-Related HO category can be eliminated because this use can be classified as either Class I, II, or III depending on the number and type of customer visits.

## **2. Non-Resident Employees**

- Limit operation/ownership of all HOs to residents of the subject property.
- Allow one non-resident employee to work on-site for Class II and Class III HOs.

Current regulations do not allow for non-resident employees. The recommended amendments provide flexibility to Class II and III HOs by allowing for one on-site, non-resident employee. Proposed language clarifies that a resident must operate and own the HO.

## **3. Goods and Products, Materials, and Shipping**

- Allow business-related activities, including storage, services, and repairs on-site. Do not allow these activities outdoors.
- Allow shipping and handling by a third-party from the HO for Class III.
- Clarify how hazardous material are defined by the City of Berkeley.

Current regulations prohibit “storage, service, repair, handling or transport of goods or products” at the subject premises. However, these activities, when conducted indoors, are integral to the operation of some HOs. The recommended amendments broaden allowable home business-related activities, clarify restrictions on outdoor activities and define hazardous materials. In addition, shipping and handling by a third-party is allowed from the subject residence with a Class III HO permit, subject to specific findings that address impacts on pedestrian and bicyclist safety, as well as parking availability. Class I and II HOs must visit a third-party facility for shipping services to limit potential neighborhood impacts.



**4. Accessory Buildings & Accessory Dwelling Units (ADU)**

- Allow HOs in Accessory Buildings and ADUs.
- Apply the square footage limitation for HOs (total area and percentage of the dwelling) to Accessory Buildings and ADUs.

Current regulations limit HO operations to a Dwelling Unit or Group Living Accommodation room. The recommended amendments provide flexibility on the location of a HO while maintaining the expectation that they are incidental to the main residential use.

**5. Advertising Signs & Visiting Hours**

- Add language to prohibit onsite signs advertising the HO.
- Establish hours of operation from 10am - 8pm for customer visits for all HOs.

Currently, the ordinance contains no specifications for advertising signs and lists customer visiting hours for Teaching-Related HOs only. The recommended amendments reduce impacts to neighbors by prohibiting onsite signage and mirroring the noise ordinance for hours of operation across all HO categories.

**6. Enforcement Protocol & Findings**

- Modify “Complaints and Imposition of Conditions” to clarify the process for submitting and addressing grievances for all HO categories.
- Amend “Findings” to provide guidance on identifying potential impacts of shipping from the HO.

Currently, HO compliance is in many ways voluntary and often enforced based on complaints. Recommended amendments clarify protocols and process for all categories to both prevent and address potential grievances.

**7. Home Occupation Definition**

- Amend the definition of “Home Occupation” to specify that HOs can operate in Accessory Buildings and Accessory Dwelling Units, and to include distinctions between Class I, II, and III HOs.
- Remove the definition of “Home Occupation, Teaching-Related.”

The recommended amendments clearly define and distinguish the three HO classes.

**8. Restructure and Reformat Chapter**

- Consolidate repetitive language.
- Remove sections “Home Occupations in Rental Unit” and “Medical Cannabis Residential Cultivation.”
- Consolidate all “Findings” for HOs to the Home Occupations chapter.
- Rename Section 23C.16.010 as “General Requirements,” Section 23C.16.020 as “Permit Requirements,” and Section 23C.16.030 as “Findings.”

The recommended amendments improve the clarity and readability of the Chapter.

## **9. Uses Permitted Tables**

- Modify Uses Permitted tables for all Residential districts, the C-W, and MU-R to remove the Teaching-Related HO category, revise the level of discretion for Class II (formerly Moderate-Impact) HOs from UP(PH) to AUP, add a category to allow Class III with a UP(PH), and merge Teaching-Related HOs into the other classifications.
- Modify Uses Permitted Tables in zones C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, and C-DMU to include Class I, Class II and Class III Home Occupations.

Currently Home Occupations are not permitted in commercial district with the exception of the C-W. Updates allow HOs wherever residential uses are permitted.

*For more detail on the specific changes related to each category presented above, see the website link to the 2018 and 2020 Planning Commission staff reports (at the end of this report).*

## **BACKGROUND**

On December 6, 2011, City Council referred to the City Manager a set of zoning ordinance amendments to consider reducing the level of discretion for Moderate-Impact HOs and streamline the permitting process for all HOs. Planning Commission considered this referral, held two public hearings and recommended amendments to City Council, reflecting current practices and needs of home-based businesses operating in Berkeley.

### **Zoning Regulation History**

Prior to the Zoning Ordinance update in 1999, Moderate-Impact HOs that involved non-resident employees, customer visits, or storage of products on premises were allowed with an AUP. Staff and the Planning Commission recommended maintaining this level of discretion; however, the Zoning Adjustments Board proposed and Council adopted a UP(PH) for Moderate Impact HOs at that time. In 2006, the Ordinance was amended to include Teaching Related HOs with issuance of an AUP.

### **Home Occupation Permit Application History**

Low-Impact HOs are often thought of as home office businesses; however, they also include businesses such as dog walking, cottage food production, graphic designing, jewelry-making, and life-coaching. From January to September 2018, the City approved approximately 116 ZCs for Low-Impact HOs (e.g. home offices, dog walking, jewelry-making, and floral arrangement). In comparison, from 2006 to 2018, the City only approved six AUPs for Teaching-Related HOs and did not receive any UP(PH) applications for Moderate-Impact HOs. Based on public input, inquiries to the Planning Department and personal anecdotes, there is reason to believe that permit activity for HOs in Berkeley may inaccurately represent existing business inventory and operations, since some businesses do not register with the City.

### ENVIRONMENTAL SUSTAINABILITY

The proposed zoning amendments will enable more individuals to establish legal businesses and work from home, and to serve customers close to their own place of work or residence. Working from home reduces commute time, contributes to quality of life, and may allow for more sustainable transportation choices (e.g. walking, biking) when obtaining neighborhood-based products and services.

### RATIONALE FOR RECOMMENDATION

Since the 2011 Council referral, technology and business models have evolved to demand a more flexible set of regulations that meet the long-standing needs of existing and of emerging HOs. The proposed Zoning Ordinance amendments would update the BMC to follow best practices for home businesses, set thresholds, and establish regulations to address potential impacts to neighbors and abutting properties. Amendments address levels of discretion and reformat the HO chapter for clarity.

### ALTERNATIVE ACTIONS CONSIDERED

Council could take no action, in which case the Zoning Ordinance would retain existing regulations for HOs.

### CONTACT PERSON

Paola Boylan, Assistant Planner, Land Use Planning Division, (510) 981-7418  
Alene Pearson, Principal Planner, Land Use Planning Division, (510) 981-7489

### Attachments:

1. Zoning Ordinance Amendments to Modify Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts
2. Council Referral Moderate-Impact Home Occupation Referral – December 6, 2011
3. Planning Commission Meeting Minutes – September 16, 2020
4. Public Hearing Notice

### Links:

1. Planning Commission Staff Report – September 16, 2020  
([https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2020-09-16\\_Item%209\\_with%20Attachments.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2020-09-16_Item%209_with%20Attachments.pdf))
2. Planning Commission Staff Report – November 7, 2018  
([https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2018-11-07\\_Item%2010.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2018-11-07_Item%2010.pdf))

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23C.16 AND AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23E.84.090, 23D.16.030, 23D.20.030, 23D.28.030, 23D.32.030, 23D.36.030, 23D.40.030, 23D.44.030, 23D.48.030, 23D.52.030, 23E.64.030, 23E.84.030, AND 23F.04.10 TO MODIFY THE HOME OCCUPATIONS ORDINANCE

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

Section 1. That Berkeley Municipal Code Chapter 23C.16 [Home Occupations] is amended to read as follows:

**Chapter 23C.16: Home Occupations**

Sections:

23C.16.010 ~~General Requirements Home Occupations~~

23C.16.020 ~~Permit Requirements Home Occupations Classifications Low Impact Home Occupations Permitted by Right Subject to Business License~~

23C.16.030 ~~Findings Moderate Impact Home Occupations Subject to Use Permit~~

23C.16.040 Complaints and Imposition of Conditions

~~23C.16.050 Home Occupation in Rental Unit~~

~~23C.16.060 Medical Cannabis Residential Cultivation~~

**23C.16.010 General Requirements ~~Home Occupations~~**

A. The establishment of a Home Occupation in compliance with this Chapter shall not be considered a Change of Use of a ~~Dwelling Unit primary residence~~, but rather shall be considered a lawful Incidental Use thereof.

B. ~~Home Occupations are subject~~ allowed pursuant to Chapter 23C.16.020 and the following requirements:

~~No Home Occupation which involves a Firearm/Munitions Business may be allowed.~~

1. A Home Occupation is allowed as an incidental use within a Dwelling Unit, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room.
2. No Firearm/Munitions Business may operate as a Home Occupation.
3. Customer visits are not allowed in the ES-R District.

4. A Home Occupation may occupy no more than the greater of: 400 square feet or 20 percent of the gross floor area of the Dwelling Unit, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room from which it operates.
5. Only residents of the subject Dwelling Unit, Accessory Dwelling Unit or Group Living Accommodation room may operate a Home Occupation business.
6. Customer visits may occur only between the hours of 10 a.m. and 8 p.m.
7. Storage, services, or repairs may not be conducted outdoors.
8. A Home Occupation shall not involve hazardous materials or waste as defined by Section 15.08.060.
9. A Home Occupation shall not create offensive or objectionable noise, vibration, odors, smoke, heat, dirt or electrical disturbance perceptible by the average person beyond the lot line, or party walls of multi-unit building, of the subject premises.
10. No on-site signs identifying or advertising the Home Occupation are allowed.
11. The operator of a Home Occupation shall pay gross receipts taxes pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.
- ~~12.~~ A lessee in possession of a property may apply for a Permit without the property owner's signature; however Home Occupations are not exempt from conditions in rental and lease agreements.

~~C. No Home Occupation which involves customer visits may be allowed in the ES-R District.~~

**23C.16.020 Permit Requirements Low Impact Home Occupations Permitted by Right Subject to Business License**(See 23F.04 for Home Occupation definitions.)

- A. A Class I Home Occupation is allowed subject to a Zoning Certificate.
- B. A Class II Home Occupation is allowed subject to issuance of an Administrative Use Permit.
- C. A Class III Home Occupation is allowed subject to issuance of a Use Permit (Public Hearing).

~~A Home Occupation which meets all of the following conditions shall be allowed by right in any Dwelling Unit or Group Living Accommodation room, subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

~~A.—Such Home Occupations must:~~

- ~~1.—Be conducted entirely within the dwelling unit or group living accommodation room;~~
- ~~2.—Occupy less than four hundred (400) square feet and less than twenty percent (20%) of the dwelling unit or group living accommodation room;~~

~~B.—Such home occupations may not:~~

- ~~1.—Involve customer visits to the subject premises;~~
- ~~2.—Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;~~
- ~~3.—Involve hazardous materials or processes; or~~
- ~~4.—Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond the lot line or party walls of multi-unit building, of the subject premises.~~

### **23C.16.030 Findings- Moderate Impact Home Occupations Subject to Use Permit**

In addition to the findings set forth in Section 23B.28.050 and Section 23B.32.040, in order to approve an Administrative Use Permit for a Class II Home Occupation or a Use Permit (Public Hearing) for a Class III Home Occupation, the Zoning Officer or Board must find, based on the circumstances of the specific use and property:

1. The degree of customer visits will not cause a significant detrimental impact on the availability of parking spaces in the immediate vicinity of the Home Occupation; and
2. The degree of shipping from the subject residence will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the Home Occupation; and

3. If the proposed Home Occupation will require a loading space on a regular basis, such loading space will be available on the subject property or the use of an on-street loading space will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the Home Occupation.

~~A.— A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

~~1.— Such Home Occupations must:~~

~~a.— Be conducted entirely within the dwelling unit or group living accommodation room;~~

~~b.— Operate within the hours of 10 a.m. and 10 p.m.; and~~

~~c.— Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;~~

~~2.— Such home occupations may not:~~

~~a.— Involve more than four students at a time;~~

~~b.— Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;~~

~~c.— Involve hazardous materials, or processes; or~~

~~d.— Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.~~

~~B.— All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections 23C.16.020.B.1 and 23C.16.020.B.2, may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

### 23C.16.040 Complaints and Imposition of Conditions

~~A.—Complaints regarding low-impact Hhome Ooccupations are subject to review, the imposition of conditions, or revocation may be made to the Zoning Officer for review and enforcement action.~~

~~B.—If written complaints that include factual information on detrimental effects to the neighborhood~~

~~A. Violations may be addressed by issuing an administrative citation pursuant to Chapter 1.28.~~

~~B. The Zoning Officer shall review documented complaints, business operations, and other factors when reviewing from a Home Occupation are received, the Board may schedule a public hearing to review the Home Occupation. After such hearing the Board may approve a Use Permit to impose conditions upon Class I and II the Home Occupations, and may impose conditions as may be necessary to prevent detrimental effects or may initiate revocation proceedings, or may revoke the permit in the event adequate conditions of approval are not available.~~

~~The Zoning Adjustments Board shall review documented complaints, business operations, and other factors when reviewing Class III Home Occupations and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit in the event adequate conditions of approval are not available.~~

~~Furthermore, the City may address violations by sending an administrative citation issued pursuant to Chapter 1.28.~~

### 23C.16.050 Home Occupation in Rental Unit

~~Any application for a Home Occupation may be filed by a lessee in possession of the property without the consent of the owner of record of the legal title and the application may be accepted without such owner's signature. In the case of a home occupation which requires a Use Permit, the owner shall be given notice of the proposed home occupation, in conformance with Section 23B.32.020.D.~~

### 23C.16.060 Medical Cannabis Residential Cultivation



~~No Use Permit shall be required for qualified patients to cultivate medical cannabis in their residence or on their residential property.~~

Section 2. That Berkeley Municipal Code Section 23E.84.090 [Findings] is amended as follows:

**23E.84.090 Findings**

A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:

B. A proposed use or structure must:

1. Be consistent with the purposes of the District;
2. Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;
3. Be consistent with the adopted West Berkeley Plan;
4. Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses;
5. Be designed in such a manner to be supportive of the character and purposes of the District; and
6. Be able to meet any applicable performance standards as described in Section 23E.84.070.H.

C. In order to approve a Use Permit under Section 23E.84.040, the Zoning Officer or Board must find that the space formerly occupied by the protected use has been replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category:

1. For purposes of this section, such replacement space shall not qualify for exemption under Section 23E.84.040.I or by reason of having been established after July 6, 1989;

2. In considering whether a project will be detrimental, consideration shall be limited to the potential detriment associated with the new use, and dislocation of any specific previous occupant or use shall not be a basis for finding detriment.

D. In order to approve a Use Permit for the establishment or expansion of Live/Work Units in this District, the Zoning Officer or Board must make all applicable findings for approval of Live/Work Units required by Section 23E.20.090 and must also make the following findings:

1. Establishment of Live/Work Unit will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the District, and will not impede the lawful future establishment of manufacturers and other industries permitted under the West Berkeley Plan;

2. The applicant has recorded with the County Recorder a statement acknowledging that the Live/Work Unit is being established in a District where manufacturers and other industries operate lawfully and that they will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing Live/Work Units to sign and record such a statement;

3. If the applicant is proposing to change one or more dwelling units to Live/Work Units, that the elimination of dwelling unit(s) and the change of use would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.

E. In order to approve a Use Permit for a change of use from manufacturing, wholesale trade, or warehouse space to another use, the Zoning Officer or Board must make both of the following findings:

1. The change of use of the space will not have a materially detrimental impact on the character of the MU-R District as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the District that is contiguous with the site;

2. Appropriate mitigation pursuant to a payment schedule adopted by resolution has been made for loss of the manufacturing space through providing such space elsewhere in Berkeley, through payment into the West Berkeley Building Acquisition Fund, or by other

appropriate means as determined by the Zoning Officer or the Board. However, no mitigation shall be required for manufacturing, warehousing, or wholesale trade space which is less than or equal to 25% of the floor area currently or most recently used for manufacturing, warehousing or wholesale trade.

F. In order to approve a Permit for the establishment or expansion of a food service use, the Zoning Officer or Board must find that the establishment of the food service use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial or residential character of the area. In order to approve an Administrative Use Permit for a Food Service Establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.

G. In order to approve an Administrative Use Permit or Use Permit for ~~the establishment or expansion of a Hhome O~~ccupation with customer visits and/or shipping and handling of goods, the Zoning Officer or Board must must find:

~~1.—The degree of customer visits and/or handling of goods, taken as a whole, will not cause a significant detrimental impact on the availability of parking spaces in the location the home occupation is being established;~~

~~2.—If the proposed home occupation will require loading space on a regular basis, such loading space will be available on the subject property, or that the use of on-street loading space will not cause a significant detrimental impact on the availability of parking spaces or on traffic flow in the location the home occupation is being established, make the findings set forth in Section 23C.16.030.~~

H. In order to approve a Use Permit for the establishment or expansion of a school, child care center, or recreational or educational facility to be used by children, the Zoning Officer or Board must make all of the following findings:

1. Development of the school, child care center, or recreational facility to be used by children is not, in the particular circumstances of the project, incompatible with adjacent and nearby uses;

2. An appropriate risk analysis or risk assessment, as defined by the City, has been made and has shown that there is not significant risk to children in the use from other activities near the site;

3. The applicants have made adequate provisions to ensure that all parents of students or children in the school, child care center, or recreational facility to be used by children will be notified in writing (on a form approved by the City) that the school is in the West Berkeley Plan MU-R District, and that light manufacturing is a permitted activity in the District and that Primary Production Manufacturing or Construction Products Manufacturing may be permitted uses in adjacent districts, including a requirement that each parent will indicate that they have read and understood this information by means of a written statement returned to the school or child care center and available for review.

I. In order to approve a Use Permit for the establishment or expansion of a mixed use containing a residential use the Zoning Officer or Board must find that the specific combination of residential and non-residential use proposed by the applicant will not be hazardous or detrimental, either to persons living and/or working on the site, or to persons living or working in its vicinity.

J. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.84.080.F, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.

K. In order to approve a Use Permit for the establishment or expansion of a manufacturing use abutting one or more dwelling units located in the MU-R District, the Zoning Officer or Board must find:

1. The manufacturer is capable of meeting all applicable performance standards; and
2. Conditions of the Use Permit will specify all reasonable steps to minimize noise, odors, dust, vibration, glare and any other potential impacts on the abutting dwelling units.

L. 1. To deny a Use Permit to establish one or more dwelling units the Board must find that the proposed residential use would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the

proposed residential use. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District.

2. To deny an Administrative Use Permit for a major residential addition, the Zoning Officer must find that the proposed addition would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the use of the proposed addition. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District. (Ord. 7358-NS § 9, 2014; Ord. 7323-NS § 9, 2014; Ord. 7167-NS §§ 25 – 27, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 3. That Berkeley Municipal Code Section 23F.04.010 is amended to revise the definitions of “Home Occupation” and “Home Occupation, Teaching-Related” as follows:

### **23F.04.010 Definitions**

**Home Occupation:** A business use conducted on ~~residential~~ property developed with Residential use, which is incidental and secondary to the Residential use, does not change the residential character thereof, is limited so as not to substantially reduce the Residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room and is operated only by the residents ~~inhabitants~~ of the subject residence. There are three classification of Home Occupations. For the purposes of this section, a “customer” is considered a single paying customer, but may include more than one person receiving the services at the same time:

1. **Class I Home Occupation** - Involves no more than five visits per day, with no more than one customer at a time. This class does not allow shipping of finished goods from the subject residence.
2. **Class II Home Occupation** - Involves no more than ten visits per day, with no more than four customers at a time and no more than one non-resident engaging in business-related

activities on-site. This class does not allow shipping of finished goods from the subject residence.

3. Class III Home Occupation - Involves more than ten visits per day, with no more than four customers at a time and no more than one non-resident engaging in business-related activities on-site and/or involves shipping of finished goods from the subject residence.

~~1. Home Occupation, Teaching-Related: A home-based business as defined under the Home Occupation definition that provides academic and/or artistic tutoring or lessons, excluding schools, studios and conservatories.~~

Section 4. That the “Accessory Uses and Structures” section of Table 23D.16.030 in Chapter 23D.16 Section 23D.16.030 of the Berkeley Municipal Code is amended to read as follows:

**23D.16.030 Uses Permitted**

| <b>Table 23D.16.030</b>                                                                   |                       |                                                                                                              |
|-------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                           |                       |                                                                                                              |
| <b>Use</b>                                                                                | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                         |
| <b>Accessory Uses and Structures</b>                                                      |                       |                                                                                                              |
| Accessory Buildings or Structures                                                         | ZC                    | Must satisfy the requirements of Chapter <u>23D.08</u>                                                       |
| If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u> | AUP                   |                                                                                                              |
| When located on a vacant lot without a Main Building                                      | AUP                   |                                                                                                              |
| With Urban Agriculture                                                                    | ZC                    | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> |
| Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>                     | ZC                    |                                                                                                              |

| <b>Table 23D.16.030</b>                                                                        |                       |                                                                       |
|------------------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                |                       |                                                                       |
| <b>Use</b>                                                                                     | <b>Classification</b> | <b>Special Requirements (if any)</b>                                  |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP                   | Subject to making applicable findings in Section <u>23C.24.070</u>    |
| Short-Term Rental                                                                              | ZC                    | Subject to requirements of Chapter <u>23C.22</u>                      |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC                    |                                                                       |
| Fences                                                                                         |                       |                                                                       |
| If six ft. or less in height                                                                   | ZC                    |                                                                       |
| Exceed six ft. in height                                                                       | AUP                   | In required setbacks                                                  |
| Home Occupations                                                                               |                       | <u>Subject to the requirements of Chapter 23C.16</u>                  |
| <del>Low Impact Class I</del>                                                                  | ZC                    | <del>If the requirements of Section 23C.16.020 are met</del>          |
| <del>Moderate Impact, teaching-related Class II</del>                                          | AUP                   | <del>Subject to the requirements of Section <u>23C.16.030.A</u></del> |
| <del>Moderate Impact Class III</del>                                                           | UP(PH)                | <del>Subject to the requirements of Section <u>23C.16.030.B</u></del> |
| Hot Tubs, Jacuzzis, Spas                                                                       | AUP                   | See Section <u>23D.08.060.C</u>                                       |
| Stables for Horses                                                                             | AUP                   |                                                                       |

Section 5. That the “Accessory Uses and Structures” section of Table 23D.20.030 in Chapter 23D.20 Section 23D.20.030 of the Berkeley Municipal Code is amended to read as follows:

**23D.20.030 Uses Permitted**

| <i>Table 23D.20.030</i>                                                                        |                |                                                                                                              |
|------------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                |                                                                                                              |
| Use                                                                                            | Classification | Special Requirements (if any)                                                                                |
| Accessory Uses and Structures                                                                  |                |                                                                                                              |
| Accessory Buildings or Structures                                                              | ZC             | Must satisfy the requirements of Chapter <u>23D.08</u>                                                       |
| If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>      | AUP            |                                                                                                              |
| When located on a vacant lot without a Main Building                                           | AUP            |                                                                                                              |
| With Urban Agriculture                                                                         | ZC             | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> |
| Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>                          | ZC             |                                                                                                              |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP            | Subject to making applicable findings in Section <u>23C.24.070</u>                                           |
| Short-Term Rental                                                                              | ZC             | Subject to requirements of Chapter <u>23C.22</u>                                                             |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC             |                                                                                                              |
| Fences                                                                                         |                |                                                                                                              |
| If six ft. or less in height                                                                   | ZC             |                                                                                                              |
| Exceeding six ft. in height                                                                    | AUP            | In required yards                                                                                            |
| Home Occupations                                                                               |                | <u>Subject to the requirements of Chapter 23C.16</u>                                                         |



| <b>Table 23D.20.030</b>                                      |                       |                                                                |
|--------------------------------------------------------------|-----------------------|----------------------------------------------------------------|
| <b>Use and Required Permits</b>                              |                       |                                                                |
| <b>Use</b>                                                   | <b>Classification</b> | <b>Special Requirements (if any)</b>                           |
| <del>Low Impact</del> <u>Class I</u>                         | ZC                    | <del>If the requirements of Section 23C.16.020 are met</del>   |
| <del>Moderate Impact, teaching-related</del> <u>Class II</u> | AUP                   | <del>Subject to the requirements of Section 23C.16.030.A</del> |
| <del>Moderate Impact</del> <u>Class III</u>                  | UP(PH)                | <del>Subject to the requirements of Section 23C.16.030.B</del> |
| Hot Tubs, Jacuzzis, Spas                                     | AUP                   | See Section <u>23D.08.060.C</u>                                |
| Stables for Horses                                           | AUP                   |                                                                |

Section 6. That the “Accessory Uses and Structures” section of Table 23D.28.030 in Chapter 23D.28 Section 23D.28.030 of the Berkeley Municipal Code is amended to read as follows:

**23D.28.030 Uses Permitted**

| <b>Table 23D.28.030</b>                                                                   |                       |                                                        |
|-------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------|
| <b>Use and Required Permits</b>                                                           |                       |                                                        |
| <b>Use</b>                                                                                | <b>Classification</b> | <b>Special Requirements (if any)</b>                   |
| <b>Accessory Uses and Structures</b>                                                      |                       |                                                        |
| Accessory Buildings or Structures                                                         | ZC                    | Must satisfy the requirements of Chapter <u>23D.08</u> |
| If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u> | AUP                   |                                                        |
| When located on a vacant lot without a Main Building                                      | AUP                   |                                                        |

| Table 23D.28.030                                                                               |                |                                                                                                              |
|------------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                |                                                                                                              |
| Use                                                                                            | Classification | Special Requirements (if any)                                                                                |
| With Urban Agriculture                                                                         | ZC             | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> |
| Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>                          | ZC             |                                                                                                              |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP            | Subject to making applicable findings in Section <u>23C.24.070</u>                                           |
| Short-Term Rental                                                                              | ZC             | Subject to requirements of Chapter <u>23C.22</u>                                                             |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC             |                                                                                                              |
| Fences                                                                                         |                |                                                                                                              |
| If six ft. or less in height                                                                   | ZC             |                                                                                                              |
| Exceeding six ft. in height                                                                    | AUP            | In required setbacks                                                                                         |
| Home Occupations                                                                               |                | <u>Subject to the requirements of Chapter 23C.16</u>                                                         |
| <del>Low Impact Class I</del>                                                                  | ZC             | <del>If the requirements of Section 23C.16.020 are met</del>                                                 |
| <del>Moderate Impact, teaching-related Class II</del>                                          | AUP            | <del>Subject to the requirements of Section 23C.16.030.A</del>                                               |
| <del>Moderate Impact Class III</del>                                                           | UP(PH)         | <del>Subject to the requirements of Section 23C.16.030.B</del>                                               |
| Hot Tubs, Jacuzzis, Spas                                                                       | AUP            | See Section <u>23D.08.060.C</u>                                                                              |

| Table 23D.28.030         |                |                               |
|--------------------------|----------------|-------------------------------|
| Use and Required Permits |                |                               |
| Use                      | Classification | Special Requirements (if any) |
| Stables for Horses       | AUP            |                               |

Section 7. That the “Accessory Uses and Structures” section of Table 23D.32.030 in Chapter 23D.32 Section 23D.32.030 of the Berkeley Municipal Code is amended to read as follows:

### 23D.32.030 Uses Permitted

| Table 23D.32.030                                                                               |                |                                                                                                              |
|------------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                |                                                                                                              |
| Use                                                                                            | Classification | Special Requirements (if any)                                                                                |
| Accessory Uses and Structures                                                                  |                |                                                                                                              |
| Accessory Buildings or Structures                                                              | ZC             | Must satisfy the requirements of Chapter <u>23D.08</u>                                                       |
| If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>      | AUP            |                                                                                                              |
| When located on a vacant lot without a Main Building                                           | AUP            |                                                                                                              |
| With Urban Agriculture                                                                         | ZC             | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> |
| Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>                          | ZC             |                                                                                                              |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP            | Subject to making applicable findings in Section <u>23C.24.070</u>                                           |

| Table 23D.32.030                                      |                |                                                                       |
|-------------------------------------------------------|----------------|-----------------------------------------------------------------------|
| Use and Required Permits                              |                |                                                                       |
| Use                                                   | Classification | Special Requirements (if any)                                         |
| Short-Term Rental                                     | ZC             | Subject to requirements of Chapter <u>23C.22</u>                      |
| Child Care; Family Daycare Home (Small or Large)      | ZC             |                                                                       |
| Fences                                                |                |                                                                       |
| If six ft. or less in height                          | ZC             |                                                                       |
| Exceeding six ft. in height                           | AUP            | In required setbacks                                                  |
| Home Occupations                                      |                | <u>Subject to the requirements of Chapter 23C.16</u>                  |
| <del>Low Impact Class I</del>                         | ZC             | <del>If the requirements of Section 23C.16.020 are met</del>          |
| <del>Moderate Impact, teaching-related Class II</del> | AUP            | <del>Subject to the requirements of Section <u>23C.16.030.A</u></del> |
| <del>Moderate Impact Class III</del>                  | UP(PH)         | <del>Subject to the requirements of Section <u>23C.16.030.B</u></del> |
| Hot Tubs, Jacuzzis, Spas                              | AUP            | See Section <u>23D.08.060.C</u>                                       |
| Stables for Horses                                    | AUP            |                                                                       |

Section 8. That the “Accessory Uses and Structures” section of Table 23D.36.030 in Chapter 23D.36 Section 23D.36.030 of the Berkeley Municipal Code is amended to read as follows:

**23D.36.030 Uses Permitted**

| Table 23D.36.030                                                                               |                |                                                                                                              |
|------------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                |                                                                                                              |
| Use                                                                                            | Classification | Special Requirements (if any)                                                                                |
| Accessory Uses and Structures                                                                  |                |                                                                                                              |
| Accessory Buildings or Structures                                                              | ZC             | Must satisfy the requirements of Chapter <u>23D.08</u>                                                       |
| If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>      | AUP            |                                                                                                              |
| When located on a vacant lot without a Main Building                                           | AUP            |                                                                                                              |
| With Urban Agriculture                                                                         | ZC             | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> |
| Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>                          | ZC             |                                                                                                              |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP            | Subject to making applicable findings in Section <u>23C.24.070</u>                                           |
| Short-Term Rental                                                                              | ZC             | Subject to requirements of Chapter <u>23C.22</u>                                                             |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC             |                                                                                                              |
| Fences                                                                                         |                |                                                                                                              |
| If six ft. or less in height                                                                   | ZC             |                                                                                                              |
| Exceeding six ft. in height                                                                    | AUP            | In required setbacks                                                                                         |

| Table 23D.36.030                                                                                                                                               |                             |                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                                                                                       |                             |                                                                                                                                                                                                                                                              |
| Use                                                                                                                                                            | Classification              | Special Requirements (if any)                                                                                                                                                                                                                                |
| Home Occupations<br><br><del>Low Impact Class I</del><br><br><del>Moderate Impact, teaching-related Class II</del><br><br><del>Moderate Impact Class III</del> | ZC<br><br>AUP<br><br>UP(PH) | <u>Subject to the requirements of Chapter 23C.16</u><br><br><del>If the requirements of Section 23C.16.020 are met</del><br><br><u>Subject to the requirements of Section 23C.16.030.A</u><br><br><u>Subject to the requirements of Section 23C.16.030.B</u> |
| Hot Tubs, Jacuzzis, Spas                                                                                                                                       | AUP                         | See Section <u>23D.08.060.C</u>                                                                                                                                                                                                                              |
| Stables for Horses                                                                                                                                             | AUP                         |                                                                                                                                                                                                                                                              |

Section 9. That the “Accessory Uses and Structures” section of Table 23D.40.030 in Chapter 23D.40 Section 23D.40.030 of the Berkeley Municipal Code is amended to read as follows:

**23D.40.030 Uses Permitted**

| Table 23D.40.030                                                                          |                |                                                        |
|-------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------|
| Use and Required Permits                                                                  |                |                                                        |
| Use                                                                                       | Classification | Special Requirements (if any)                          |
| Accessory Uses and Structures                                                             |                |                                                        |
| Accessory Buildings or Structures                                                         | ZC             | Must satisfy the requirements of Chapter <u>23D.08</u> |
| If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u> | AUP            |                                                        |

| Table 23D.40.030                                                                               |                |                                                                                                                |
|------------------------------------------------------------------------------------------------|----------------|----------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                |                                                                                                                |
| Use                                                                                            | Classification | Special Requirements (if any)                                                                                  |
| When located on a vacant lot without a Main Building                                           | AUP            |                                                                                                                |
| With Urban Agriculture                                                                         | ZC             | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> . |
| Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>                          | ZC             |                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP            | Subject to making of applicable findings set forth in Section <u>23C.24.070</u>                                |
| Short-Term Rental                                                                              | ZC             | Subject to requirements of Chapter <u>23C.22</u>                                                               |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC             |                                                                                                                |
| Fences                                                                                         |                |                                                                                                                |
| Six ft. or less in height                                                                      | ZC             |                                                                                                                |
| Exceeding six ft. in height                                                                    | AUP            | In required setbacks                                                                                           |
| Home Occupations                                                                               |                | <u>Subject to the requirements of Chapter 23C.16</u>                                                           |
| <del>Low Impact Class I</del>                                                                  | ZC             | <del>If the requirements of Section 23C.16.020 are met</del>                                                   |
| <del>Moderate Impact, teaching-related Class II</del>                                          | AUP            | <del>Subject to the requirements of Section <u>23C.16.030.A</u></del>                                          |

| Table 23D.40.030                             |                |                                                                                                          |
|----------------------------------------------|----------------|----------------------------------------------------------------------------------------------------------|
| Use and Required Permits                     |                |                                                                                                          |
| Use                                          | Classification | Special Requirements (if any)                                                                            |
| <del>Moderate Impact</del> <u>Class III</u>  | UP(PH)         | <del>Subject to the requirements of Section 23C.16.030.B</del>                                           |
| Hot Tubs, Jacuzzis, Spas                     | AUP            | See Section <u>23D.08.060.C</u>                                                                          |
| Stables for Horses                           | AUP            |                                                                                                          |
| Stores and Shops (Incidental to another Use) | UP(PH)         | Contained within a building with no street access and no displays or merchandise visible from the street |

Section 10. That the “Accessory Uses and Structures” section of Table 23D.44.030 in Chapter 23D.44 Section 23D.44.030 of the Berkeley Municipal Code is amended to read as follows:

**23D.44.030 Uses Permitted**

| Table 23D.44.030                                                                          |                |                                                        |
|-------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------|
| Use and Required Permits                                                                  |                |                                                        |
| Use                                                                                       | Classification | Special Requirements (if any)                          |
| Accessory Uses and Structures                                                             |                |                                                        |
| Accessory Buildings or Structures                                                         | ZC             | Must satisfy the requirements of Chapter <u>23D.08</u> |
| If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u> | AUP            |                                                        |
| When located on a vacant lot without a Main Building                                      | AUP            |                                                        |



| Table 23D.44.030                                                                               |                |                                                                                                              |
|------------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                |                                                                                                              |
| Use                                                                                            | Classification | Special Requirements (if any)                                                                                |
| With Urban Agriculture                                                                         | ZC             | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> |
| Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>                          | ZC             |                                                                                                              |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP            | Subject to making applicable findings set forth in Section <u>23C.24.070</u>                                 |
| Short-Term Rental                                                                              | ZC             | Subject to requirements of Chapter <u>23C.22</u>                                                             |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC             |                                                                                                              |
| Fences                                                                                         |                |                                                                                                              |
| Six ft. or less in height                                                                      | ZC             |                                                                                                              |
| Exceeding six ft. in height                                                                    | AUP            | In required setbacks                                                                                         |
| Home Occupations                                                                               |                | <u>Subject to the requirements of Chapter 23C.16</u>                                                         |
| <del>Low Impact Class I</del>                                                                  | ZC             | <del>If the requirements of Section 23C.16.020 are met</del>                                                 |
| <del>Moderate Impact, teaching-related Class II</del>                                          | AUP            | <del>Subject to the requirements of Section <u>23C.16.030.A</u></del>                                        |
| <del>Moderate Impact Class III</del>                                                           | UP(PH)         | <del>Subject to the requirements of Section <u>23C.16.030.B</u></del>                                        |
| Hot Tubs, Jacuzzis, Spas                                                                       | AUP            | See Section <u>23D.08.060.C</u>                                                                              |

| Table 23D.44.030                             |                |                                                                                                          |
|----------------------------------------------|----------------|----------------------------------------------------------------------------------------------------------|
| Use and Required Permits                     |                |                                                                                                          |
| Use                                          | Classification | Special Requirements (if any)                                                                            |
| Stables for Horses                           | AUP            |                                                                                                          |
| Stores and Shops (Incidental to another Use) | UP(PH)         | Contained within a building with no street access and no displays or merchandise visible from the street |

Section 11. That the “Accessory Uses and Structures” section of Table 23D.48.030 in Chapter 23D.48 Section 23D.48.030 of the Berkeley Municipal Code is amended to read as follows:

**23D.48.030 Uses Permitted**

| Table 23D.48.030                                                                          |                |                                                                                                              |
|-------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                  |                |                                                                                                              |
| Use                                                                                       | Classification | Special Requirements (if any)                                                                                |
| Accessory Uses and Structures                                                             |                |                                                                                                              |
| Accessory Buildings or Structures                                                         | ZC             | Must satisfy the requirements of Chapter <u>23D.08</u>                                                       |
| If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u> | AUP            |                                                                                                              |
| When located on a vacant lot without a Main Building                                      | AUP            |                                                                                                              |
| With Urban Agriculture                                                                    | ZC             | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> |

| Table 23D.48.030                                                                               |                |                                                                              |
|------------------------------------------------------------------------------------------------|----------------|------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                |                                                                              |
| Use                                                                                            | Classification | Special Requirements (if any)                                                |
| Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>                          | ZC             |                                                                              |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP            | Subject to making applicable findings set forth in Section <u>23C.24.070</u> |
| Short-Term Rental                                                                              | ZC             | Subject to requirements of Chapter <u>23C.22</u>                             |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC             |                                                                              |
| Fences                                                                                         |                |                                                                              |
| Six ft. or less in height                                                                      | ZC             |                                                                              |
| Exceeding six ft. in height                                                                    | AUP            | In required setbacks                                                         |
| Home Occupations                                                                               |                | <u>Subject to the requirements of Chapter 23C.16</u>                         |
| <del>Low Impact</del> <u>Class I</u>                                                           | ZC             | <del>If the requirements of Section 23C.16.020 are met</del>                 |
| <del>Moderate Impact, teaching-related</del> <u>Class II</u>                                   | AUP            | <del>Subject to the requirements of Section 23C.16.030.A</del>               |
| <del>Moderate Impact</del> <u>Class III</u>                                                    | UP(PH)         | <del>Subject to the requirements of Section 23C.16.030.B</del>               |
| Hot Tubs, Jacuzzis, Spas                                                                       | AUP            | See Section <u>23D.08.060.C</u>                                              |
| Stables for Horses                                                                             | Prohibited     |                                                                              |

| Table 23D.48.030                             |                |                                                                                                          |
|----------------------------------------------|----------------|----------------------------------------------------------------------------------------------------------|
| Use and Required Permits                     |                |                                                                                                          |
| Use                                          | Classification | Special Requirements (if any)                                                                            |
| Stores and Shops (Incidental to another Use) | UP(PH)         | Contained within a building with no street access and no displays or merchandise visible from the street |

Section 12. That the “Accessory Uses and Structures” section of Table 23D.52.030 in Chapter 23D.52 Section 23D.52.030 of the Berkeley Municipal Code is amended to read as follows:

**23D.52.030 Uses Permitted**

| Table 23D.52.030                                                                          |                |                                                                                                              |
|-------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                  |                |                                                                                                              |
| Use                                                                                       | Classification | Special Requirements (if any)                                                                                |
| Accessory Uses and Structures                                                             |                |                                                                                                              |
| Accessory Buildings or Structures                                                         | ZC             | Must satisfy the requirements of Chapter <u>23D.08</u>                                                       |
| If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u> | AUP            |                                                                                                              |
| When located on a vacant lot without a Main Building                                      | AUP            |                                                                                                              |
| With Urban Agriculture                                                                    | ZC             | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> |
| Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>                     | ZC             |                                                                                                              |

| Table 23D.52.030                                                                               |                |                                                                                                          |
|------------------------------------------------------------------------------------------------|----------------|----------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                |                                                                                                          |
| Use                                                                                            | Classification | Special Requirements (if any)                                                                            |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP            | Subject to making applicable findings set forth in Section <u>23C.24.070</u>                             |
| Short-Term Rental                                                                              | ZC             | Subject to requirements of Chapter <u>23C.22</u>                                                         |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC             |                                                                                                          |
| Fences                                                                                         |                |                                                                                                          |
| Six ft. or less in height                                                                      | ZC             |                                                                                                          |
| Exceeding six ft. in height                                                                    | AUP            | In required setbacks                                                                                     |
| Home Occupations                                                                               |                | <u>Subject to the requirements of Chapter 23C.16</u>                                                     |
| <del>Low Impact</del> <u>Class I</u>                                                           | ZC             | <del>If the requirements of Section 23C.16.020 are met</del>                                             |
| <del>Moderate Impact, teaching-related</del> <u>Class II</u>                                   | AUP            | <del>Subject to the requirements of Section <u>23C.16.030.A</u></del>                                    |
| <del>Moderate Impact</del> <u>Class III</u>                                                    | UP(PH)         | <del>Subject to the requirements of Section <u>23C.16.030.B</u></del>                                    |
| Hot Tubs, Jacuzzis, Spas                                                                       | AUP            | See Section <u>23D.08.060.C</u>                                                                          |
| Stables for Horses                                                                             | Prohibited     |                                                                                                          |
| Stores and Shops (Incidental to another Use)                                                   | UP(PH)         | Contained within a building with no street access and no displays or merchandise visible from the street |

Section 13. That the “Uses Permitted in Residential Districts” section of Table 23E.36.030 in Chapter 23E.36 Section 23E.36.030 of the Berkeley Municipal Code is amended to read as follows:

**23E.36.030 Uses Permitted**

| <b>Table 23E.36.030</b>                                                                                 |                       |                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                         |                       |                                                                                                                                                                                |
| <b>Use</b>                                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                           |
| <b>Uses Permitted in Residential Districts</b>                                                          |                       |                                                                                                                                                                                |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>                           | ZC                    |                                                                                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP                   | Subject to making applicable findings in Section <a href="#">23C.24.070</a>                                                                                                    |
| Accessory Uses and Structures                                                                           | Per R-3 District      | See Table <a href="#">23D.36.030</a>                                                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture                                               | ZC                    | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>                                 |
| Short-Term Rental                                                                                       | ZC                    | Subject to requirements of Chapter <a href="#">23C.22</a>                                                                                                                      |
| Child Care Centers                                                                                      | UP(PH)                |                                                                                                                                                                                |
| Child Care; Family Daycare Home (Small or Large)                                                        | ZC                    |                                                                                                                                                                                |
| Clubs, Lodges                                                                                           | UP(PH)                |                                                                                                                                                                                |
| Community Centers                                                                                       | UP(PH)                |                                                                                                                                                                                |
| Dwelling Units, subject to R-3 Standards                                                                | UP(PH)                | Standards may be modified under Section <a href="#">23E.36.070.E</a> . Residential-only projects are prohibited within the University Avenue Node Overlay areas, and permitted |

| Table 23E.36.030                                                     |                |                                                                            |
|----------------------------------------------------------------------|----------------|----------------------------------------------------------------------------|
| Use and Required Permits                                             |                |                                                                            |
| Use                                                                  | Classification | Special Requirements (if any)                                              |
|                                                                      |                | within University Avenue Overlay Mixed Use areas                           |
| Group Living Accommodations<br>subject to R-3 Standards              | UP(PH)         | Standards may be modified under<br>Section <a href="#">23E.36.070.E</a>    |
| <u>Home Occupations</u>                                              |                | <u>Subject to the requirements of Chapter 23C.16</u>                       |
| <u>Class I</u>                                                       | <u>ZC</u>      |                                                                            |
| <u>Class II</u>                                                      | <u>AUP</u>     |                                                                            |
| <u>Class III</u>                                                     | <u>UP(PH)</u>  |                                                                            |
| Hospitals                                                            | UP(PH)         | Subject to parking requirements; see<br>Section <a href="#">23E.36.080</a> |
| Hotels, Residential, including Single<br>Room Occupancy (SRO) Hotels | UP(PH)         |                                                                            |
| Libraries                                                            | UP(PH)         | Subject to parking requirements; see<br>Section <a href="#">23E.36.080</a> |
| Nursing Homes                                                        | UP(PH)         | Subject to parking requirements; see<br>Section <a href="#">23E.36.080</a> |
| Parks and Playgrounds                                                | ZC             |                                                                            |
| Public Safety and Emergency<br>Services                              | UP(PH)         |                                                                            |
| Religious Assembly Uses                                              | UP(PH)         |                                                                            |
| Schools, Public or Private                                           | UP(PH)         |                                                                            |
| Senior Congregate Housing<br><br>Six or fewer people                 | <br><br>ZC     | Changes of use from an existing dwelling unit                              |

| Table 23E.36.030         |                |                               |
|--------------------------|----------------|-------------------------------|
| Use and Required Permits |                |                               |
| Use                      | Classification | Special Requirements (if any) |
| Seven or more persons    | AUP            |                               |
| New Construction         | UP(PH)         |                               |

Section 14. That the “Uses Permitted in Residential Districts” section of Table 23E.40.030 in Chapter 23E.40 Section 23E.40.030 of the Berkeley Municipal Code is amended to read as follows:

### 23E.40.030 Uses Permitted

| Table 23E.40.030                                                                                        |                  |                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                                |                  |                                                                                                                                                |
| Use                                                                                                     | Classification   | Special Requirements (if any)                                                                                                                  |
| Uses Permitted in Residential Districts                                                                 |                  |                                                                                                                                                |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>                           | ZC               |                                                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP              | Subject to making applicable findings in Section <a href="#">23C.24.070</a>                                                                    |
| Accessory Uses and Structures                                                                           | Per R-3 District | See Table <a href="#">23D.36.030</a>                                                                                                           |
| Accessory Buildings and Structures with Urban Agricultures                                              | ZC               | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Child Care Centers                                                                                      | UP(PH)           |                                                                                                                                                |



| Table 23E.40.030                                                  |                |                                                                           |
|-------------------------------------------------------------------|----------------|---------------------------------------------------------------------------|
| Use and Required Permits                                          |                |                                                                           |
| Use                                                               | Classification | Special Requirements (if any)                                             |
| Child Care; Family Daycare Home (Small or Large)                  | ZC             |                                                                           |
| Clubs, Lodges                                                     | UP(PH)         |                                                                           |
| Community Centers                                                 | UP(PH)         |                                                                           |
| Dwelling Units, subject to R-3 Standards                          | UP(PH)         | Standards may be modified under Section <a href="#">23E.40.070.E</a>      |
| Group Living Accommodations subject to R-3 Standards              | UP(PH)         | Standards may be modified under Section <a href="#">23E.40.070.E</a>      |
| <u>Home Occupations</u>                                           |                | <u>Subject to the requirements of Chapter 23C.16</u>                      |
| <u>Class I</u>                                                    | <u>ZC</u>      |                                                                           |
| <u>Class II</u>                                                   | <u>AUP</u>     |                                                                           |
| <u>Class III</u>                                                  | <u>UP(PH)</u>  |                                                                           |
| Hospitals                                                         | Prohibited     |                                                                           |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)         |                                                                           |
| Libraries                                                         | UP(PH)         | Subject to parking requirements; see Section <a href="#">23E.40.080.B</a> |
| Nursing Homes                                                     | UP(PH)         | Subject to parking requirements; see Section <a href="#">23E.40.080.B</a> |
| Parks and Playgrounds                                             | ZC             |                                                                           |
| Public Safety and Emergency Services                              | UP(PH)         |                                                                           |

| Table 23E.40.030           |                |                                               |
|----------------------------|----------------|-----------------------------------------------|
| Use and Required Permits   |                |                                               |
| Use                        | Classification | Special Requirements (if any)                 |
| Religious Assembly Uses    | UP(PH)         |                                               |
| Schools, Public or Private | UP(PH)         |                                               |
| Senior Congregate Housing  |                | Changes of use from an existing dwelling unit |
| Six or fewer persons       | ZC             |                                               |
| Seven or more persons      | AUP            |                                               |
| New Construction           | UP(PH)         |                                               |

Section 15. That the “Uses Permitted in Residential Districts” section of Table 23E.44.030 in Chapter 23E.44 Section 23E.44.030 of the Berkeley Municipal Code is amended to read as follows:

**23E.44.030 Uses Permitted**

| Table 23E.44.030                                                                                        |                  |                                                                             |
|---------------------------------------------------------------------------------------------------------|------------------|-----------------------------------------------------------------------------|
| Use and Required Permits                                                                                |                  |                                                                             |
| Use                                                                                                     | Classification   | Special Requirements (if any)                                               |
| Uses Permitted in Residential Districts                                                                 |                  |                                                                             |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>                           | ZC               |                                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP              | Subject to making applicable findings in Section <a href="#">23C.24.070</a> |
| Accessory Uses and Structures                                                                           | Per R-3 District | See Table <a href="#">23D.36.030</a>                                        |

| Table 23E.44.030                                                  |                |                                                                                                                                                |
|-------------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                          |                |                                                                                                                                                |
| Use                                                               | Classification | Special Requirements (if any)                                                                                                                  |
| Accessory Buildings and Structures with Urban Agriculture         | ZC             | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Child Care Centers                                                | UP(PH)         |                                                                                                                                                |
| Child Care; Family Daycare Home (Small or Large)                  | ZC             |                                                                                                                                                |
| Clubs, Lodges                                                     | UP(PH)         |                                                                                                                                                |
| Community Centers                                                 | UP(PH)         |                                                                                                                                                |
| Dwelling Units, subject to R-3 Standards                          | UP(PH)         | Standards may be modified under Section <a href="#">23E.44.070.F</a>                                                                           |
| Group Living Accommodations, subject to R-3 Standards             | UP(PH)         | Standards may be modified under Section <a href="#">23E.44.070.F</a>                                                                           |
| <u>Home Occupations</u>                                           |                | <u>Subject to the requirements of Chapter 23C.16</u>                                                                                           |
| <u>Class I</u>                                                    | <u>ZC</u>      |                                                                                                                                                |
| <u>Class II</u>                                                   | <u>AUP</u>     |                                                                                                                                                |
| <u>Class III</u>                                                  | <u>UP(PH)</u>  |                                                                                                                                                |
| Hospitals                                                         | Prohibited     |                                                                                                                                                |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)         |                                                                                                                                                |
| Libraries                                                         | UP(PH)         | Subject to parking requirements under Section <a href="#">23E.44.080</a>                                                                       |
| Nursing Homes                                                     | UP(PH)         | Subject to parking requirements under Section <a href="#">23E.44.080</a>                                                                       |

| Table 23E.44.030                     |                |                                               |
|--------------------------------------|----------------|-----------------------------------------------|
| Use and Required Permits             |                |                                               |
| Use                                  | Classification | Special Requirements (if any)                 |
| Parks and Playgrounds                | ZC             |                                               |
| Public Safety and Emergency Services | UP(PH)         |                                               |
| Religious Assembly Uses              | UP(PH)         |                                               |
| Schools, Public or Private           | UP(PH)         |                                               |
| Senior Congregate Housing            |                | Changes of use from an existing dwelling unit |
| Six or fewer persons                 | ZC             |                                               |
| Seven or more persons                | AUP            |                                               |
| New Construction                     | UP(PH)         |                                               |

Section 16. That the “Uses Permitted in Residential Districts” section of Table 23E.48.030 in Chapter 23E.48 Section 23E.48.030 of the Berkeley Municipal Code is amended to read as follows:

**23E.48.030 Uses Permitted**

| Table 23E.48.030                                                              |                |                                                                             |
|-------------------------------------------------------------------------------|----------------|-----------------------------------------------------------------------------|
| Use and Required Permits                                                      |                |                                                                             |
| Use                                                                           | Classification | Special Requirements (if any)                                               |
| Uses Permitted in Residential Districts                                       |                |                                                                             |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a> | ZC             |                                                                             |
| Accessory Dwelling Unit that does not comply with                             | AUP            | Subject to making applicable findings in Section <a href="#">23C.24.070</a> |

| Table 23E.48.030                                          |                  |                                                                                                                                                |
|-----------------------------------------------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                  |                  |                                                                                                                                                |
| Use                                                       | Classification   | Special Requirements (if any)                                                                                                                  |
| requirements under Section <a href="#">23C.24.050</a>     |                  |                                                                                                                                                |
| Accessory Uses and Structures                             | Per R-3 District | See Table <a href="#">23D.36.030</a>                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture | ZC               | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Short-Term Rental                                         | ZC               | Subject to requirements of Chapter <a href="#">23C.22</a>                                                                                      |
| Child Care Centers                                        | UP(PH)           |                                                                                                                                                |
| Child Care; Family Daycare Home (Small or Large)          | ZC               |                                                                                                                                                |
| Clubs, Lodges                                             | Prohibited       |                                                                                                                                                |
| Community Centers                                         | UP(PH)           |                                                                                                                                                |
| Dwelling Units, subject to R-3 Standards                  | UP(PH)           | Subject to the standards under Section <a href="#">23E.48.070.F</a>                                                                            |
| Group Living Accommodations, subject to R-3 Standards     | UP(PH)           | Subject to the standards under Section <a href="#">23E.48.070.F</a>                                                                            |
| <u>Home Occupations</u>                                   |                  | <u>Subject to the requirements of Chapter 23C.16</u>                                                                                           |
| <u>Class I</u>                                            | <u>ZC</u>        |                                                                                                                                                |
| <u>Class II</u>                                           | <u>AUP</u>       |                                                                                                                                                |
| <u>Class III</u>                                          | <u>UP(PH)</u>    |                                                                                                                                                |
| Hospitals                                                 | Prohibited       |                                                                                                                                                |

| Table 23E.48.030                                                  |                |                                                                         |
|-------------------------------------------------------------------|----------------|-------------------------------------------------------------------------|
| Use and Required Permits                                          |                |                                                                         |
| Use                                                               | Classification | Special Requirements (if any)                                           |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)         |                                                                         |
| Libraries                                                         | UP(PH)         | Subject to parking requirements; see Section <a href="#">23E.48.080</a> |
| Nursing Homes                                                     | UP(PH)         | Subject to parking requirements; see Section <a href="#">23E.48.080</a> |
| Parks and Playgrounds                                             | ZC             |                                                                         |
| Public Safety and Emergency Services                              | UP(PH)         |                                                                         |
| Religious Assembly Uses                                           | UP(PH)         |                                                                         |
| Schools, Public or Private                                        | UP(PH)         |                                                                         |
| Senior Congregate Housing                                         |                | Change of use from an existing dwelling unit                            |
| Six or fewer persons                                              | ZC             |                                                                         |
| Seven or more persons                                             | AUP            |                                                                         |
| New Construction                                                  | UP(PH)         |                                                                         |

Section 17. That the “Uses Permitted in Residential Districts” section of Table 23E.52.030 in Chapter 23E.52 Section 23E.52.030 of the Berkeley Municipal Code is amended to read as follows:

**23E.52.030 Uses Permitted**

| Table 23E.52.030                                                                                        |                  |                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                                |                  |                                                                                                                                                |
| Use                                                                                                     | Classification   | Special Requirements (if any)                                                                                                                  |
| Uses Permitted in Residential Districts                                                                 |                  |                                                                                                                                                |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>                           | ZC               |                                                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP              | Subject to making applicable findings in Section <a href="#">23C.24.070</a>                                                                    |
| Accessory Uses and Structures                                                                           | Per R-3 District | See Table <a href="#">23D.36.030</a>                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture                                               | ZC               | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Short-Term Rental                                                                                       | ZC               | Subject to requirements of Chapter <a href="#">23C.22</a>                                                                                      |
| Child Care Centers                                                                                      | UP(PH)           |                                                                                                                                                |
| Child Care; Family Daycare Home (Small or Large)                                                        | ZC               |                                                                                                                                                |
| Clubs, Lodges                                                                                           | UP(PH)           |                                                                                                                                                |
| Community Centers                                                                                       | UP(PH)           |                                                                                                                                                |
| Dwelling Units, subject to R-3 Standards                                                                | UP(PH)           | Subject to the standards under Section <a href="#">23E.52.070.E</a>                                                                            |
| Group Living Accommodations subject to R-3 Standards                                                    | UP(PH)           | Subject to the standards under Section <a href="#">23E.52.070.E</a>                                                                            |
| <u>Home Occupations</u><br><br><u>Class I</u>                                                           | <u>ZC</u>        | <u>Subject to the requirements of Chapter 23C.16</u>                                                                                           |

| Table 23E.52.030                                                        |                |                                                                            |
|-------------------------------------------------------------------------|----------------|----------------------------------------------------------------------------|
| Use and Required Permits                                                |                |                                                                            |
| Use                                                                     | Classification | Special Requirements (if any)                                              |
| <u>Class II</u>                                                         | <u>AUP</u>     |                                                                            |
| <u>Class III</u>                                                        | <u>UP(PH)</u>  |                                                                            |
| Hospitals                                                               | Prohibited     |                                                                            |
| Hotels, Residential, including<br>Single Room Occupancy (SRO)<br>Hotels | UP(PH)         |                                                                            |
| Libraries                                                               | UP(PH)         | Subject to parking requirements; see<br>Section <a href="#">23E.52.080</a> |
| Nursing Homes                                                           | UP(PH)         | Subject to parking requirements; see<br>Section <a href="#">23E.52.080</a> |
| Parks and Playgrounds                                                   | ZC             |                                                                            |
| Public Safety and Emergency<br>Services                                 | UP(PH)         |                                                                            |
| Religious Assembly Uses                                                 | UP(PH)         |                                                                            |
| Schools, Public or Private                                              | UP(PH)         |                                                                            |
| Senior Congregate Housing                                               |                | Change of use from an existing dwelling unit                               |
| Six or fewer people                                                     | ZC             |                                                                            |
| Seven or more people                                                    | AUP            |                                                                            |
| New construction                                                        | UP(PH)         |                                                                            |

Section 18. That the “Uses Permitted in Residential Districts” section of Table 23E.56.030 in Chapter 23E.56 Section 23E.56.030 of the Berkeley Municipal Code is amended to read as follows:

### **23E.56.030 Uses Permitted**



| Table 23E.56.030                                                                                        |                  |                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                                |                  |                                                                                                                                                |
| Use                                                                                                     | Classification   | Special Requirements (if any)                                                                                                                  |
| Uses Permitted in Residential Districts                                                                 |                  |                                                                                                                                                |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>                           | ZC               |                                                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP              | Subject to making applicable findings in Section <a href="#">23C.24.070</a>                                                                    |
| Accessory Uses and Structures                                                                           | Per R-3 District | See Table <a href="#">23D.36.030</a>                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture                                               | ZC               | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Short-Term Rental                                                                                       | ZC               | Subject to requirements of Chapter <a href="#">23C.22</a>                                                                                      |
| Child Care Centers                                                                                      | UP(PH)           |                                                                                                                                                |
| Child Care; Family Daycare Home (Small or Large)                                                        | ZC               |                                                                                                                                                |
| Clubs, Lodges                                                                                           | UP(PH)           |                                                                                                                                                |
| Community Centers                                                                                       | UP(PH)           |                                                                                                                                                |
| Dwelling Units, subject to R-3 Standards                                                                | UP(PH)           | Subject to the standards under Section <a href="#">23E.56.070.E</a>                                                                            |
| Group Living Accommodations subject to R-3 Standards                                                    | UP(PH)           | Subject to the standards under Section <a href="#">23E.56.070.E</a>                                                                            |
| <u>Home Occupations</u>                                                                                 |                  | <u>Subject to the requirements of Chapter 23C.16</u>                                                                                           |
| <u>Class I</u>                                                                                          | <u>ZC</u>        |                                                                                                                                                |

| Table 23E.56.030                                                  |                |                                              |
|-------------------------------------------------------------------|----------------|----------------------------------------------|
| Use and Required Permits                                          |                |                                              |
| Use                                                               | Classification | Special Requirements (if any)                |
| <u>Class II</u>                                                   | <u>AUP</u>     |                                              |
| <u>Class III</u>                                                  | <u>UP(PH)</u>  |                                              |
| Hospitals                                                         | Prohibited     |                                              |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels | UP(PH)         |                                              |
| Libraries                                                         | UP(PH)         |                                              |
| Nursing Homes                                                     | UP(PH)         |                                              |
| Parks and Playgrounds                                             | ZC             |                                              |
| Public Safety and Emergency Services                              | UP(PH)         |                                              |
| Religious Assembly Uses                                           | UP(PH)         |                                              |
| Schools, Public or Private                                        | UP(PH)         |                                              |
| Senior Congregate Housing                                         |                | Change of use from an existing dwelling unit |
| Six or fewer people                                               | ZC             |                                              |
| Seven or more persons                                             | AUP            |                                              |
| New Construction                                                  | UP(PH)         |                                              |

Section 19. That the “Uses Permitted in Residential Districts” section of Table 23E.60.030 in Chapter 23E.60 Section 23E.60.030 of the Berkeley Municipal Code is amended to read as follows:

**23E.60.030 Uses Permitted**

| Table 23E.60.030                                                                                        |                  |                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                                |                  |                                                                                                                                                |
| Use                                                                                                     | Classification   | Special Requirements (if any)                                                                                                                  |
| Uses Permitted in Residential Districts                                                                 |                  |                                                                                                                                                |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>                           | ZC               |                                                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP              | Subject to making applicable findings in Section <a href="#">23C.24.070</a>                                                                    |
| Accessory Uses and Structures                                                                           | Per R-3 District | See Table <a href="#">23D.36.030</a>                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture                                               | ZC               | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Child Care Centers                                                                                      | UP(PH)           |                                                                                                                                                |
| Child Care; Family Daycare Home (Small or Large)                                                        | ZC               |                                                                                                                                                |
| Clubs, Lodges                                                                                           | Prohibited       |                                                                                                                                                |
| Community Centers                                                                                       | UP(PH)           |                                                                                                                                                |
| Dwelling Units, subject to R-3 Standards                                                                | UP(PH)           | Standards may be modified under Section <a href="#">23E.60.070.F</a>                                                                           |
| Group Living Accommodations, subject to R-3 Standards                                                   | UP(PH)           | Standards may be modified under Section <a href="#">23E.60.070.F</a>                                                                           |
| <u>Home Occupations</u>                                                                                 |                  | <u>Subject to the requirements of Chapter 23C.16</u>                                                                                           |
| <u>Class I</u>                                                                                          | <u>ZC</u>        |                                                                                                                                                |
| <u>Class II</u>                                                                                         | <u>AUP</u>       |                                                                                                                                                |

| Table 23E.60.030                                                        |                |                                                                            |
|-------------------------------------------------------------------------|----------------|----------------------------------------------------------------------------|
| Use and Required Permits                                                |                |                                                                            |
| Use                                                                     | Classification | Special Requirements (if any)                                              |
| <u>Class III</u>                                                        | <u>UP(PH)</u>  |                                                                            |
| Hospitals                                                               | Prohibited     |                                                                            |
| Hotels, Residential, including<br>Single Room Occupancy (SRO)<br>Hotels | UP(PH)         |                                                                            |
| Libraries                                                               | UP(PH)         | Subject to parking requirements; see<br>Section <a href="#">23E.60.080</a> |
| Nursing Homes                                                           | UP(PH)         | Subject to parking requirements; see<br>Section <a href="#">23E.60.080</a> |
| Parks and Playgrounds                                                   | ZC             |                                                                            |
| Public Safety and Emergency<br>Services                                 | UP(PH)         |                                                                            |
| Religious Assembly Uses                                                 | UP(PH)         |                                                                            |
| Schools, Public or Private                                              | UP(PH)         |                                                                            |
| Senior Congregate Housing                                               |                | Change of use from an existing dwelling unit                               |
| Six or fewer persons                                                    | ZC             |                                                                            |
| Seven or more persons                                                   | AUP            |                                                                            |
| New Construction                                                        | UP(PH)         |                                                                            |

Section 20. That the “Residential and Related Uses” section of Table 23E.64.030 in Chapter 23E.64 Section 23E.64.030 of the Berkeley Municipal Code is amended to read as follows:

### 23E.64.030 Uses Permitted

| <b>Table 23E.64.030</b>                                                                        |                                                                      |                                                                                                        |
|------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                |                                                                      |                                                                                                        |
| <b>Use</b>                                                                                     | <b>Permits Required to Establish, Expand or Change Use (sq. ft.)</b> | <b>Special Requirements (if any)</b>                                                                   |
| <b>Residential and Related Uses</b>                                                            |                                                                      |                                                                                                        |
| Accessory Dwelling Unit in compliance with Section <u>23C.24.050</u>                           | ZC                                                                   |                                                                                                        |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP                                                                  | Subject to making applicable findings in Section <u>23C.24.070</u>                                     |
| Additions, Major Residential                                                                   | AUP                                                                  | See definition in Sub-title <u>23F</u> . Subject to required finding under Section <u>23E.64.090.G</u> |
| Short-Term Rental                                                                              | ZC                                                                   | Subject to requirements of Chapter <u>23C.22</u>                                                       |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC                                                                   |                                                                                                        |
| Child Care Centers                                                                             | UP(PH)                                                               |                                                                                                        |
| Clubs, Lodges                                                                                  | UP(PH)                                                               |                                                                                                        |
| Community Care Facilities/Homes                                                                | ZC                                                                   |                                                                                                        |
| Community Centers                                                                              | UP(PH)                                                               |                                                                                                        |
| Dwelling Units                                                                                 | UP(PH)                                                               | Subject to Development Standards under Section <u>23E.64.070</u>                                       |

| Table 23E.64.030                                                                                                                                   |                                                               |                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                                                                           |                                                               |                                                                                                                                                                                                                                                          |
| Use                                                                                                                                                | Permits Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any)                                                                                                                                                                                                                            |
| Group Living Accommodations                                                                                                                        | UP(PH)                                                        | Subject to Development Standards under Section <u>23E.64.070</u>                                                                                                                                                                                         |
| Home Occupations<br><br><u>Low Impact Class I</u><br><br><u>Moderate Impact, teaching-related Class II</u><br><br><u>Moderate Impact Class III</u> | ZC<br><br>AUP<br><br>UP(PH)                                   | <u>Subject to the requirements of Chapter 23C.16</u><br><br><u>If the requirements of Section 23C.16.020 are met</u><br><br><u>Subject to the requirements of Section 23C.16.030.A</u><br><br><u>Subject to the requirements of Section 23C.16.030.B</u> |
| Hospitals                                                                                                                                          | UP(PH)                                                        | Subject to parking requirements; see Section <u>23E.64.080.F</u>                                                                                                                                                                                         |
| Hot Tubs, Jacuzzis, Spas                                                                                                                           | AUP                                                           | See Section <u>23D.08.070.C</u>                                                                                                                                                                                                                          |
| Hotels, Residential, including Single Room Occupancy (SRO)                                                                                         | UP(PH)                                                        |                                                                                                                                                                                                                                                          |
| Libraries                                                                                                                                          | UP(PH)                                                        | Subject to parking requirements; see Section <u>23E.64.080.F</u>                                                                                                                                                                                         |
| Nursing Homes                                                                                                                                      | UP(PH)                                                        |                                                                                                                                                                                                                                                          |
| Parks and Playgrounds                                                                                                                              | AUP                                                           |                                                                                                                                                                                                                                                          |

| Table 23E.64.030                                                                               |                                                               |                                                                                                                                                |
|------------------------------------------------------------------------------------------------|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                                                               |                                                                                                                                                |
| Use                                                                                            | Permits Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any)                                                                                                                  |
| Public Safety and Emergency Services                                                           | UP(PH)                                                        |                                                                                                                                                |
| Religious Assembly Uses                                                                        | AUP                                                           |                                                                                                                                                |
| Schools, Public or Private                                                                     | UP(PH)                                                        |                                                                                                                                                |
| Senior Congregate Housing<br>Six or fewer persons<br>Seven or more persons<br>New Construction | ZC<br>AUP<br>UP(PH)                                           | Changes of use from an existing dwelling unit                                                                                                  |
| All other Residential Accessory Structures and Uses not listed                                 | Per R-3 District                                              | See Table <a href="#">23D.36.030</a>                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture                                      | ZC                                                            | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |

Section 21. That the “Residential and Related Uses” section of Table 23E.68.030 in Chapter 23E.68 Section 23E.68.030 of the Berkeley Municipal Code is amended to read as follows:

**23E.68.030 Uses Permitted**

| Table 23E.68.030                        |                |                      |
|-----------------------------------------|----------------|----------------------|
| Use and Required Permits                |                |                      |
| Use                                     | Classification | Special Requirements |
| Uses Permitted in Residential Districts |                |                      |

| Table 23E.68.030                                                                                        |                     |                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                                |                     |                                                                                                                                                |
| Use                                                                                                     | Classification      | Special Requirements                                                                                                                           |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>                           | ZC                  |                                                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP                 | Subject to making applicable findings in Section <a href="#">23C.24.070</a>                                                                    |
| Accessory Uses and Structures                                                                           | As per R-5 District | See Table <a href="#">23D.44.030</a>                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture                                               | ZC                  | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Short-Term Rental                                                                                       | ZC                  | Subject to requirements of Chapter <a href="#">23C.22</a>                                                                                      |
| Child Care Centers                                                                                      | AUP                 |                                                                                                                                                |
| Child Care; Family Daycare Home (Small or Large)                                                        | ZC                  |                                                                                                                                                |
| Clubs, Lodges                                                                                           | UP(PH)              |                                                                                                                                                |
| Community Centers                                                                                       | UP(PH)              |                                                                                                                                                |
| Dwelling Units, including multifamily developments                                                      | UP(PH)              | Subject to the standards under Section <a href="#">23E.68.060.F</a>                                                                            |
| Group Living Accommodations subject to R-3 Standards                                                    | UP(PH)              | Subject to the standards under Section <a href="#">23E.68.060.F</a>                                                                            |
| <u>Home Occupations</u><br><br><u>Class I</u>                                                           | <u>ZC</u>           | <u>Subject to the requirements of Chapter 23C.16</u>                                                                                           |



| Table 23E.68.030                                                        |                |                                                 |
|-------------------------------------------------------------------------|----------------|-------------------------------------------------|
| Use and Required Permits                                                |                |                                                 |
| Use                                                                     | Classification | Special Requirements                            |
| <u>Class II</u>                                                         | <u>AUP</u>     |                                                 |
| <u>Class III</u>                                                        | <u>UP(PH)</u>  |                                                 |
| Hospitals                                                               | UP(PH)         |                                                 |
| Hotels, Residential, including<br>Single Room Occupancy (SRO)<br>Hotels | UP(PH)         | Subject to Section <a href="#">23E.68.060.F</a> |
| Libraries                                                               | UP(PH)         |                                                 |
| Nursing Homes                                                           | UP(PH)         |                                                 |
| Parks and Playgrounds                                                   | ZC             |                                                 |
| Public Safety and Emergency<br>Services                                 | UP(PH)         |                                                 |
| Religious Assembly Uses                                                 | UP(PH)         |                                                 |
| Schools, Public or Private                                              | UP(PH)         |                                                 |
| Senior Congregate Housing                                               |                | Change of use of an existing dwelling unit      |
| Six or fewer people                                                     | ZC             |                                                 |
| Seven or more persons                                                   | AUP            |                                                 |
| New Construction                                                        | UP(PH)         | Subject to Section <a href="#">23E.68.070</a>   |

Section 22. That the “Residential and Related Uses” section of Table 23E.84.030 in Chapter 23E.84 Section 23E.84.030 of the Berkeley Municipal Code is amended to read as follows:

### 23E.84.030 Uses Permitted

| Table 23E.84.030                                                                               |                                                              |                                                                                                                                                             |
|------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                                       |                                                              |                                                                                                                                                             |
| Uses                                                                                           | Permit Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any)                                                                                                                               |
| Residential and Related Uses                                                                   |                                                              |                                                                                                                                                             |
| Accessory Dwelling Unit in compliance with Section <u>23C.24.050</u>                           | ZC                                                           |                                                                                                                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u> | AUP                                                          | Subject to making applicable findings in Section <u>23C.24.070</u>                                                                                          |
| Additions, Major Residential                                                                   | AUP                                                          | See Definition in Sub-title <u>23F</u> . Subject to finding required under <u>23E.84.090.L</u> ; see limitations on location in Section <u>23E.84.060.G</u> |
| Short-Term Rental                                                                              | ZC                                                           | Subject to requirements of Chapter <u>23C.22</u>                                                                                                            |
| Child Care Centers                                                                             | UP(PH)                                                       | Subject to the findings in Section <u>23E.84.090.H</u>                                                                                                      |
| Child Care; Family Daycare Home (Small or Large)                                               | ZC                                                           |                                                                                                                                                             |
| Clubs, Lodges                                                                                  | UP(PH)                                                       |                                                                                                                                                             |
| Community Care Facilities/Homes (Changes of Use)                                               | ZC                                                           | Subject to parking requirements; see Section <u>23E.84.080.B</u>                                                                                            |
| Community Centers                                                                              | UP(PH)                                                       |                                                                                                                                                             |
| Dwelling Units                                                                                 |                                                              | See limitation on location in Section <u>23E.84.060.G</u> . Subject to development                                                                          |

| Table 23E.84.030                                               |                                                              |                                                                                                |
|----------------------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| Use and Required Permits                                       |                                                              |                                                                                                |
| Uses                                                           | Permit Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any)                                                                  |
|                                                                |                                                              | standards of Section <u>23E.84.070</u> and parking requirements in Section <u>23E.84.080.B</u> |
| 1 – 4 Units                                                    | AUP                                                          |                                                                                                |
| 5+ Units                                                       | UP(PH)                                                       |                                                                                                |
| Group Living Accommodations, subject to R-3 District Standards | UP(PH)                                                       | See limitations on location in Section <u>23E.84.060.G</u>                                     |
| Home Occupations                                               |                                                              | <u>Subject to the requirements of Chapter 23C.16</u>                                           |
| <u>Low Impact Class I</u>                                      | ZC                                                           | <u>If the requirements of Section 23C.16.020 are met</u>                                       |
| <u>Moderate Impact, teaching-related Class II</u>              | AUP                                                          | <u>Subject to the requirements of Section 23C.16.030.A</u>                                     |
| <u>Moderate Impact Class III</u>                               | UP(PH)                                                       | <u>Subject to the requirements of Section 23C.16.030.B</u>                                     |
| Hospitals                                                      | Prohibited                                                   |                                                                                                |
| Hotels, Residential                                            | Prohibited                                                   |                                                                                                |
| Hot Tubs, Jacuzzis, Spas                                       | AUP                                                          | See Section <u>23D.08.060.C</u>                                                                |
| Libraries                                                      | UP(PH)                                                       | Subject to additional parking requirements; see Section <u>23E.84.080.B</u>                    |
| Nursing Homes                                                  | UP(PH)                                                       | Subject to additional parking requirements; see Section <u>23E.84.080.B</u>                    |

| <b>Table 23E.84.030</b>                                                                        |                                                                     |                                                                                                                                            |
|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                |                                                                     |                                                                                                                                            |
| <b>Uses</b>                                                                                    | <b>Permit Required to Establish, Expand or Change Use (sq. ft.)</b> | <b>Special Requirements (if any)</b>                                                                                                       |
| Parks, Playgrounds, and outdoor recreation facilities                                          | UP(PH)                                                              | If the park, playground, or outdoor recreation facility is likely to be used by children, subject to the finding under <u>23E.84.090.H</u> |
| Public Safety and Emergency Services                                                           | UP(PH)                                                              |                                                                                                                                            |
| Public Utilities Substations, Buildings, Tanks                                                 | UP(PH)                                                              |                                                                                                                                            |
| Religious Assembly Uses                                                                        | UP(PH)                                                              |                                                                                                                                            |
| Schools, Public or Private and Other Educational Institutions                                  | UP(PH)                                                              | Subject to the findings in Section <u>23E.84.090.H</u>                                                                                     |
| Senior Congregate Housing<br>Six or fewer persons<br>Seven or more persons<br>New Construction | ZC<br>AUP<br>UP(PH)                                                 | Changes of use from an existing dwelling unit                                                                                              |
| Accessory Buildings and Structures with Urban Agriculture                                      | ZC                                                                  | Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>                               |

Section 23. 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.



Linda Maio  
District 1

CONSENT CALENDAR  
December 6, 2011

To: Honorable Mayor and Members of the City Council  
From: Councilmember Linda Maio  
Subject: Classify Home Occupation Activities Receiving Five or Fewer Visits as Moderate Impact Home Operation

RECOMMENDATION

Refer to the City Manager that the zoning code for Moderate Impact Home Operation (Moderate Impact HO) be amended to include home occupation activities receiving five or fewer visits weekly, requiring an AUP rather than a Use Permit with public hearing.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

Years ago, the City changed the regulations to allow teaching, up to four students at a time, with a Moderate Impact HO, which is an AUP, rather than a Use Permit with public hearing. Zoning Code section 23C.16.030 reads as follows, and is applicable to home occupation activities receiving five or fewer visits weekly:

**23C.16.030 Moderate Impact Home Occupations Subject to Use Permit**

A. A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

1. Such Home Occupations must:
  - a. Be conducted entirely within the dwelling unit or group living accommodation room;
  - b. Operate within the hours of 10 a.m. and 10 p.m.; and
  - c. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;
2. Such home occupations may not:

- a. Involve more than four students at a time;
- b. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;
- c. Involve hazardous materials, or processes; or
- d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.

**B. All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections [23C.16.020.B.1](#) and [23C.16.020.B.2](#), may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.**

Given that we permit 4 students at a time, which could amount to many more per day, enabling 5 visits or fewer per day with an HO designation, for other home occupation visitors seems eminently reasonable.

CONTACT PERSON

Linda Maio

District 1

(510) 981-7110



Planning Commission

1                   **DRAFT MINUTES OF THE SPECIAL PLANNING COMMISSION MEETING**  
2                                           **September 16, 2020**

3 The meeting was called to order at 7:03 p.m.

4 **Location:** Virtual meeting via Zoom

5 **1. ROLL CALL:**

6 **Commissioners Present:** Benjamin Beach, Robb Kapla, Shane Krpata, Mary Kay Lacey,  
7 Steve Martinot, Christine Schildt, Jeff Vincent (arrived at 7:20), Brad Wiblin, and Rob Wrenn.

8 **Commissioners Absent:** None.

9 **Staff Present:** Secretary Alene Pearson, Katrina Lapira, Paola Boylan, Alisa Shen, and  
10 Jordan Klein.

11 **2. ORDER OF AGENDA:** No changes.

12 **3. PUBLIC COMMENT PERIOD:** 0

13 **4. PLANNING STAFF REPORT:**

- 14
- 15 • September 23 – Special Planning Commission Meeting cancelled
  - 16 • September 30 – Special Planning Commission Meeting to continue public hearing on the  
17 Draft Adeline Corridor Plan, if necessary

18 **Information Items:**

- 19
- 20 • None

21 **Communications:**

- 22
- 23 • September 3 – Staff, Meeting Updates
  - 24 • September 3 – Carr, Southside Plan

25 **Late Communications:** *See agenda for links.*

- 26
- 27 • Supplemental Packet One
  - 28 • Supplemental Packet Two
  - 28 • Supplemental Packet Three (Read aloud at the meeting)

29 **5. CHAIR REPORT:**

- 30 • Mention of the climate change/ acknowledging the impacts of climate change especially
- 31 on communities of color

32

33 **6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the

34 items below, additional matters may be reported at the meeting.

- 35
- 36 • None

37 **7. APPROVAL OF MINUTES:**

38 Motion/Second/Carried (Wiblin/Martinot) to approve the Planning Commission Meeting

39 Minutes from September 2, 2020.

40

41 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None.

42 Abstain: None. Absent: None. (9-0-0-0)

43

44 **FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:**

- 45 • None

46 **AGENDA ITEMS**

47 **9. Action:** *Public Hearing: Home Occupations*

48 Staff discussed the proposed amendments to the Home Occupations ordinance, which focus on

49 modifications to enforcement protocols and updating definitions and findings, customer visits,

50 and shipping and receiving. The Planning Commission discussed levels of discretionary permits

51 related third- party shipping and receiving practices with regard to the potential impact to

52 residential neighborhood circulation.

53 **Public Comments: 2**

54 Motion/Second/Carried (Schildt/Krpata) to adopt staff’s recommendation with amendments

55 to lines 272 (removal of “receiving”) and lines 72 / 73 (addition of language that protects

56 bicycle access within the vicinity of the home occupation).

57

58 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes:

59 None. Abstain: None. Absent: None. (9-0-0-0)

61 Motion/Second/Carried (Kapla/Wrenn) to close the public hearing at 7:59pm.

62

63 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes:

64 None. Abstain: None. Absent: None. (9-0-0-0)



67

68 **10. Action:** *Public Hearing: DRAFT Adeline Corridor Plan*

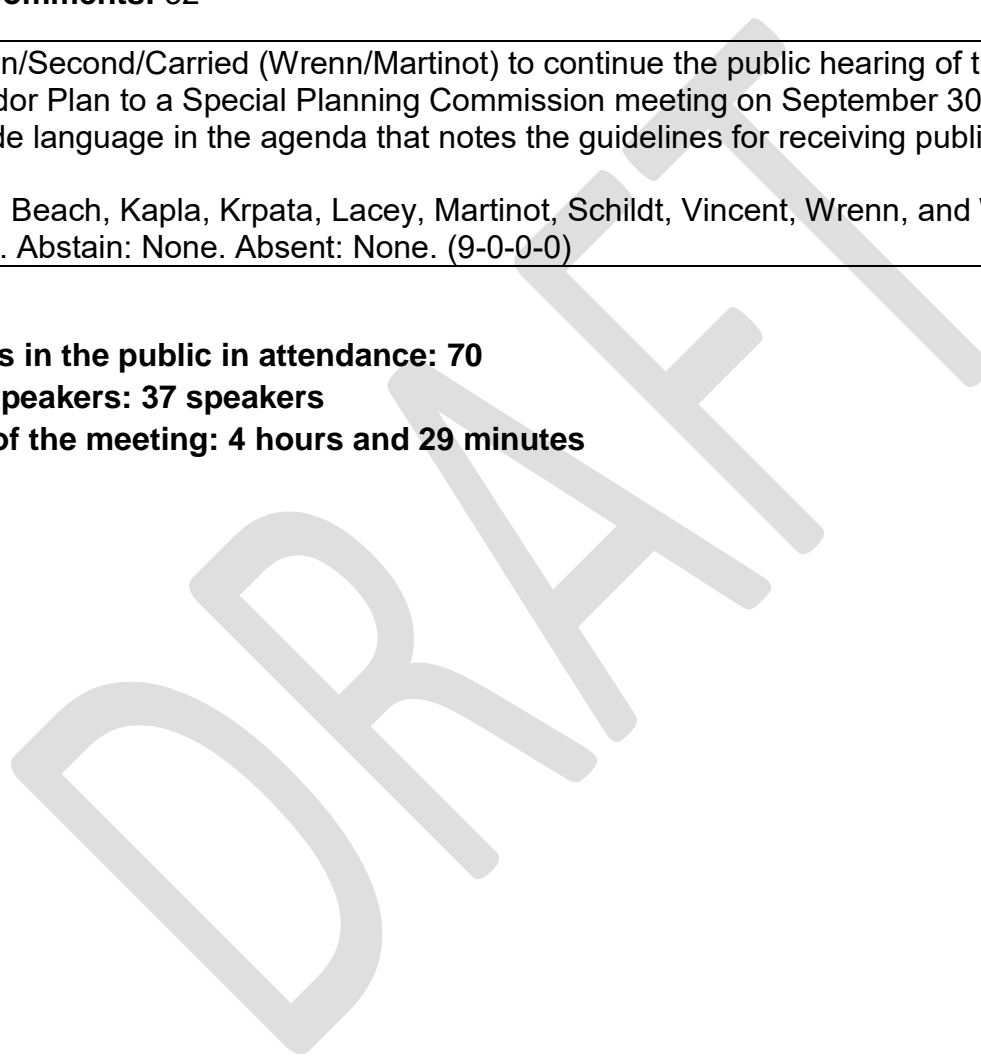
69 Related to the draft plan, staff provided background information on the planning process, an  
70 overview of the different chapters within the plan, noting stated goals and policies, and reviewed  
71 related documents under review. After staff’s presentation, the Planning Commission received  
72 public comment.

73 **Public Comments: 32**

74 Motion/Second/Carried (Wrenn/Martinot) to continue the public hearing of the Draft Adeline  
75 Corridor Plan to a Special Planning Commission meeting on September 30, 2020 and to  
76 include language in the agenda that notes the guidelines for receiving public comment.  
77  
78 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes:  
79 None. Abstain: None. Absent: None. (9-0-0-0)

80

- 81 **Members in the public in attendance: 70**
- 82 **Public Speakers: 37 speakers**
- 83 **Length of the meeting: 4 hours and 29 minutes**





**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL  
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

**Amendments to the Home Occupations Ordinance**

The Department of Planning and Development is proposing to amend the Home Occupations Ordinance to reduce levels of discretion for Moderate Impact Home Occupations and streamline the permitting process for all Home Occupations.

The recommended Zoning Ordinance amendments affect the following Berkeley Municipal Code (BMC) Chapters: 23C.16, 23D.16, 23D.20, 23D.24, 23D.28, 23D.32, 23D.36, 23D.40, 23D.44, 23D.48, 23D.52, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, 23E.84, and 23F.04

The hearing will be held on, DECEMBER 15, 2020 at 6:00 p.m. A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **December 3, 2020. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Paola Boylan, Assistant Planner, Department of Planning and Development at [pboylan@cityofberkeley.info](mailto:pboylan@cityofberkeley.info).

Written comments should be mailed to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to [council@cityofberkeley.info](mailto:council@cityofberkeley.info) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

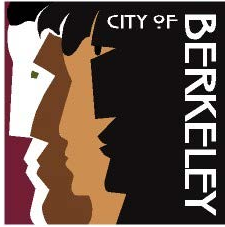
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** December 4, 2020 – The Berkeley Voice  
BMC Section 22.04.020 (Amendment — Procedures required — Planning Commission and City Council Authority) states “the council shall set a public hearing on the proposed amendment.”)

~~~~~

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 December 3, 2020.

Mark Numainville, City Clerk



Office of the City Manager

URGENT ITEM AGENDA MATERIAL

Meeting Date: November 17, 2020

Item Description: FY 2020 Year-End Results and FY 2021 First Quarter Budget Update

At the November 12, 2020 Budget & Finance Policy Committee Meeting, Staff presented a current list of the Unfunded needs and an updated list of the Council Budget Referrals.

Staff is requesting these items be added to the agenda report as additional and revised materials prior to the discussion on the report tonight.

The Council may add this item pursuant to the Brown Act under Government Code Section 54954.2(b).

The item may be added to the agenda because there is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda for this meeting being posted.

In order to add this item to the agenda, the council must vote by a 2/3 majority (six yes votes) to add the item to the agenda.

Once the item is added to the agenda (Consent or Action) it must be passed by the standard required vote threshold depending on the item (majority, two-thirds, or 7/9).

FY 21 and FY 22 Resource Needs (Not Included in Baseline)
November 2020 AAO

	FY 21	FY 22	Committee Date
Estimated FLSA Labor Settlement (ERMA Implementation) (1)			
June 1, 2018 - May 31, 2020	800,000	0	
June 1, 2020 - Go Live (Feb. 2021)	266,667	0	
Parking Funds			
FY 21 Operational Needs (2)	3,240,688	0	10/8/2020
Telegraph Channing Garage Elevator Replacement (3)	0	710,000	
Homeless Response Team	815,729	1,263,257	11/12/2020
Waterfront and Marina Security Improvements			
Security Services (7 months)	86,275	0	
Monitors (7 months)	44,189	0	
Police Budget - FY 21 (4)	5,000,000	0	11/12/2020
Cybersecurity for Telecommuting (IT)	819,000	913,800	
Projected FY 21 Building Purchases and Maintenance Fund Deficit Fund Balance	540,000	0	11/12/2020
Transfer to Paramedic Tax to Address Deficit	397,774	0	
Section 115 Trust (5)	4,000,000	4,000,000	
Fire Dept. Compressor Truck	350,000	0	
Estimated Homelessness and Housing Needs (in progress)			
Berkeley Way	0	3,023,365	
STAIR	0	2,499,525	
Dorothy Day (Shelter)	0	566,000	
Dorothy Day (Drop In)	0	182,000	
Coordinated Entry	0	1,442,426	
Outdoor Encampment	0	615,000	
YSA Tiny Homes	0	78,000	
Lifelong - Street Medicine	0	454,239	
DBA - Homeless Outreach Worker	0	40,000	
Downtown Streets Team	0	225,000	
BDIC Locker Program	0	50,000	
Reserve Replenishment	0	0	
COVID-19 Response	0	0	
Intersection Improvements at Shattuck and Berkeley Way	0	650,000	
Litigation and Settlements (6)	0	0	12/10/2020
Measure T1			
Mental Health Facility	230,000	0	
North Berkeley Senior Center	0	0	
Total Resource Needs	16,590,322	16,712,612	

(1) Estimate based on previous settlements.

(2) Based on Public Works balancing proposal, represents costs of parking enforcement program. FY 22 represents costs of Telegraph-Channing Garage elevator replacement.

(3) Preliminary cost estimates.

(4) Additional need based on three-year average of overtime costs incurred by the Police Department.

(5) Recommended annual contribution.

(6) AAO #1 allocates additional resources to address litigation and settlements for FY 21.

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
1. Safety for all: The George Floyd Community Safety Act – Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis ¹	July 14, 2020	Refer to the Budget Process \$150,000 to: a. Hire a consultant to conduct a data-driven analysis of police calls and responses to determine the quantity and proportion of these calls that can be responded to by non-police services. The third-party consultant must be hired and engaged in work within three months of the item's passage. b. Hire a consultant to conduct an analysis of the Berkeley Police Department's budget and its expenditures by call type. The third-party consultant must be hired and engaged in work within three months of the item's passage.	\$150,000		Bartlett, Mayor Arreguin, and Harrison
2. BerkDOT: Reimagining Transportation for a Racially Just Futures ²	July 14, 2020	Refer to the City Manager, the FY 2021-22 budget process, and the proposed community engagement process to reimagine public safety to pursue the creation of a Berkeley Department of Transportation (BerkDOT) to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, & infrastructure.	unknown		Robinson, Droste, Bartlett, and Mayor Arreguin
3. Support Community Refrigerators ³	September 22, 2020 (continued on October 13, 2020)	Allocate \$8,000 of the budget for the purchasing of the refrigerators.	\$8,000		Davila

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_18a_Safety_for_All_The_George_Floyd_pdf.aspx

² https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_18e_BerkDOT_Reimagining_Transportation_pdf.aspx

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-22_Item_17_Support_Community_Refrigerators.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
4. Providing our Unhoused Communities in the City of Berkeley with Potable Water and addressing Water Insecurity ⁴	September 22, 2020	Refer to City Manager to include an allocation in the upcoming AAO budget to use existing homeless services to fund Berkeley Free Clinic's program to address water insecurity among Berkeley's unhoused communities. This program will initially require \$10,000 to construct and maintain a large tank with a foot pump for dispensing water from a spout that can be used for drinking or handwashing.	\$10,000	Funded	Davila
5. Healthy Checkout Ordinance ⁵	September 22, 2020	Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program. Refer to the Sugar Sweetened Beverage Product Panel of Experts to consider recommending funding allocations, and to work with City staff to develop protocols for, implementation, education, and enforcement.	unknown		Harrison and Hahn
6. Authorize Installation of Security Cameras at the Marina and Request an Environmental Safety Assessment ⁶	October 13, 2020	Adopt the following recommendation in order to address the recent dramatic uptick in reported crime incidents at the Berkeley marina: • Request that the City Manager install security cameras and signage as expeditiously as possible as a long-term safety measure;	\$120,000	\$60,000 – PRW– General Fund carryover request \$60,000 – Marina Fund	Kesarwani and Wengraf

⁴ https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-22_Item_09_Providing_our_Unhoused_Communities.aspx

⁵ https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-22_Item_16_Healthy_Checkout_Ordinance.aspx

⁶ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Item_12_Authorize_Installation_of_Security.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
7. "Step Up Housing" Initiative: Allocation of Measure P Funds to Lease and Operate a New Permanent Supportive Housing Project at 1367 University Avenue ⁷	October 13, 2020	Adopt a resolution allocating approximately \$900,000 per year for 10 years, as well as a one-time allocation of approximately \$32,975 from Measure P transfer tax receipts to support the lease and operation of a new permanent supportive housing project for the homeless at 1367 University Avenue. This resolution is put forward out of consideration that the City Council has already approved in its FY 2020-21 budget—on June 30, 2020— an allocation of \$2.5 million for permanent housing subsidy, a portion of which is available to be spent on the 1367 University Avenue project.	\$32,975 (one-time allocation from Measure P) \$900,000/year for 10 years	Measure P	Bartlett, Kesarwani, Wengraf, and Mayor Arreguin
8. Removal of Traffic Bollards on the Intersection at Fairview and California St. ⁸	October 13, 2020	Refer to the City Manager to remove the traffic bollards at the intersection at Fairview and California St. for the following reasons: 1. To allow residents, emergency responders, street cleaning and garbage disposal services, and delivery vehicles ease of access to enter and exit Fairview Street; 2. To allow residents of the 1600 block of Fairview St. access to additional parking spots because the current capacity is inadequate; and 3. To decrease illegal dumping that has been incentivized by the traffic bollards and eliminate the harborage of junk, debris, and garbage.	unknown		Bartlett

⁷ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Item_16_Step_Up_Housing_Initiative_Allocation.aspx

⁸ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Item_17_Removal_of_Traffic_Bollards.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
9. \$50,000 to UC Theatre Concert Career Pathways Education Program ⁹	October 27, 2020	Refer to the November 2020 AAO budget process the allocation of \$50,000 to the UC Theatre Concert Career Pathways Education Program.	\$50,000		Mayor Arreguin
10. Equitable Clean Streets Budget Referral: Funding for Staff to Conduct Bi-Weekly (Once Every Two Weeks) Residential Cleaning Services ¹⁰	October 27, 2020	Refer to the November AAO budget process to allocate \$500,000 from the General Fund to require biweekly (once every two weeks) cleaning of populated encampment sites, major corridors, and encampments adjacent to residential neighborhoods throughout the City of Berkeley for approximately one year. The City should also partner with appropriate non-profit organizations to create work opportunities for homeless residents who can help City staff clean the streets on an ongoing basis	\$500,000		Bartlett
11. Convert 62nd Street between King St. and Adeline St. into a One-Way Line that exits in the direction of Adeline St. ¹¹	October 27, 2020	Refer to the City Manager to convert 62nd Street between King St. and Adeline St. into a one-way lane that exits to Adeline and blocks motorists from entering 62nd Street through Adeline Street.	unknown		Bartlett and Mayor Arreguin
12. Support for Berkeley Mutual Aid ¹²	October 27, 2020	Refer to the City Manager and to the November FY2020 AAO budget adjustment process to identify existing resources, or propose a new allocation of funds, to provide emergency financial support to Berkeley Mutual Aid (BMA) to allow the organization to continue its highly valued programs and	\$36,000 annual cost		Hahn and Mayor Arreguin

⁹ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-27_Item_18_Budget_Referral_50,000_to_UC_Theatre.aspx

¹⁰ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-27_Item_20_Equitable_Clean_Streets_Budget_Referral.aspx

¹¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-27_Item_21_Convert_62nd_Street_between_King_St.aspx

¹² https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-27_Item_23_Support_for_Berkeley_Mutual_Aid.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
		services addressing the needs of Berkeley residents sheltering-in- place during the COVID-19 health emergency. Support required for BMA to continue providing critical services to the community is \$3,000 per month, starting as soon as possible and continuing until 3 months after the COVID-19 emergency order is lifted.			
13. Security Cameras at Major Berkeley Arterial Entry and Exit Points for the City and Request an Environmental Safety Assessment at High Crime Areas of the City ¹³	November 10, 2020	In order to deter would-be perpetrators of gun violence and apprehend those engaging in gun violence, adopt the following recommendations: • Request that the City Manager install security cameras and increased lighting at appropriate arterial streets serving as entry into and exit out of the City of Berkeley in conjunction with prominently displayed signage; • Refer to the City Manager to perform an environmental safety assessment of the high crime areas specifically in South and West Berkeley; • Refer costs for security cameras and lighting to the mid-year budget process for FY 2020-21.	\$500,000 - \$1,000,000		Kesarwani and Mayor Arreguin
14. Gun Buy Back Program ¹⁴	November 10, 2020	Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) \$40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018.	\$40,000		Kesarwani, Mayor Arreguin, and Davila

¹³ https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-10_Item_12_Authorize_Installation_of_Security.aspx

¹⁴ https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-10_Item_13_Budget_Referral_to_Reinstate.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
15. Radar speed feedback sign for Wildcat Canyon Road ¹⁵	November 10, 2020	Referral to the City Manager for a solar powered radar speed feedback sign to be installed on Wildcat Canyon Road at the cost of \$20,000 to be considered during the Mid-Year Budget Process.	\$20,000		Wengraf
16. Berkeley Age Friendly Continuum ¹⁶	November 17, 2020	Refer to the FY21 Annual Appropriations Ordinance process \$20,000 for the Berkeley Age-Friendly Continuum.	\$20,000		Mayor Arreguin and Wengraf
TOTAL			\$2,886,975		

¹⁵ https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-10_Item_16_Budget_Referral_-_20,000_radar_speed.aspx

¹⁶ https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-17_Item_12_Budget_Referral_Berkeley_Age-Friendly.aspx



Office of the City Manager

ACTION CALENDAR
December 15, 2020
(Continued from November 17, 2020)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Teresa Berkeley-Simmons, Budget Manager
Subject: FY 2020 Year-End Results and FY 2021 First Quarter Budget Update

INTRODUCTION

This budget update presents the FY 2020 Year-End (Year-End) results as well as reports on the FY 2021 First Quarter. The FY 2020 Year-End budget summary covers the period starting July 1, 2019, through June 30, 2020 (FY 2020). This report also provides preliminary revenue information for the first quarter of the current fiscal year, 2021. The FY 2021 First Quarter Budget Update covers the period July 1, 2020, through September 30, 2020. The FY 2020 General Fund Year-End balance was \$40.1 million. Amounts restricted, committed, and assigned totaled \$35.6 million. Allocations to the General Fund reserves totaled \$1.75 million¹. The amount of Unassigned Excess Equity totaled \$2.75 million.

The information in this report should be reviewed in conjunction with the Amendment to the FY 2021 Annual Appropriations Ordinance (AAO) also on tonight's agenda. The AAO#1 establishes the expenditure limits by fund for FY 2021. The adopted budget is amended annually to reflect the re-appropriation of prior year funds for contractual commitments (i.e. encumbrances) as well as unencumbered carryover of unexpended funds previously authorized for one-time, non-recurring purposes. These budget modifications are presented to the Council twice a year in the form of an AAO. The first AAO is on tonight's agenda. The second and final AAO will go to Council in May 2021.

Included on tonight's agenda is the First Amendment to the FY 2021 Annual Appropriations Ordinance report (AAO#1). The information included in this Year-End report is supplemented by the detailed information included in the AAO#1. Recommendations in the AAO#1 augments the adopted General Fund budget by \$16.1 million. The \$16.15 million includes encumbrances of \$7.19 million, unencumbered carry-over requests of \$5.41 million, and adjustments of \$3.55 million.

¹ Starting in FY 2018, to achieve the City's intermediate and long-term Reserves goals, 50% of Excess Equity above the first \$1M is allocated to Reserves. The General Fund Reserve consists of the total of the Stability Reserve and the Catastrophic Reserve.

CURRENT SITUATION AND ITS EFFECTS**FY 2020 Year-End Summary**General Fund

On June 25, 2019, the City Council adopted the FY 2020 budget (Adopted Budget).² The FY 2020 adopted General Fund revenues were \$197.0 million. The actual FY 2020 year-end General Fund revenues were \$220.4 million.

Included in the FY 2020 Adopted Budget were General Fund expenditures of \$196.9 million. During the fiscal year, there were three Adjustments to the Appropriation Ordinance totaling \$33.9 million, thus the total FY 2020 General Fund adjusted expenditure budget was \$230.8 million³. At the end of FY 2020, \$7.2 million was encumbered and rolled into FY 2021 resulting in an FY 2020 year-end adjusted expenditure budget of \$223.6. Not all of the budgeted funds were expended in FY 2020, so the FY 2020 year-end actual General Fund expenditures were \$219.0 million.

Revenues

At FY 2020 year-end, actual General Fund revenues were \$220.4 million. This was \$23.4 million above the adopted budget of \$197.0 million. The largest contributors to the revenue increase were Property Transfer Tax, which exceeded the budgeted amount by \$9.6 million⁴, Measure P – Transfer Tax⁵, which exceeded the budgeted amount by \$8.0 million, and Business License Tax generated from Measure U1 – Rental Unit Business License Tax⁶, which exceeded the budgeted amount by \$4.6 million. Together, these three revenue streams generated \$22.2 million above the FY 2020 adopted revenues for the General Fund.

Details on the FY 2020 General Fund revenues can be found in Attachment 1.

Expenditures

Actual FY 2020 General Fund expenditures were \$219.0 million. This was \$22.1 million above the initial adopted budget of \$196.9 million and \$4.6 million below the adjusted budget of \$223.6 million.

The actual General Fund expenditures came in below the adjusted budget due to salary savings in many departments. FY 2020 General Fund salary savings were \$4.8 million.

² https://www.cityofberkeley.info/Clerk/City_Council/2019/06_June/Documents/2019-06-25_Item_39_FY_2020_and_FY_2021_Biennial_Budget.aspx (Items #39 & #40)

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/05_May/Documents/2020-05-12_Item_02_Amendment_FY_2020_Annual.aspx (Item #1, Exhibit A)

⁴ This amount will be reduce to \$9.2 million for the payment to the Workers Compensation Fund for the purchase of the University Avenue property

⁵ https://www.cityofberkeley.info/Clerk/Elections/Ballot_Measure_Archive_Page.aspx

⁶ Business License Tax of five or more units (U1)

In addition, there were funds for several projects that were budgeted but not completed in FY 2020. Funding allocations for ongoing projects are being carried over to FY 2021.

Details of the variances are included in Attachment 2 of this report.

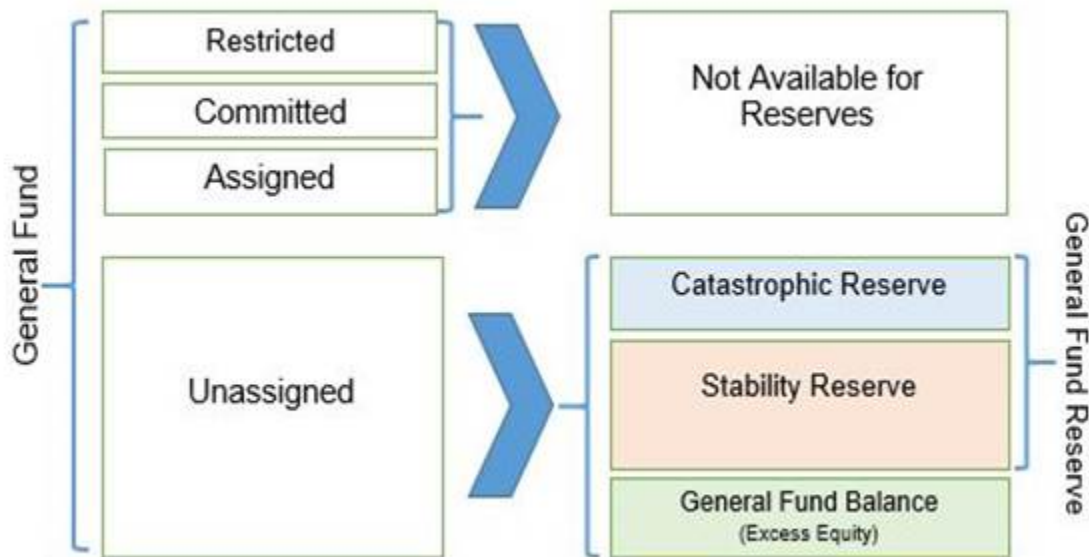
Details of the carryover requests are included in the AAO#1 on tonight's agenda.

Excess Equity

Starting in FY 2018 to achieve the City's intermediate and long-term General Fund Reserves goals, 50% of Excess Equity above the first \$1 million is allocated to General Fund Reserves. The chart below illustrates the FY 2020, \$1.75 million reserve calculation as well as the \$2.75 million calculation for the unassigned excess equity.

GENERAL FUND EXCESS EQUITY CALCULATION			
FY 2020 Beginning Balance		\$	38,777,804
FY 2020 Revenues		\$	220,364,309
FY 2020 Expenditures			(219,015,176)
Available Balance		\$	40,126,937
Less:			
Excess Property Transfer Tax Revenue*		\$	(9,188,555)
Measure U1 Fund Balance		\$	(10,017,583)
Measure P Fund Balance		\$	(9,859,779)
G. F. Encumbrances (AAO #1)		\$	(7,191,365)
G.F. Carryover & Other Adjustments (AAO #1)		\$	(8,551,265)
Total Restricted & Carryovers		\$	(35,619,992)
FY 2020 Available Excess Equity		\$	4,506,945
Allocation to Reserves		\$	1,753,473
Excess Equity Balance		\$	2,753,473
<i>*Policy can be suspended by Council to address FY 2021 funding priorities. Amount reduced by \$406,952 to repay loan to the Workers Compensation fund for the purchase of Premier Cru included in AAO#1.</i>			

The calculation for excess equity is documented in the graphic below.



The graphic above shows the relation between excess equity as well as other restricted, committed, and assigned General Fund monies.

- The restricted fund balance category includes amounts that can be spent only for the specific purposes stipulated by constitution, external resource providers, or through enabling legislation.
- The committed fund balance classification includes amounts that can be used only for the specific purposes determined by a formal action of the government's highest level of decision-making authority.
- Amounts in the assigned fund balance classification are intended to be used by the government for specific purposes but do not meet the criteria to be classified as restricted or committed.
- Unassigned fund balance is the residual classification for the government's general fund and includes all spendable amounts not contained in the other classifications

General Fund Reserve

The General Fund Reserve is distinctly separate from the General Fund Balance (Excess Equity). On January 24, 2017, the City Council established [Resolution No. 67,821](#) – N.S., a policy for the General Fund Reserves.⁷ The General Fund reserves are comprised of two elements: a Stability Reserve and a Catastrophic Reserve.

The Stability Reserve was established to mitigate the loss of service delivery and financial risks associated with unexpected revenue shortfalls during a single fiscal year or during a prolonged recessionary period. The purpose of the Stability Reserve is to provide fiscal stability in response to unexpected downturns or revenue shortfalls. Fifty-five percent of the General Fund Reserve is allocated to the Stability Reserve.

The Catastrophic Reserve was established to sustain the General Fund operations in the case of a public emergency such as a natural disaster or other catastrophic event. The Catastrophic Reserve may be used to respond to extreme onetime events, such as earthquakes, fires, floods, civil unrest, and terrorist attacks. Forty-five percent of the General Fund Reserve is allocated to the Catastrophic Reserve.

When the Council adopted the General Fund Reserve Policy the target level established for the Reserve was a minimum of 13.8% of Adopted General Fund Revenues with an Intermediate Goal of a minimum of 16.7% by the end of Fiscal Year 2020, if financially feasible. In addition, the Council adopted a Long-Term Goal of 30% of General Fund revenues, to be achieved within no more than 10 years. The Council demonstrated their commitment to these goals in the policy by assigning 50% of the General Fund Excess Equity above the first \$1 million to be allocated to Reserves. Additional Excess Equity may be allocated to Reserves by a majority vote of the Council. As part of the FY 2021 Mid-Biennial Budget Adoption, the Council approved the use of approximately \$11.4 million to help balance the General Fund deficit. The chart directly below illustrates the use of these reserves and the FY 2020 allocation of the \$1.75 million distributed to the General Fund Reserves, resulting in an actual Reserves level of 12.69%⁸.

General Fund Reserves	Stability Reserve	Catastrophic Reserve	Reserve %
Beginning Cash Balance -	\$ 20.89	\$ 16.91	
Use of Reserves to balance FY 2021 Budget	\$ (6.90)	\$ (4.50)	
FY 2020 Allocation to Reserves	\$ 0.96	\$ 0.79	
% Allocation	55%	45%	
Reserve Balance	\$ 14.95	\$ 13.20	
Reserved for Camps Fund - Tuolumne Camp		\$ (3.30)	
Ending Cash Balance - Reserves	\$ 14.95	\$ 9.90	12.69%

⁷ <https://www.cityofberkeley.info/recordsonline/export/17153922.pdf>

⁸ Based on the FY 2021 Adopted General Fund Revenues of \$195.8 million.

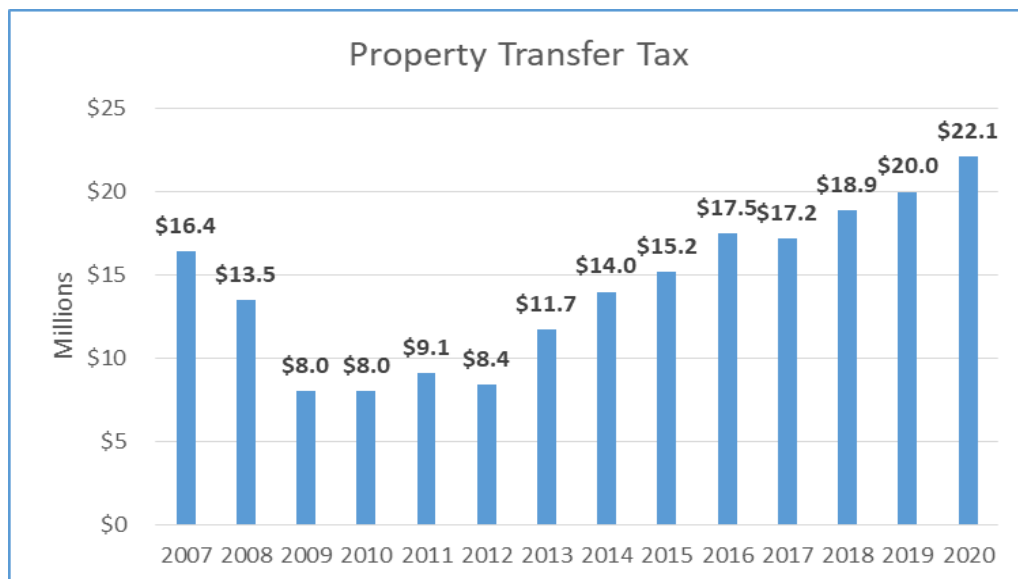
The allocations to the General Fund reserves are not included in AAO#1.

Funding for Capital Improvements

Property Transfer Tax

One of Council’s fiscal policies stipulates that the Property Transfer Tax in excess of the \$12.5 million operating baseline will be treated as one-time revenue to be used for the City’s capital infrastructure needs.

The chart below documents the historical trend of the City’s Property Transfer Tax from FY 2007 through FY 2020.



In FY 2020 the Property Transfer Tax included in the Adopted Budget was \$12.5 million. By year-end, the actual Property Transfer Tax was \$22.1 million. This is \$9.6 million over the \$12.5 million operating baseline threshold established by Council.

Of the \$9.6 million in excess Property Transfer Tax, \$406,952 is being allocated for a transfer to the Workers’ Compensation Fund to repay the loan for purchase of Premier Cru. The balance of \$9.2 million can be transferred to the Capital Improvement Fund or Council can suspend the policy to use these funds for FY 2021 funding priorities.

Measure U1 and Measure P

In November 2018 voters approved the passage of Measure P and in November 2016 the voters approved the passage of Measure U1. Measure P increased funding for general municipal purposes such as navigation centers, mental health support, rehousing and other services for the homeless, including homeless seniors and youth.

Measure U1 also makes available funding to support affordable housing. Although these are general fund revenues, the City tracks these revenue streams separately as Council has assigned these funds to homeless services and affordable housing.

The charts below summarize FY 2020 Measure U1 and Measure P revenues and expenditures.

Measure U1	
FY 2020 Beginning Measure U1 Balance	\$ 8,994,778
FY 2020 U1 Revenues	\$ 5,597,359
FY 2020 U1 Expenditures	\$ 3,574,554
FY 2020 U1 Funds for Berkeley Relief Fund	\$ 1,000,000
FY 2020 Ending U1 Fund Balance*	\$ 10,017,583
*U1 FY 2020 Ending Fund Balance will be transferred from the General Fund to new U1 Fund in FY 2021.	
Measure P	
FY 2020 Beginning Measure P Balance	\$ 2,932,313
FY 2020 Measure P Revenues	\$ 9,512,603
FY 2020 Measure P Expenditures	\$ 985,137
FY 2020 Measure P Funds for Berkeley Relief Fund	\$ 1,600,000
FY 2020 Ending Measure P Balance	\$ 9,859,779

Below are the FY 2021 preliminary calculations for Measure U1 and Measure P.

FY 2021 Beginning Measure U1 Balance	\$10,017,583
FY 2021 U1 Revenues	\$ 2,700,000
FY 2021 U1 Appropriated & Planned Expenditures	\$ 9,959,856
FY 2021 Projected Ending U1 Fund Balance	\$ 2,757,727
Measure P	
FY 2021 Beginning Measure P Balance	\$ 9,859,779
FY 2021 Measure P Revenues	\$ 4,747,414
FY 2021 Permanent Local Housing Allocation	\$ 1,000,000
FY 2021 Measure P Appropriated & Planned Expenditures	\$10,469,224
FY 2021 Ending Measure P Balance	\$ 5,137,969

A discussion on these funds information on these funds was held with the Budget & Finance Policy Committee on November 12, 2020.

Workers' Compensation Repayment for Purchase of University Avenue Property
The City appropriated \$6.7 million from the Workers' Compensation Fund for the Acquisition of Real Property at 1001 University Avenue, 1007 University Avenue, 1011 University Avenue, and 1925 Ninth Street (formerly Premier Cru) with the purpose of redeveloping the majority of the site for below market-rate housing. In addition, a portion of the property was identified for use as an interim City Council Chamber with a seating capacity of 150-200 persons. Meetings of the City Council, the Rent Board, and the Zoning Adjustments Board would utilize the interim Council Chamber.⁹

Proposed repayment to the Worker's Compensation fund was to be made with revenue generated from a combination of the Business License Tax of five or more units (U1) and excess Property Transfer Tax. The proposed repayment schedule is illustrated below.

Summary of Proposed Funds for Repayment

Total Purchase Price: \$6,650,000

Repayment Source	Principal Repayment Amount	Percent of Purchase Price
General Fund Excess Property Transfer Tax	\$ 2,000,000	30%
Measure U1 Business Tax Revenue	\$ 4,650,000	70%

Annual Repayment Amounts by Source (with interest)

Total Repayment Amount: \$6,765,575

Repayment Source	General Fund Excess Property Transfer Tax*	Measure U1 Business Tax Revenue**
FY 2017-18	406,952	946,163
FY 2018-19	406,952	946,163
FY 2019-20	406,952	946,163
FY 2020-21	406,952	946,163
FY 2021-22	406,952	946,163
Total	\$2,034,760	\$4,730,815

* Total General Fund excess Property Transfer Tax has averaged \$5.8 million over the last two years.

** Total Measure U1 Business Tax revenue is estimated at \$3 million annually.

Included in the AAO#1 on tonight's agenda is a \$406,952 General Fund allocation to repay the Workers' Compensation Fund for the portion of the property that will be used for the Council Chambers. The FY 2021 U1 funds for the \$946,163 payment were appropriated in the new Measure U1 Fund as part of the FY 2021 Mid-Biennial Budget Adoption.

⁹ https://www.cityofberkeley.info/Clerk/City_Council/2017/03_Mar/City_Council_03-28-2017_-_Regular_Meeting_Agenda.aspx (Item #32)

Other Funding Needs For Council's Consideration**Excess Transfer Occupancy Tax (Short Term Rentals)**

Included in Council's fiscal policies is the methodology to allocate General Fund revenues generated from Short Term Rentals. Starting in FY 2019, staff costs as approved by the City Council that exceed the enforcement fees and penalties shall be appropriated from the short term rental taxes collected pursuant to BMC Section 23C.22.050, Section H, with primary allocation of the rental tax to the purposes listed below:

- Two thirds (66.7%) allocated to the Affordable Housing Trust Fund.
- One third (33.3%) allocated to the Civic Arts Grant Fund.

On February 27, 2020, the Budget & Finance Policy Committee approved an item removing this policy with a positive recommendation to the Council and the following amendment:

That the Council consider the Committee's priorities for the short-term rental revenues as part of the budget process as follows:

- a. Sufficiently fund the implementation and enforcement of the short-term rental program;
- b. Keep the \$500,000 baseline for the arts grants program;
- c. Consider additional funding for the arts, including a capital grant program;
- d. Consider additional funding for affordable housing.

During the FY 2021 Mid-Biennial Budget discussions held in May, the Council discussed this item but did not take any official action on the policy.

The FY 2021 Adopted Budget has \$500,000 for the arts grants program.

Unfunded Liabilities

On April 4, 2017, there was a Council Worksession in which the City's outside actuary presented the [Projections of Future Liabilities - Options to Address Unfunded Liabilities Tied to Employee Benefits](#). The actuary provided several options for Council's consideration that would reduce the City's unfunded liabilities tied to post-employee benefits. Included in the recommendations were the following:

- Investing for the long-term to generate more earning to meet long-term funding targets,
- Increase annual contribution by approximately \$4.5 million per year and fully pre-fund the plans, and
- Establish an irrevocable supplemental trust for CalPERS to stabilize the increasing employer contribution rates.

On June 26, 2018, Council authorized the City Manager to establish an IRS Section 115 Pension Trust Fund (Trust) to be used to help pre-fund pension obligations¹⁰. On May 14, 2019, Council authorized the City Manager to execute a contract with Keenan date, Council has allocated \$9.1 million to fund the Trust, which consists of the following:

- ✓ \$4 million set aside in the PERS Savings Fund
- ✓ \$4 million allocated by Council in November 2018
- ✓ \$1.1 million discount the City saved by prepaying the FY 2019 unfunded liability payments required by CalPERS

Ongoing funding of the Trust has not yet been identified and is needed to ensure continuity of services as the City's pension contributions increase. As the Budget and Finance Policy Committee review Council's Fiscal Policies, a policy to identify ongoing funding of the Trust will be part of that discussion. No additional funding of the Trust is included in the AAO#1 on tonight's agenda. However, Council may vote to allocate additional Excess Equity to fund the Trust.

One thing that staff is paying close attention to and will increase the City's Unfunded Liabilities in the coming years will be the underperforming of CalPERS returns in FY 2020.

Council Budget Referrals Deferred for Consideration in November 2020

On June 30, 2020, Council referred the following Supplemental Budget Recommendations to the budget process for consideration in November 2020. Funding for these budget referrals is not included in AAO#1.

Council Items Referred to November 2020 AAO Process	
Contribution to Section 115 Trust Fund	\$4,000,000
Structure and Framework for an Office of Racial Equity	\$150,000
Solano Avenue Plan (OED or PW Transportation)	\$150,000
Bay Area Book Festival 2021 Funding	\$50,000
General Fund Reserves Replenishment	TBD based on available revenues

¹⁰ https://www.cityofberkeley.info/Clerk/City_Council/2018/06_June/Documents/2018-06-26_Item_19_Authorization_to_Establish_IRS.aspx

In addition, between July 14, 2020 and November 10, 2020, there were 15 Council items referred to the budget process for consideration in November 2020. These budget referrals are listed in Attachment 5.

Funding for these budget referrals is not included in AAO#1.

All Funds

On an All Funds basis, the City finished FY 2020, \$117 million (18%) under the adjusted budget. These fund balances are largely dedicated to projects, capital improvements that have not yet been completed, and personnel cost savings. For example, \$37 million is in the Department of Public Works. A sampling of the \$37 million underspending includes the following:

- State Transportation Tax (+\$2.9 million) \$1.1 million in salary savings and \$1.7 million in project funding for various street and storm drain program projects continued for completion in FY 2021.
- Capital Improvement Fund (+\$5.5 million): \$0.7 million in salary savings and \$4.3 million in project fund carryover for transportation, street, facilities project funds to FY 2021 due to project timing, including ADA Transition Plan Update, Shattuck Reconfiguration, FY 20 Street Rehab, Storm Drain and Sidewalk Repair projects.
- Measure B (+\$1.7 million) \$0.3 million in salary savings and \$1.4 million in street improvement projects project budget to carried over into FY 2021 for construction completion.
- Measure BB (+4.9 million) \$0.1 million in salary savings and \$4.7 million in sidewalk and street improvement projects project budget to be carried over into FY 2021 for completion.

In addition, the Department of Health Housing and Community Services had \$32 million in underspending primarily as a result of funds allocated to projects and programs not fully expended by the end of the fiscal year that will be carried forward to FY 2021, new positions being filled after the start of the fiscal year and vacancies throughout the department. Of the \$32 million, over \$13 million is allocated for housing development contracts to be encumbered in FY 2021, approximately \$3.1 million was accumulated in the Housing Trust Fund to be disbursed for various Housing Development projects at a later date, and almost \$1.9 million were CDBG funds committed to programs that were not expended during the fiscal year and will be carried forward. Over \$3 million are related to grant balances, including COVID allocations that will carry over into FY 2021. Over \$5 million in unspent Mental Health Service Act Funds and Mental Health Realignment funds resulted from vacancies throughout the division, new positions budgeted for the full year but not filled until later in the fiscal year and delays in implementation of new programs.

Information Technology had \$17.3 million in underspending due to FUNDS\$ Replacement Funds and IT Cost Allocation Funds not being fully spent in FY 2021. Only funds for active projects will be carried over to FY 2021.

Parks Recreation and Waterfront had \$17.1 million in underspending due to personnel savings and unexpended project funds in the Playground Camp, Parks Tax Fund, and Measure T1 Fund. Only certain unspent project funds will be carried over to FY 2021.

Finally, the Library Fund had underspending of \$5.3 million due in large part to unexpected delays to initiating construction of the Central Library Improvement Project; and although project construction began in early 2020, the Shelter-in-Place order declared in March temporarily suspended and subsequently slowed on-site activities.

Attachment 1 provides information on the FY 2020 Year-End General Fund Revenues and includes a variance analysis.

Attachment 2 provides information on unspent FY 2020 Year-End Expenditures.

Additional detailed information on unspent funds can be found in the AAO#1 on tonight's agenda.

FY 2021 First Quarter Summary

General Fund Revenues

The first quarter review generally focuses primarily on the major revenue fluctuation and changes that have occurred that might result in significant changes in future projections. However, in light of the disruptions created by the COVID-19 pandemic, Staff recognize that it would be wise, where possible to present revisions to revenue projections at this time based on the first quarter trends, and then refine them more during the mid-year update.

During the first quarter of FY 2021, General Fund revenue and transfers decreased significantly from the first quarter of FY 2020 by \$5,424,521 or 15.7%, due primarily to a decline of \$2,465,224 in Property Transfer Taxes, a decline of \$840,169 in Sales Taxes, a decline of \$1,717,910 in Transient Occupancy Taxes (TOT), a decline of \$517,575 in Parking Fines, a decline of \$676,108 in Ambulance Fees, and a decline of \$460,913 in Interest Income. These declines were partially offset by an increase of \$480,961 in Other Income and an increase in Transfers of \$3,115,969.

For additional information on the First Quarter General Fund Revenues please see Attachment 3.

General Fund Expenditures

General Fund expenditures are currently tracking close to within budget as departments tend to encumber funds purchase orders for the entire year in the first few months of the

year. Staff will continue to monitor the budget and report back at mid-year on the impacts of the key challenges discussed earlier in this report.

Attachment 4 provides additional information on the FY 2021 First Quarter Expenditures by department and includes a variance analysis

Next Steps

Staff will present second-quarter revenue and expenditure projections at the FY 2021 Mid-Year Update and the Projection of Future Liabilities Report in February 2021.

ENVIRONMENTAL SUSTAINABILITY

Actions included in the budget will be developed and implemented in a manner that is consistent with the City's environmental sustainability goals and requirements.

CONTACT PERSON

Teresa Berkeley-Simmons, Budget Manager, City Manager's Office, 981-7000

Henry Oyekanmi, Finance Director, Department of Finance, 981-7300

Rama Murty, Senior Management Analyst, City Manager's Office, 981-7000

Attachments:

- 1: FY 2020 Year End General Fund Revenues
- 2: FY 2020 Year End General Fund and All Funds Expenditures
3. FY 2021 1st Quarter General Fund Revenues
4. FY 2021 1st Quarter General Fund and All Funds Expenditures
5. Summary of Council Referrals to the Budget Process

General Fund Revenue for FY 2020 and Comparison with FY 2019

Revenue Categories	FY 2020				FY 2019				Comparison FY20 vs FY 19	
	Adopted	Actual	Variance	% Received	Adopted	Actual	Variance	% Received	Amount	%
	(a)	(b)	c=(b) - (a)	(d) = (b)/(a)	(e)	(f)	g=(f) - (e)	(h) = (f)/(g)	(i) = (b) - (f)	(j) = (i)/(f)
Secured Property	\$63,199,622	\$63,192,678	(\$6,944)	99.99%	\$57,966,998	\$59,178,773	\$1,211,775	102.09%	4,013,905	6.78%
Redemptions -Regular	668,140	580,941	(87,199)	86.95%	668,140	590,395	(77,745)	88.36%	(9,454)	-1.60%
Supplemental Taxes	1,400,000	2,334,597	934,597	166.76%	1,400,000	2,174,903	774,903	155.35%	159,694	7.34%
Unsecured Property Taxes	2,500,000	3,164,168	664,168	126.57%	2,500,000	2,878,275	378,275	115.13%	285,893	9.93%
Property Transfer Tax	12,500,000	12,500,000	(0)	100.00%	12,500,000	12,500,000	0	100.00%	(0)	0.00%
Property Transfer Tax-Measure P	1,509,218	9,512,603	8,003,385	630.30%		2,932,313	2,932,313		6,580,290	224.41%
Sales Taxes	18,238,000	17,557,539	(680,461)	96.27%	18,140,977	18,663,550	522,573	102.88%	(1,106,011)	-5.93%
Soda Taxes	1,459,057	1,331,313	(127,744)	91.24%	1,500,000	1,547,349	47,349	103.16%	(216,036)	-13.96%
Utility Users Taxes	15,000,000	13,475,915	(1,524,085)	89.84%	15,000,000	13,973,744	(1,026,256)	93.16%	(497,829)	-3.56%
Transient Occupancy Taxes	7,800,000	6,387,495	(1,412,505)	81.89%	7,800,000	7,995,188	195,188	102.50%	(1,607,693)	-20.11%
Short-term Rentals	1,020,000	1,280,317	260,317	125.52%	840,000	1,830,983	990,983	217.97%	(550,666)	-30.07%
Business License Tax	19,284,000	20,863,685	1,579,685	108.19%	18,500,000	19,207,784	707,784	103.83%	1,655,902	8.62%
Recreational Cannabis	510,000	1,300,887	790,887	255.08%	500,000	1,168,794	668,794	233.76%	132,093	11.30%
Medicinal Cannabis	300,000	145,768	(154,232)	48.59%	700,000	641,019	(58,981)	91.57%	(495,252)	-77.26%
U1 Revenues	1,000,000	5,597,359	4,597,359	559.74%	1,000,000	5,828,443	4,828,443	582.84%	(231,084)	-3.96%
Other Taxes	1,116,860	1,536,731	419,871	137.59%	1,049,800	1,688,101	638,301	160.80%	(151,370)	-8.97%
Vehicle In-Lieu Taxes	13,333,826	13,356,044	22,218	100.17%	12,381,128	12,540,784	159,656	101.29%	815,260	6.50%
Parking Fines-Regular Collections	6,600,000	3,891,910	(2,708,090)	58.97%	5,818,123	6,002,211	184,088	103.16%	(2,110,301)	-35.16%
Parking Fines-Booting Collections	200,000	8,685	(191,315)	4.34%	200,000	211,913	11,913	105.96%	(203,228)	-95.90%
Moving Violations	190,000	209,894	19,894	110.47%	235,000	177,824	(57,176)	75.67%	(32,070)	-13.03%
Ambulance Fees	4,200,000	4,996,193	796,193	118.96%	4,613,194	4,424,808	(188,386)	95.92%	571,385	12.91%
Interest Income	3,500,000	6,702,564	3,202,564	191.50%	2,500,000	4,334,404	1,834,404	173.38%	2,368,160	54.64%
Franchise Fees	2,068,928	1,839,102	(229,826)	88.89%	1,984,643	1,821,316	(163,327)	91.77%	17,786	0.98%
Other Revenue	8,044,544	8,032,193	(12,351)	99.85%	7,620,152	8,116,908	496,756	106.52%	(84,715)	-1.04%
IDC Reimbursement	6,100,000	5,489,783	(610,217)	90.00%	4,952,317	5,223,725	271,408	105.48%	266,058	5.09%
Transfers	5,266,688	5,480,439	213,751	104.06%	4,385,568	5,356,132	970,564	122.13%	124,307	2.32%
Total Undesignated Revenue	\$197,008,883	\$210,768,802	\$13,759,919		\$184,756,040	\$201,009,639	\$16,253,599		\$9,759,163	
Prop. Transfer Taxes for capital improvements	4,500,000	9,595,507	5,095,507		4,500,000	7,452,981	2,952,981		2,142,526	
Total Designated Revenue and Transfers:	\$201,508,883	\$220,364,309	\$18,855,426	109.36%	\$189,256,040	\$208,462,620	\$19,206,580	110.15%	\$11,901,689	5.71%

Notes: (1) This statement is presented on a budgetary basis (i.e., cash).
 (2) Current vendor no longer breaks out Regular and Booting Parking Fines Collections

The General Fund revenues were on track to finish FY 2020 slightly below the growth rate experienced through the first half of FY 2020 (15.93%). However, once COVID-19 pandemic hit and the shelter in place order was implemented, the economic activity that drives some of the General Fund revenue streams caused a decline in the growth rate for the second half of FY 2020.

Property Tax Revenue Streams:

Because of the way that property taxes are assessed, due and paid, property taxes were only mildly impacted or not impacted at all. For example:

	Secured Taxes	Unsecured Taxes
Lien date	January 1	January 1
Levy dates	July 1	July 1
Due dates:		July 1
50%	November 1	
50%	February 1	
Delinquent as of:		August 1
For November	December 10	
For February	April 10	

Revenue Streams Reliant Upon Business and Other Activity:

As a result of the Governor’s shelter in place orders to close all non-essential businesses, almost all business-related activity came to a halt and resulted in significant negative impact on the following revenue streams:

- Transient Occupancy Taxes (TOT)- Had growth of 3.51% at mid-year;
- Property Transfer Taxes-Had growth of 26.3% at mid-year;
- Parking fines-Had negative growth of 12.81% at mid-year;
- Sales Taxes- Had growth of .33% at mid-year;
- Utility Users Taxes- Had growth of .32% at mid-year;
- Other income- Had growth of 4.68% at mid-year; and,
- Ambulance fees-Had growth of 12.48% at mid-year.

During FY 2020, General Fund revenue increased from FY 2019 by \$11,901,689 or 5.71%, due primarily to an increase in Secured Property Taxes (+\$4,013,905), an increase in Measure P Property Transfer Tax (+6,580,290), an increase in Property Transfer Taxes (+2,142,526), and an increase in Interest Income (+2,368,160).

The annual review focuses primarily on the major revenue fluctuation and changes that have occurred that might result in significant changes in future projections.

Secured Property Tax (+\$4,013,905 more than FY 2019 Actual)

During FY 2020, Secured Property Tax revenues totaled \$63,192,678, which was \$4,013,905 or 6.78% more than the \$59,178,773 received for FY 2019. This was consistent with the County's FY 2020 Certification of Assessed Valuation growth of 6.60%.

Property Transfer Tax (+\$2,142,526 more than FY 2019 Actual)

During FY 2020, Property Transfer Tax totaled \$22,095,507, which was \$2,142,526 or 10.74% more than the \$19,952,981 received during FY 2019. The primary reason for the \$2,142,526 increase in Property Transfer Tax was the sale of a group of properties totaling \$87.5 million in the first quarter of FY 2020 that resulted in Property Transfer Tax of \$1,312,500.

In addition, \$9,512,603 in Measure P taxes (tax took effect December 21, 2018) was collected during FY 2020 compared to \$2,932,313 collected during FY 2019. The primary reason for the increase is the same as that for Property Transfer Tax above.

Sales Tax (-\$1,106,010 less than FY 2019 Actual)

For FY 2020, Sales Tax revenue totaled \$17,557,540, which is \$1,106,010 or 5.93% less than the \$18,663,550 received during FY 2019. Part of the decline was due to the Governor's shelter in place orders in March 2020. In addition, the FY 2019 total included \$555,600 in revenues that should have been received in FY 2018. This resulted when the California Department of Tax and Fee Administration (Formerly State Board of Equalization) changed the allocations from three advances and a cleanup to two advances and a cleanup; they underpaid Berkeley Sales Tax revenue in the first quarter of FY 2018 by \$555,600 and paid it during FY 2019.

Utility Users Taxes (- \$497,829 less than FY 2019 Actual)

Utility Users Taxes revenue for FY 2020 totaled \$13,475,915, which is \$497,829 or 3.56% less than the \$13,973,744 received during FY 2019. This decline of \$497,829 resulted from changes in the following sectors: Telephone (-\$519,353; Cable (-\$109,812); Cellular (+\$23,152); Electric (+\$41,302; and Gas (+\$66,883).

Transient Occupancy Tax (-\$1,607,693 less than FY 2019 Actual)

Transient Occupancy Tax (TOT) revenue for FY 2020 totaled \$6,387,495 which is \$1,607,693 or 20.11% less than the \$7,995,188 received during FY 2019. The decrease in FY 2020 TOT revenue is attributable to a substantial decline in room occupancy due to the Governor's shelter in place orders. For example, the shelter in place resulted in a decline of \$1,422,163 or 22.6% in TOT revenue at the five largest hotels in Berkeley during FY 2020, versus a 4.31% increase during FY 2019.

Business License Taxes (+\$1,655,902 more than FY 2019 Actual)

Business license Taxes (BLT) revenue for FY 2020 totaled \$20,863,685, which is \$1,655,902 or 8.62% more than the \$19,207,784 received during FY 2019. Categories with significant increases were the following: Professional/semi-professional (+\$413,395); Business personal repair service (+\$146,659); Construction/contractor (+\$58,562); Retail (+\$35,864); and Administrative Headquarters (+\$49,929).

Vehicle In Lieu Taxes (+\$815,260 more than FY 2019 Actual)

Vehicle in Lieu Taxes (VLF) revenue for FY 2020 totaled \$13,356,044, which is \$815,260 or 6.5% more than the \$12,540,784 received during FY 2019. This was consistent with the County's FY 2020 Certification of Assessed Valuation growth of 6.60%.

Parking Fines (-\$2,110,301 less than FY 2019 Actual)

Parking Fines revenue for FY 2020 totaled \$3,891,910 which is \$2,110,301 or 35.16% less than the \$6,002,211 received during FY 2019, due to Parking Enforcement stopping ticket writing as a result of the Governor's shelter in place orders, due to the pandemic.

Ambulance Fees (+\$571,385 more than FY 2019 Actual)

Ambulance Fees revenue for FY 2020 totaled \$4,996,193 which is \$571,385 or 12.91% more than the \$4,424,808 received during FY 2019. This increase was due to more aggressive collection efforts and new Medi-Cal QAF (Quality Assurance Fee) receipts of approximately \$617,452 in FY 2020 versus \$2,685 in FY 2019.

Interest Income (+\$2,368,160 more than FY 2019 Actual)

For FY 2020, interest income totaled \$6,702,564 which is \$2,368,160 or 54.64% more than the total of \$4,334,404 received during FY 2019. This increase is primarily attributable to (1) an increase in net interest income from long-term investments (after allocations to other funds) of \$1,874,173 in FY 2020; (2) an increase of \$376,697 in interest income on cash balances at the custodial bank in FY 2020. In FY 2019, such interest income was netted against the bank fees charged; and, (3) a FY 2019 adjustment to allocate interest to Measure M that was earned, but not allocated in FY 2014 through FY 2018 (\$352,189)

It should be noted that on March 15, 2020, the Federal Reserve Board voted to cut interest rates back to zero, in order to mitigate the negative impact of the COVID-19 pandemic on the US economy. As a result, interest income in FY 2021 and beyond will be significantly lower than the total in FY 2020.

Indirect Cost Reimbursements (+\$266,058 more than FY 2019 Actual)

IDC Reimbursement for FY 2020 totaled \$5,489,783 which is \$266,058 or 5.09% more than the \$5,223,725 received during FY 2019. This is primarily attributable to an increase in direct salaries and wages of \$1,279,724 or 5.0% for departments/divisions that are charged indirect costs; and, there was no change in the indirect cost rate charged. IDC Reimbursement increases result from increases in the indirect cost allocation base (i.e., total direct salaries and wages in the fund), an increase in the indirect cost rate or both.

FY 2020 Year End Expenditures

General Fund

Department	FY 2020 Adopted	FY 2020 Adjusted	Year-End Actuals	Balance	Percent Expended
Mayor & Council	2,398,876	2,616,304	2,525,920	90,384	97%
Auditor	2,625,103	2,652,154	2,432,086	220,068	92%
Rent Board	0	602,015	579,015	23,000	96%
City Manager	11,037,283	14,441,511	14,205,540	235,971	98%
City Attorney	2,516,581	2,945,069	2,217,772	727,297	75%
City Clerk	3,004,901	3,173,477	2,069,740	1,103,737	65%
Finance	6,797,353	7,722,946	6,596,629	1,126,317	85%
Human Resources	2,329,292	3,301,578	2,270,953	1,030,625	69%
Information Technology	213,210	1,988,228	1,396,627	591,601	70%
Health, Housing & Community Services	17,553,283	29,145,113	27,809,295	1,335,818	95%
Parks, Recreation and Waterfront	7,105,343	7,724,377	6,987,223	737,154	90%
Planning	2,426,051	3,711,249	2,540,320	1,170,929	68%
Public Works	4,404,030	5,861,827	4,729,001	1,132,826	81%
Police	70,622,557	70,973,523	75,754,210	(4,780,687)	107%
Fire	36,019,089	38,158,291	38,848,003	(689,712)	102%
Non-Departmental	27,860,897	28,607,285	28,052,841	554,444	98%
Total	196,913,849	223,624,947	219,015,176	4,609,771	98%

All Funds (including General Fund)

Department	FY 2020 Adopted	FY 2020 Adjusted	Year-End Actuals	Balance	Percent Expended
Mayor & Council	2,398,876	2,616,304	2,525,920	90,384	97%
Auditor	2,714,111	2,741,162	2,527,125	214,037	92%
Rent Board	5,334,943	5,973,313	5,755,222	218,091	96%
City Manager	14,548,957	19,748,713	17,831,838	1,916,875	90%
Library	26,114,585	24,199,430	18,865,464	5,333,966	78%
City Attorney	4,594,533	5,949,268	4,555,976	1,393,292	77%
City Clerk	3,004,901	3,173,477	2,069,740	1,103,737	65%
Finance	8,766,934	9,756,916	8,362,334	1,394,582	86%
Human Resources	4,240,103	5,205,076	3,924,687	1,280,389	75%
Information Technology	19,404,413	32,841,001	15,495,905	17,345,096	47%
Health, Housing & Community Services	54,597,950	92,609,169	60,597,079	32,012,090	65%
Parks, Recreation and Waterfront	46,600,585	60,678,313	43,593,489	17,084,824	72%
Planning	24,506,913	25,346,313	21,595,399	3,750,914	85%
Public Works	133,015,850	177,037,839	140,089,888	36,947,951	79%
Police	74,979,834	76,161,558	79,762,712	(3,601,154)	105%
Fire	44,379,144	47,193,247	48,213,947	(1,020,700)	102%
Non-Departmental	56,654,177	59,049,867	57,550,067	1,499,800	97%
Total	525,856,809	650,280,966	533,316,793	116,964,173	82%

FY 2020 Year-End Expenditures Variance Analysis**Significant General Fund Variances**

- City Manager's Office (+235,971) was due to salary savings from vacant positions and underspending in non-personnel funds. Non-personnel funds not spent in FY 2020 were \$200,000 for the Berkeley Contracting Availability Study and \$100,000 for a Citywide Risk Assessment. The funds for the Citywide Risk Assessment were deferred to help with balancing the FY 2020 budget and will not be carried over to FY 2021. The funds for the Berkeley Contracting Availability Study will be carried over to FY 2021.
- City Attorney (+783,082) was due to salary savings from vacant positions in FY 2020.
- City Clerk (+1,278,677) was due to funds for regular elections, the March 2020 primary election, and funds for the Fair Election Campaign Fund not being fully spent in FY 2020. FY 2020 funds for the regular elections will be carried over to FY 2021 to pay for the November elections. The Fair Election Campaign Funds will be carried over and transferred from the General Fund to the newly created Fair Election Campaign Fund created for FY 2021.
- Finance (+2,106,684) was due to salary savings from vacant positions and funds for banking services, IT consultants, and other professional services not being fully spent in FY 2020.
- Human Resources (+1,091,293) was due to salary savings from vacant positions and funds for labor negotiations and a compensation and classification study not being fully spent in FY 2020. The funds for labor negotiations and the compensation and classification study will be carried over to FY 2021.
- Health, Housing and Community Services (\$1,335,818) was due to salary savings from vacant positions and underspending of non-personnel funds.
- Parks, Recreation & Waterfront (\$737,154) was due to career and hourly salary savings and non-personnel savings. The hourly salary savings was a result of the spring recreation programs being canceled due to COVID-19 and the Shelter in Place order.
- Planning (\$1,170,929) was due to salary savings and allocations approved by Council that were not fully spent in FY 2020. Allocations that were deferred for FY 2020 and will not be carried over are the following:

CEQA student housing	\$ 45,000
Density Standards	\$ 8,000
Southside EIR	\$ 58,000
Missing Middle RFP Study	\$ 100,000
BART Station Env Planning	\$ 50,000
Landmarks Pres Grants	\$ 20,000
BART Station Env Planning (ph 3 deferral)	\$ 40,000

- Public Works (\$1,132,826) was due to salary savings and non-personnel funds for Funding Illegal Dumping Component of “Clean & Livable Commons Initiative” (\$200,000), Measure P allocated funds for the Downtown Streets Team (\$225,000), and funds for a sweeper (\$300,000) not being spent in FY 2020. The funds for these items will be carried over to FY 2021.
- Police (-\$4,780,687) was due to total overtime expenditures being \$5,254,848 over budget. The overage in overtime expenditures was due to many factors including maintaining adequate operational staffing levels in all of the units requiring 24-hour operations; staff being called in for special operations callouts and responses; longer duration events and demonstrations which required substantial departmental staffing and resources; and increased requests for reimbursable services. Salary and benefit savings resulted in the total personnel budget being over budget by \$4,714,175. The non-personnel budget was over budget by \$66,512, which was due to higher costs for vehicle maintenance and replacement. These costs were offset by savings in other non-personnel categories in FY 2020.
- Fire (-\$689,712) was primarily the result of the personnel budget being over budget by -\$725,176. Mutual Aid Overtime caused some of the personnel overage and the City has been reimbursed \$266,483.55 for the assistance provided. Non-personnel savings of \$35,464 helped to reduce the total overage down to the final -\$689,712 figure.

Significant All Funds Variances

- Information Technology (+\$17,345,096) was due to FUND\$ Replacement Funds and the IT Cost Allocation Fund not being fully spent in FY 2020.
- Health, Housing & Community Services fund balance (+\$32,098,325) was primarily the result of funds allocated to projects and programs not fully expended by the end of the fiscal year which will be carried forward to FY 2021, new positions being filled after the start of the fiscal year and vacancies throughout the department. Of the \$32 million, over \$13 million is allocated for housing development contracts to be encumbered in FY 2021, approximately \$3.1 million was accumulated in the Housing Trust Fund to be disbursed for various Housing Development projects at a later date, and almost \$1.9 million were CDBG funds committed to programs that were not expended during the fiscal year and will be carried forward. Over \$3 million are

related to grant balances, including COVID allocations that will carry over into FY 2021. Over \$5 million in unspent Mental Health Service Act Funds and Mental Health Realignment funds resulted from vacancies throughout the division, new positions budgeted for the full year but not filled until later in the fiscal year and delays in implementation of new programs. These funds have been carried forward into FY 2021. Additionally funds were unspent due to long-term vacancies that are difficult to fill, such as nurses and psychiatrists, and anticipated expenses on State Health grants we were unable to draw down because the activities did not take place due to COVID restrictions. Almost \$1 million was added to the fund balance in Realignment due to uncertainty in future revenues and vacancies. Of the \$1.3 million in general fund unexpended, a little under \$500,000 has been requested in carryforwards and another \$500,000 will go towards a Measure U1 Housing Development contract in FY 2021.

- Public Works (+\$36,947,951) were largely due to the following:
 - General Fund (+\$1.1 million): \$0.6 million in carryover for projects to be completed in FY 2021, \$0.4 million for Equipment Purchases carried forward into FY 2021.
 - Sewer Fund (+\$3.8 million): \$1.3 million in personnel savings due to vacancies, \$2.3 million in continuing and deferred sewer projects scheduled for completion in FY 2021.
 - State Transportation Tax (+\$2.9 million) \$1.1 million in salary savings and \$1.7 million in project funding for various street and storm drain program projects continued for completion in FY 2021.
 - Capital Improvement Fund (+\$5.5 million): \$0.7 million in salary savings and \$4.3 million in project fund carryover for transportation, street, facilities project funds to FY 2021 due to project timing, including ADA Transition Plan Update, Shattuck Reconfiguration, FY 20 Street Rehab, Storm Drain and Sidewalk Repair projects.
 - Measure B (+\$1.7 million) \$0.3 million in salary savings and \$1.4 million in street improvement projects project budget to carried over into FY 2021 for construction completion.
 - Measure BB (+4.9 million) \$0.1 million in salary savings and \$4.7 million in sidewalk and street improvement projects project budget to be carried over into FY 2021 for completion.
 - Off Street Parking (+0.3 million) and Parking Meter (+0.6 million): A combined total of \$0.1 million in salary savings and \$0.2M On -Street Parking Fund savings due to project budget carryover to FY 2021, and \$0.3 million in Parking Management savings.
 - Caltrans Grant (+\$1.3 million) \$1.3 million in project carryover into FY 2021 for transportation projects.
 - T1 (+\$1.5 million) \$1.5 million in carryover for various T1 projects with work continuing into FY 2021.
 - Streetlight Assessment (+\$0.8 million) \$0.6 million in salary savings, and \$0.2 million in capital project carryover into FY 2021.
 - Clean Storm (+\$2.6 million) \$1.3 million in salary savings, \$1.0 million in capital project carryover into FY 2021.
 - Building Maintenance (+\$1.1 million) \$0.9 million in salary savings due to vacancies.

- Equipment Replacement (+\$2.6 million) \$2.6 million for replacement purchases initially scheduled for FY 2020 but to be completed in FY 2021.
- Parks Recreation and Waterfront (+\$17,084,824) due to personnel savings and unexpended project funds in the Playground Camp, Parks Tax Fund, and Measure T1 Fund. Only certain unspent project funds will be carried over to FY 2021.
- Library (+\$5,333,966) due in large part to unexpected delays to initiating construction of the Central Library Improvement Project; and although project construction began in early 2020, the Shelter-in-Place order declared in March temporarily suspended and subsequently slowed on-site activities. Secondly, personnel costs contributed significant savings due to staffing vacancies – a factor which was further reinforced by the city-wide hiring freeze instituted on April 27 in response to impacts of the pandemic on the City's fiscal resources.

General Fund Revenue for 1st Quarter FY2021 and Comparison With 1st Quarter of FY2020

Revenue Categories	FY 2021				FY 2020				Comparison FY21 vs FY 20	
	Adopted	Actual	Variance	% Received	Adopted	Actual	Variance	% Received	Amount	%
	(a)	(b)	c=(b) - (a)	(d) = (b)/(a)	(e)	(f)	g=(f) - (e)	(h) = (f)/(g)	(i) = (b) - (f)	(j) = (i)/(f)
Secured Property	\$61,165,454	\$428,517	(\$60,736,937)	0.70%	\$63,199,622	\$306,451	(\$62,893,171)	0.48%	122,066	39.83%
Redemptions - Regular	534,512	123,151	(411,361)	23.04%	668,140	69,946	(\$598,194)	10.47%	53,205	76.07%
Supplemental Taxes	1,260,000	313,161	(946,839)	24.85%	1,400,000	310,555	(\$1,089,445)	22.18%	2,606	0.84%
Unsecured Property Taxes	2,250,000	2,867,793	617,793	127.46%	2,500,000	2,652,522	\$152,522	106.10%	215,271	8.12%
Property Transfer Tax	16,500,000	4,160,284	(12,339,716)	25.21%	12,500,000	6,625,508	(\$5,874,492)	53.00%	(2,465,224)	-37.21%
Property Transfer Tax-Measure P (New December 21, 2018)	4,747,414	1,589,134	(3,158,280)	33.47%	1,509,218	2,999,630	\$1,490,412	198.75%	(1,410,496)	-47.02%
Sales Taxes	15,786,200	3,827,061	(11,959,139)	24.24%	18,238,000	4,667,230	(\$13,570,770)	25.59%	(840,169)	-18.00%
Soda Taxes	970,794	260,569	(710,225)	26.84%	1,459,057	380,821	(\$1,078,236)	26.10%	(120,252)	-31.58%
Utility Users Taxes	12,750,000	3,078,308	(9,671,692)	24.14%	15,000,000	3,249,973	(\$11,750,027)	21.67%	(171,665)	-5.28%
Transient Occupancy Taxes	5,070,000	539,035	(4,530,965)	10.63%	7,800,000	2,256,945	(\$5,543,055)	28.94%	(1,717,910)	-76.12%
Short-term Rentals	676,260	62,436	(613,824)	9.23%	1,020,000	457,127	(\$562,873)	44.82%	(394,691)	-86.34%
Business License Tax	12,684,192	182,357	(12,501,835)	1.44%	19,284,000	202,222	(\$19,081,778)	1.05%	(19,865)	-9.82%
Recreational Cannabis	1,300,000	44,883	(1,255,117)	3.45%	510,000	481,424	(\$28,576)	94.40%	(436,541)	-90.68%
Medical Cannabis	300,000	4,122	(295,878)	1.37%	300,000	31,227	(\$268,773)	10.41%	(27,105)	-86.80%
U1 Revenues	2,700,000	34,236	(2,665,764)	1.27%	1,000,000	34,616	(\$965,384)	3.46%	(380)	-1.10%
Other Taxes	922,048	267,921	(654,127)	29.06%	1,116,860	304,536	(\$812,324)	27.27%	(36,615)	-12.02%
Vehicle In-Lieu Taxes	12,421,597	-	(12,421,597)	0.00%	13,333,826	-	(\$13,333,826)	0.00%	-	0.00%
Parking Fines-Regular Collections	5,049,000	758,837	(4,290,163)	15.03%	6,600,000	1,276,412	(\$5,323,588)	19.34%	(517,575)	-40.55%
Parking Fines-Booting Collections					200,000	8,685	(\$191,315)	4.34%	(8,685)	-100.00%
Moving Violations	190,000	15,789	(174,211)	8.31%	190,000	59,426	(\$130,574)	31.28%	(43,637)	-73.43%
Ambulance Fees	5,103,208	630,108	(4,473,100)	12.35%	4,200,000	1,306,216	(\$2,893,784)	31.10%	(676,108)	-51.76%
Interest Income	2,851,200	1,217,126	(1,634,074)	42.69%	3,500,000	1,678,039	(\$1,821,961)	47.94%	(460,913)	-27.47%
Franchise Fees	1,551,696	189,820	(1,361,876)	12.23%	2,068,928	216,794	(\$1,852,134)	10.48%	(26,974)	-12.44%
Other Revenue	6,246,348	2,789,292	(3,457,056)	44.65%	8,044,544	2,308,331	(\$5,736,213)	28.69%	480,961	20.84%
IDC Reimbursement	5,490,000	1,221,056	(4,268,944)	22.24%	6,100,000	1,260,850	(\$4,839,150)	20.67%	(39,794)	-3.16%
Transfers	17,274,293	4,432,641	(12,841,652)	25.66%	5,266,688	1,316,672	(\$3,950,016)	25.00%	3,115,969	236.65%
Total Revenue:	\$195,794,216	\$29,037,637	-\$166,756,579	14.83%	\$197,008,883	\$34,462,158	-\$162,546,725	17.49%	(\$5,424,521)	-15.74%

Note: This statement is presented on a budgetary basis.

The first quarter review generally focuses primarily on the major revenue fluctuation and changes that have occurred that might result in significant changes in future projections. However, in light of the disruptions created by the COVID-19 pandemic, Staff recognize that it would be wise, where possible to present revisions to revenue projections at this time based on the first quarter trends, and then refine them more during the mid-year update.

During the first quarter of FY 2021, General Fund revenue and transfers decreased significantly from the first quarter of FY 2020 by \$5,424,521 or 15.7%, due primarily to a decline of \$2,465,224 in Property Transfer Taxes, a decline of \$840,169 in Sales Taxes, a decline of \$1,717,910 in Transient Occupancy Taxes (TOT), a decline of \$517,575 in Parking Fines, a decline of \$676,108 in Ambulance Fees, and a decline of \$460,913 in Interest Income. These declines were partially offset by an increase of \$480,961 in Other Income and an increase in Transfers of \$3,115,969.

After the COVID-19 pandemic hit and the shelter in place orders were implemented, the economic activity that drives some of the General Fund's major revenue streams caused a sharp decline in the growth rate for the first quarter of FY 2021. However, some revenue streams were impacted differently than others.

Property Tax Revenue Streams:

Because of the way that property taxes are assessed, due and paid, the major property tax revenue sectors were only mildly impacted or not impacted at all. For example:

For Secured Property Taxes in FY 2021, assessed values were determined and taxes were lienied on January 1, 2020, before the COVID-19 pandemic hit. Therefore, the taxes could only be significantly affected by a lower collection rate. (i.e., a higher level of taxpayers who are delinquent in paying the taxes).

In addition, assessed values for Unsecured Property Taxes were determined and taxes were liened on January 1, 2020, before the pandemic hit; and, these taxes are due and primarily paid during the first quarter. Therefore, this tax category will be unaffected by the COVID-19 pandemic in FY 2021.

Revenue Streams Reliant Upon Business and Other Activity:

As a result of the shelter in place orders to close all non-essential businesses, almost all business-related activities came to a halt (or close to a halt) and resulted in significant negative impacts on the following revenue streams:

- Transient Occupancy Taxes (TOT)- Decline of 76.1%;
- Short-Term Rentals – Decline of 86.3%
- Property Transfer Taxes- Decline of 37.2%;
- Parking fines – Decline of 40.6%;
- Sales Taxes -Decline of 18.0%;
- Utility Users Taxes – Decline of 5.3%;
- Ambulance fees -Decline of 51.8%; and
- Interest Income -Decline of 27.5%

Secured Property Tax (+\$122,066 more than FY 2020 Actual)

During the first quarter of FY 2021, Secured Property Tax revenues totaled \$428,517, which was \$122,066 or 39.8% more than the \$306,451 received for the same period in FY 2020. This first quarter revenue reflects a relatively small amount received from the previous year's levy that was unpaid during that fiscal year. The amount received is typical of what is historically received in the first quarter. The Staff revenue projection reflected in the FY 2021 Adopted Budget assumes a 3.22%% decline for the year, while the County's Certification of Assessed Valuation reflects growth of 7.70%.

Since assessed values for Secured Property Taxes were determined as of January 1, 2020, and they were liened as of that date, the only material factor that could impact Secured Property Tax revenues as a result of COVID-19 would a significant increase in delinquent property taxes, resulting in a significant reduction in the collection rate. As indicated in the table below, the collection rate for the City of Berkeley has been high and rising for many years. In addition, the COVID-19 pandemic had little, if any, impact on the second Secured Property Tax payment for FY 2020, which was due February 1, 2020 and was delinquent on April 10, 2020 (i.e., The total Secured Property Tax revenues in FY 2020 was the amount expected based on the actual growth in assessed value for FY 2020.

**Percentage of Secured Property Tax Levy Collected Within the Fiscal Year of Levy
Fiscal Year Ended June 30**

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
96.71%	97.27%	97.47%	98.16%	98.57%	98.73%	98.58%	98.92%	98.89%	98.97%

Staff is considering revising the projections upward once it analyzes the allowances for delinquencies due to COVID-19 pandemic.

Unsecured Property Tax (+\$215,271 more than FY 2020 Actual)

During the first quarter of FY 2021, Unsecured Property Tax revenues totaled \$2,867,793, which was \$215,271 or 8.1% more than the \$2,652,522 received for the same period in FY 2020. The Staff revenue projection reflected in the FY 2021 Adopted Budget assumes a 15.2%% decline for the year, versus the County's Certification of Assessed Valuation growth of 8.23%.

Since Unsecured property taxes were liened on January 1, 2020, were due July 1, 2020, and were mostly collected in the first quarter, these taxes do not appear to be impacted by COVID-19 in FY 2021. As a result, staff is considering increasing the projection after a more detailed analysis.

Property Transfer Tax (-\$2,465,224 less than FY 2020 Actual)

During the first quarter of FY 2021, Property Transfer Tax totaled \$4,160,284, which was \$2,465,224 or 37.2% less than the \$6,625,508 received for the first quarter of FY 2020. The primary reasons for the \$2,465,224 decrease in Property Transfer Tax were (1) The FY 2020 total includes the sale of a group of properties totaling \$87.5 million that resulted in Property Transfer Tax of \$1,312,500; (2) The dollar value of property sales declined by 35.8% during the first quarter of FY 2021, as illustrated in the table below; and (3) The number of property sales transactions declined by 51 or 19.9% during the first quarter of FY 2021, as illustrated in the table below. Staff will closely monitor this revenue for another quarter before proposing a change in the FY 2021 projection for Property Transfer Taxes and/or Measure P taxes.

Property Sales \$	July	August	September	Total
FY 2021	\$ 74,018,291	\$115,008,000	\$106,351,773	\$295,378,064
FY 2020	113,356,500	234,115,500	112,790,500	460,262,500
Change	-39,338,209	-119,107,500	-6,438,727	-164,884,436
% Change	-34.7%	-50.9%	-5.7%	-35.8%

Transactions	July	August	September	Total
FY 2021	50	82	73	205
FY 2020	86	86	84	256
Change	-36	-4	-11	-51
% Change	-41.9%	-4.7%	-13.1%	-19.9%

In addition, \$1,589,134 in Measure P taxes (a tax which took effect on December 21, 2018) was collected during the first quarter of FY 2021 compared to \$2,999,630 collected during the first quarter of FY 2020.

Sales Tax (-\$840,169 less than FY 2020 Actual)

For the first quarter of FY 2020, Sales Tax revenue totaled \$3,827,061, which is \$840,169 or 18.0% less than the \$4,667,230 received for the first quarter of FY 2020. Staff is considering revising the projection for Sales Taxes as reflected in the FY 2021 Adopted Budget once it is able to review and analyze concrete trend lines of economic activities and the collection trends compiled by the City's Sales Tax Consultant:

The expected FY 2021 decline from the FY 2020 total will be partially mitigated by a \$281,987 increase in the County Pool revenues, a \$44,371 decrease in county sharing, and a \$24,430 decline in CDTFA administrative costs.

Utility Users Taxes (-\$171,665 less than FY 2020 Actual)

Utility Users Tax revenue for the first quarter of FY 2021 totaled \$3,078,308, which is \$171,665 or 5.28% less than the \$3,249,973 received for the same period in FY 2020. This decline of \$171,665 was experienced across the board in the following sectors:

FY 2020 Actual First Quarter Cash Revenues and FY 2021 Actual First Quarter Revenues

	FY2021	FY 2020	\$ Change	% Change
Telephone	\$ 368,636	\$ 388,889	-\$ 20,253	-5.21%
Cable	258,207	298,274	- 40,067	-13.43%
Cellular	313,395	342,929	-29,534	- 8.61%
Electric	1,710,892	1,761,837	-50,945	-2.89%
Gas	427,122	458,045	-30,923	-6.75%
Total	\$3,078,252	\$3,249,974	-\$171,722	-5.28%

Staff expects Utility Users Tax revenue in FY 2021 to meet or slightly exceed the FY 2021 revenue projection of \$12,750,000.

Transient Occupancy Tax (-\$1,717,910 less than FY 2020 Actual)

Transient Occupancy Tax (TOT) revenue for the first quarter of FY 2021 totaled \$539,035, which is \$1,717,910 or 76.1% less than the \$2,256,945 received for the first quarter of FY 2020. The decrease in FY 2021 is primarily attributable to a decline of 77.9% at the five largest hotels in Berkeley during the quarter, which included some months with no payments for two of the hotels. Staff is considering lowering the FY 2021 projection of \$5,070,000 reflected in the Adopted Budget to \$4,070,000. Staff will also continue to monitor this revenue stream critically over the next several months.

Short-Term Rentals (-\$394,691 less than FY 2020 Actual)

Short-Term Rentals revenue for the first quarter of FY 2021 totaled \$62,436, which is \$394,691 or 86.3% less than the \$457,127 received for the first quarter of FY 2020. Staff is considering lowering the FY 2021 projection of \$676,260 in the FY 2021 Adopted Budget to \$476,260. Staff will also continue to monitor this revenue stream on a monthly basis.

Business License Taxes (-\$46,970 less than FY 2020 Actual)

Business license Taxes (BLT) revenue for the first quarter of FY 2021 totaled \$186,479, which is \$46,970 or 20.1% less than the \$233,449 received for the first quarter of FY 2020. BLT are not due yet, so it is too soon to gauge the effect COVID-19 has had on FY 2021 Business License Tax revenue. With that said, this revenue stream is based on gross receipts that is generated by economic activities. Staff will continue to review and analyze all the economic indicators for a more concise action.

Recreational Cannabis (-\$436,541 less than FY 2020 Actual)

Recreational Cannabis revenue for the first quarter of FY 2021 totaled \$44,883, which is \$436,541 or 90.7% less than the \$481,424 received in the first quarter of FY 2020. This decline is primarily attributable to (1) \$240,260 in Recreational Cannabis receipts during the first quarter of FY 2021 that did not get recorded in the General Ledger before the close of the first quarter; and (2) \$160,250 of FY 2019 Recreational Cannabis revenues which were recorded in the first quarter of FY 2020. Recreational Cannabis taxes are not due yet, so it is too soon to gauge the effect COVID-19 has had on FY 2021 Recreational Cannabis.

U1 Revenues (-\$380 less than FY 2020 Actual)

U1 revenues for the first quarter of FY 2021 totaled \$34,236, which is \$380 or 1.1% less than the \$34,616 received in the first quarter of FY 2020. U1 revenues are not due yet, so it is too soon to gauge the effect COVID-19 has had on FY 2021 U1 revenues.

Vehicle in Lieu Taxes (+\$0 more than FY 2020 Actual)

There was no Vehicle in Lieu Taxes (VLF) received during the first quarter of FY 2021 and FY 2020, since they are not yet due. However, the Staff revenue projection reflected in the FY 2021 Adopted Budget assumes a 6.8%% decline for the year, while the County's Certification of Assessed Valuation reflects growth of 7.70%.

Changes in VLF revenues are based on the growth in assessed values.

Since assessed values for VLF Taxes were determined as of January 1, 2020, and they were liened as of that date, the only material factor that could impact revenues as a result of COVID-19 would be a significant increase in delinquent property taxes, resulting in a significant reduction in the collection rate. As indicated in the table below, the collection rate for the City of Berkeley has been high and rising for many years. In addition, the COVID-19 pandemic had little, if any, impact on the second payment of Property Taxes for FY 2020, which was due February 1, 2020 and was delinquent on April 10, 2020.

**Percentage of Secured Property Tax Levy Collected Within the Fiscal Year of Levy
Fiscal Year Ended June 30**

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
96.71%	97.27%	97.47%	98.16%	98.57%	98.73%	98.58%	98.92%	98.89%	98.97%

Staff is considering revising the projections upward once it analyzes the allowances for delinquencies dues to COVID-19 pandemic.

Parking Fines (-\$517,575 less than FY 2020 Actual)

Parking Fines revenue for the first quarter of FY 2021 totaled \$758,837, which is \$517,575 or 40.6% less than the \$1,276,412 received for the first quarter of FY 2020. The primary reason for the decline is that starting March 18, 2020, due to the shelter in place orders, Parking Enforcement was directed to enforce in a relaxed manner for Street Sweeping. The only violation enforced was Street Sweeping. All other violations, including meters, time zones, yellow curbs, and residential parking were not enforced. The City also implemented an amnesty program which allowed citizens to contact the City Manager and were allowed one citation per household to be dismissed for Street Sweeping. This enforcement was continued until July 1, 2020.

On July 1, 2020, enforcement of time zones was restarted, and meter enforcement was restarted using a phased approach with discounted rates. By the end of July 2020, all meters were being enforced. On October 1, 2020, Residential Parking enforcement was restarted, and Parking Enforcement is currently enforcing all violations.

During the quarter, ticket writing declined from 27,650 or 14,5% in the first quarter of FY 2020 to 23,450 in the first quarter of FY 2021, as follows:

	July	August	Sept.	Total
FY 2020	8,840	9,888	9,122	27,650
FY 2021	6,810	7,744	9,091	23,645
Difference	-2,030	-2,144	-31	-4,005
% Difference	-23.0%	-21.7%	-.3%	-14.5%

Staff is considering lowering the Parking Fines projection to \$4,049,000 from the \$5,049,00 reflected in the FY 2021 Adopted Budget.

Ambulance Fees (-\$676,108 less than FY 2020 Actual)

Ambulance Fees revenue for FY 2021 totaled \$630,108, which is \$676,108 or 51.8% less than the \$1,306,216 received for the same period during FY 2020. According to the City's Ambulance Fees vendor, the collections being made during the first quarter of FY 2021 were for services provided during March and April 2020, right after the COVID-19 hit and the Governor's shelter in place orders went into effect. During March, transports declined from 576 in 2019 to 312 in 2020 or 45.8%; and in April, transports declined from 312 in 2019 to 251 in 2020 or 19.6%.

Prior to the COVID-19 pandemic, the vendor was projecting 6,541 transports and \$ 4,774, 200 in Ambulance Fees revenues on a cash basis. Currently, they are projecting that transports and Ambulance Fees revenue for FY 2021 will decline to 4,579 transports and \$3,342,159 in revenue.

As a result, Staff is lowering the FY 2021 projection from the \$5,103,208 reflected in the Adopted Budget to \$3,342,159.

Interest Income (-\$460,913 less than FY 2020 Actual)

For the first quarter of FY 2021, interest income totaled \$1,217,126, which is \$460,913 or 27.5% less than the total of \$1,678,039 received for the same period in FY 2020. This decrease is primarily attributable to a sharp drop in short-term and long-term interest rates, as a result of the Federal Reserve Board's (the Fed) vote on March 15, 2020 to cut interest rates back to zero, in order to mitigate the negative impact of the COVID-19 pandemic on the US economy. The Fed subsequently also announced that it expects to keep rates at this low level through FY 2023.

Primarily as a result of the Fed's actions, the net interest rate earned by the City dropped from a range of 2.23%-2.33% during the first quarter of FY 2020, to a range of 1.13%-1.17% during the first quarter of FY 2021, as follows:

Monthly Net Interest Rate Earned

FY	July	August	September
2020	2.33%	2.29%	2.23%
2021	1.17%	1.13%	1.14%

As a result of the sharp decline in the net interest rate being earned by the City, interest income in FY 2021 and beyond will be significantly lower than the total earned in FY 2020. Staff expected a sharp decline in interest rates, and will keep the Interest Income projection at the \$2,851,200 level reflected in the FY 2021 Adopted Budget (Down from the \$6,696,279 received in FY 2020).

Franchise Fees (-\$26,974 less than FY 2020 Actual)

Franchise Fees for the first quarter of FY 2021 totaled \$189,820, which is \$26,974 or 12.4% less than the \$216,794 received for the same period in FY 2020. Only the Cable Fees were collected in the first quarter of FY 2021 and FY 2020, and this decline is consistent with the 13.4% decline in UUT for Cable. The UUT Electric and Gas declines in the FY 2021 first quarter were 2.89% and 6.75%, respectively.

Therefore, Staff is increasing the FY 2021 Franchise Fees revenues projection to \$1,581,650 from the \$1,551,696 reflected in the Adopted Budget (but down from the \$1,839,102 received in FY 2020), based on the projected COVID-19 impact below:

Category	FY 2020 Actuals	Est. FY 2021 COVID Impact %	Est. FY 2021 COVID Impact \$	FY 2021 Revised Projection
Cable	\$ 791,663	-20%	-\$158,333	\$ 633,330
Electric	598,023	-5%	-29,901	568,122
Gas	422,442	-10%	-42,244	380,198
Total	\$1,812,128	-13%	-\$230,478	\$1,581,650

Transfers (+\$3,115,969 more than FY 2020 Actual)

Transfers from other funds for the first quarter of FY 2021 totaled \$4,432,641 which is \$3,115,969 or 236.7% more than the \$1,316,672 received for the same period in FY 2020. This is primarily attributable to the Transfer of \$1,725,000 from the Stabilization Reserve Fund and the \$1,125,000 from the Catastrophic Reserve Fund during the FY 2021 first quarter, to mitigate the negative impact of COVID-19. It should be noted that a total of \$6,900,000 and \$4,500,000 will be transferred from the Stabilization Reserve Fund and Catastrophic Reserve Fund, respectively, for General Fund operations in FY 2021.

Other Revenues (+\$480,961 more than FY 2020 Actual)

Other Revenues consists of licenses and permits; grants; preferential parking fees; general government charges for services; public safety charges for services; health charges for services; culture and recreation charges for services; rents and royalties; and other miscellaneous revenues that are not considered major.

Other Revenues for the first quarter of FY 2021 totaled \$2,789,292 which is \$480,961 or 20.8% more than the \$2,308,331 received for the first quarter of FY 2020, This increase resulted primarily from the receipt of \$704,000 from East Bay Community Foundation for the Berkeley Relief Fund, to finance grant payments to assist businesses and nonprofit organizations impacted by the COVID-19 pandemic.

FY 2021 First Quarter Expenditures (7/1/20 – 9/30/20)

General Fund

Department	FY 2021 Adopted	FY 2021 Adjusted*	Year-To-Date		Percent Expended
			Actuals + Encumbrances	Balance	
Mayor & Council	2,559,046	2,575,185	479,931	2,095,254	19%
Auditor	2,657,863	2,665,324	474,237	2,191,087	18%
City Manager	10,450,066	11,186,655	2,812,214	8,374,441	25%
City Attorney	2,587,273	2,643,059	522,247	2,120,812	20%
City Clerk	2,338,047	2,572,987	642,470	1,930,517	25%
Finance	5,978,002	7,111,104	2,221,163	4,889,941	31%
Human Resources	2,280,207	2,860,875	476,041	2,384,834	17%
Information Technology	580,710	1,334,885	1,009,981	324,904	76%
Health, Housing & Community Services	14,850,382	26,074,606	13,234,285	12,840,321	51%
Parks, Recreation and Waterfront	6,831,086	7,746,386	2,087,978	5,658,408	27%
Planning	2,178,037	2,361,990	691,346	1,670,644	29%
Public Works	4,408,589	6,238,450	1,475,252	4,763,198	24%
Police	65,460,524	64,843,729	15,032,613	49,811,116	23%
Fire	32,272,610	36,814,113	8,284,339	28,529,774	23%
Non-Departmental	39,286,268	27,761,101	8,701,525	19,059,576	31%
Total	194,718,710	204,790,449	58,145,622	146,644,827	28%

**FY 2021 Adjusted includes FY 2020 Encumbrance Rollover*

All Funds (including General Fund)

Department	FY 2021 Adopted	FY 2021 Adjusted*	Year-To-Date		Percent Expended
			Actuals + Encumbrances	Balance	
Mayor & Council	2,559,046	2,575,185	479,931	2,095,254	19%
Auditor	2,786,499	2,793,960	492,850	2,301,110	18%
Rent Board	6,646,209	6,772,560	1,741,320	5,031,240	26%
City Manager	13,515,943	14,790,341	4,181,513	10,608,828	28%
Library	21,846,159	24,991,144	8,450,105	16,541,039	34%
City Attorney	4,509,824	5,204,947	1,758,709	3,446,238	34%
City Clerk	2,839,880	3,074,820	810,134	2,264,686	26%
Finance	8,555,177	9,696,178	2,519,123	7,177,055	26%
Human Resources	4,072,239	4,715,202	858,862	3,856,340	18%
Information Technology	20,647,410	25,011,428	6,849,896	18,161,532	27%
Health, Housing & Community Services	53,834,105	97,274,965	42,699,483	54,575,482	44%
Parks, Recreation and Waterfront	32,561,123	61,242,951	34,331,966	26,910,985	56%
Planning	25,022,338	27,284,553	5,795,072	21,489,481	21%
Public Works	138,631,154	204,495,368	72,189,866	132,305,502	35%
Police	70,325,114	69,882,747	16,390,759	53,491,988	23%
Fire	41,254,373	47,548,441	10,998,981	36,549,460	23%
Non-Departmental	83,711,926	72,352,591	24,096,488	48,256,103	33%
Total	533,318,519	679,707,381	234,645,058	445,062,323	35%

**FY 2021 Adjusted includes FY 2020 Encumbrance Rollover*

FY 2021 First Quarter Expenditures Variance Analysis

First Quarter Assumptions

- Personnel year-to-date actuals are through 09/30/20 and represent 22.21% expended. All departments are tracking at or below 22.21% in personnel expenditures. General Fund personnel costs represent almost 74% of the total City's General Fund budget and are tracked on a monthly basis. As in prior years, Police overtime continues to be a concern and is being monitored by staff.

Generally, on an all funds basis, expenditures over 22.21% are related to non-personnel costs, such as encumbrances for contracts, supplies, and materials.

First Quarter Variances

General Fund

- Finance: Banking Services contracts and other professional services contracts were encumbered in the 1st Quarter.
- Information Technology: Funds encumbered for projects started in FY 2020 were rolled over to FY 2021 in the 1st Quarter along with funds for software maintenance and the City's contract with Berkeley Community Media being encumbered as well.
- Health, Housing & Community Services: Community Agency contract funds were moved from Non-Departmental so that contracts purchase orders could be created.
- Public Works: Funds were encumbered for gas and electricity payments.
- Non-Departmental: Funds for the City's Outside Auditors, Legislative and Professional Services, Insurance were encumbered or paid in the first three months of FY 2021.

All Funds

- City Attorney: Funds for outside counsel contracts were encumbered at the start of the fiscal year.
- Public Works & Parks, Recreation & Waterfront: Funds were encumbered for capital improvement projects early in the fiscal year.
- Non-Departmental: Debt service and insurance payments were made in August.

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
1. Safety for all: The George Floyd Community Safety Act – Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis ¹	July 14, 2020	Refer to the Budget Process \$150,000 to: a. Hire a consultant to conduct a data-driven analysis of police calls and responses to determine the quantity and proportion of these calls that can be responded to by non-police services. The third-party consultant must be hired and engaged in work within three months of the item's passage. b. Hire a consultant to conduct an analysis of the Berkeley Police Department's budget and its expenditures by call type. The third-party consultant must be hired and engaged in work within three months of the item's passage.	\$150,000		Bartlett, Mayor Arreguin, and Harrison
2. BerkDOT: Reimagining Transportation for a Racially Just Futures ²	July 14, 2020	Refer to the City Manager, the FY 2021-22 budget process, and the proposed community engagement process to reimagine public safety to pursue the creation of a Berkeley Department of Transportation (BerkDOT) to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, & infrastructure.	unknown		Robinson, Droste, Bartlett, and Mayor Arreguin
3. Support Community Refrigerators ³	September 22, 2020 (continued on October 13, 2020)	Allocate \$8,000 of the budget for the purchasing of the refrigerators.	\$8,000		Davila

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_18a_Safety_for_All_The_George_Floyd_pdf.aspx

² https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_18e_BerkDOT_Reimagining_Transportation_pdf.aspx

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-22_Item_17_Support_Community_Refrigerators.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
4. Providing our Unhoused Communities in the City of Berkeley with Potable Water and addressing Water Insecurity ⁴	September 22, 2020	Refer to City Manager to include an allocation in the upcoming AAO budget to use existing homeless services to fund Berkeley Free Clinic's program to address water insecurity among Berkeley's unhoused communities. This program will initially require \$10,000 to construct and maintain a large tank with a foot pump for dispensing water from a spout that can be used for drinking or handwashing.	\$10,000	Funded	Davila
5. Healthy Checkout Ordinance ⁵	September 22, 2020	Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program. Refer to the Sugar Sweetened Beverage Product Panel of Experts to consider recommending funding allocations, and to work with City staff to develop protocols for, implementation, education, and enforcement.	unknown		Harrison and Hahn
6. Authorize Installation of Security Cameras at the Marina and Request an Environmental Safety Assessment ⁶	October 13, 2020	Adopt the following recommendation in order to address the recent dramatic uptick in reported crime incidents at the Berkeley marina: • Request that the City Manager install security cameras and signage as expeditiously as possible as a long-term safety measure;	\$120,000	\$60,000 – PRW– General Fund carryover request \$60,000 – Marina Fund	Kesarwani and Wengraf

⁴ https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-22_Item_09_Providing_our_Unhoused_Communities.aspx

⁵ https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-22_Item_16_Healthy_Checkout_Ordinance.aspx

⁶ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Item_12_Authorize_Installation_of_Security.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
7. "Step Up Housing" Initiative: Allocation of Measure P Funds to Lease and Operate a New Permanent Supportive Housing Project at 1367 University Avenue ⁷	October 13, 2020	Adopt a resolution allocating approximately \$900,000 per year for 10 years, as well as a one-time allocation of approximately \$32,975 from Measure P transfer tax receipts to support the lease and operation of a new permanent supportive housing project for the homeless at 1367 University Avenue. This resolution is put forward out of consideration that the City Council has already approved in its FY 2020-21 budget—on June 30, 2020— an allocation of \$2.5 million for permanent housing subsidy, a portion of which is available to be spent on the 1367 University Avenue project.	\$32,975 (one-time allocation from Measure P) \$900,000/year for 10 years	Measure P	Bartlett, Kesarwani, Wengraf, and Mayor Arreguin
8. Removal of Traffic Bollards on the Intersection at Fairview and California St. ⁸	October 13, 2020	Refer to the City Manager to remove the traffic bollards at the intersection at Fairview and California St. for the following reasons: 1. To allow residents, emergency responders, street cleaning and garbage disposal services, and delivery vehicles ease of access to enter and exit Fairview Street; 2. To allow residents of the 1600 block of Fairview St. access to additional parking spots because the current capacity is inadequate; and 3. To decrease illegal dumping that has been incentivized by the traffic bollards and eliminate the harborage of junk, debris, and garbage.	unknown		Bartlett

⁷ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Item_16_Step_Up_Housing_Initiative_Allocation.aspx

⁸ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Item_17_Removal_of_Traffic_Bollards.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
9. \$50,000 to UC Theatre Concert Career Pathways Education Program ⁹	October 27, 2020	Refer to the November 2020 AAO budget process the allocation of \$50,000 to the UC Theatre Concert Career Pathways Education Program.	\$50,000		Mayor Arreguin
10. Equitable Clean Streets Budget Referral: Funding for Staff to Conduct Bi-Weekly (Once Every Two Weeks) Residential Cleaning Services ¹⁰	October 27, 2020	Refer to the November AAO budget process to allocate \$500,000 from the General Fund to require biweekly (once every two weeks) cleaning of populated encampment sites, major corridors, and encampments adjacent to residential neighborhoods throughout the City of Berkeley for approximately one year. The City should also partner with appropriate non-profit organizations to create work opportunities for homeless residents who can help City staff clean the streets on an ongoing basis	\$500,000		Bartlett
11. Convert 62nd Street between King St. and Adeline St. into a One-Way Line that exits in the direction of Adeline St. ¹¹	October 27, 2020	Refer to the City Manager to convert 62nd Street between King St. and Adeline St. into a one-way lane that exits to Adeline and blocks motorists from entering 62nd Street through Adeline Street.	unknown		Bartlett and Mayor Arreguin
12. Support for Berkeley Mutual Aid ¹²	October 27, 2020	Refer to the City Manager and to the November FY2020 AAO budget adjustment process to identify existing resources, or propose a new allocation of funds, to provide emergency financial support to Berkeley Mutual Aid (BMA) to allow the organization to continue its highly valued programs and	\$36,000 annual cost		Hahn and Mayor Arreguin

⁹ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-27_Item_18_Budget_Referral_50,000_to_UC_Theatre.aspx

¹⁰ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-27_Item_20_Equitable_Clean_Streets_Budget_Referral.aspx

¹¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-27_Item_21_Convert_62nd_Street_between_King_St.aspx

¹² https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-27_Item_23_Support_for_Berkeley_Mutual_Aid.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
		services addressing the needs of Berkeley residents sheltering-in- place during the COVID-19 health emergency. Support required for BMA to continue providing critical services to the community is \$3,000 per month, starting as soon as possible and continuing until 3 months after the COVID-19 emergency order is lifted.			
13. Security Cameras at Major Berkeley Arterial Entry and Exit Points for the City and Request an Environmental Safety Assessment at High Crime Areas of the City ¹³	November 10, 2020	In order to deter would-be perpetrators of gun violence and apprehend those engaging in gun violence, adopt the following recommendations: • Request that the City Manager install security cameras and increased lighting at appropriate arterial streets serving as entry into and exit out of the City of Berkeley in conjunction with prominently displayed signage; • Refer to the City Manager to perform an environmental safety assessment of the high crime areas specifically in South and West Berkeley; • Refer costs for security cameras and lighting to the mid-year budget process for FY 2020-21.	\$500,000 - \$1,000,000		Kesarwani and Mayor Arreguin
14. Gun Buy Back Program ¹⁴	November 10, 2020	Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) \$40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018.	\$40,000		Kesarwani, Mayor Arreguin, and Davila

¹³ https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-10_Item_12_Authorize_Installation_of_Security.aspx

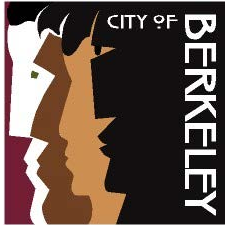
¹⁴ https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-10_Item_13_Budget_Referral_to_Reinstate.aspx

Summary of Council Referrals to the Budget Process

Attachment 5

Title and Item #	Council Date	Description (Purpose)	Amount	Funding Allocation	Referred by: Council Member Name
15. Radar speed feedback sign for Wildcat Canyon Road ¹⁵	November 10, 2020	Referral to the City Manager for a solar powered radar speed feedback sign to be installed on Wildcat Canyon Road at the cost of \$20,000 to be considered during the Mid-Year Budget Process.	\$20,000		Wengraf
TOTAL			\$2,866,975		

¹⁵ https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-10_Item_16_Budget_Referral_-_20,000_radar_speed.aspx



Office of the City Manager

URGENT ITEM AGENDA MATERIAL

Meeting Date: November 17, 2020

Item Description: Amendment: FY 2021 Annual Appropriations Ordinance

Attached is a detail list of funding requests for the Amendment to the FY 2021 Annual Appropriations Ordinance (AAO #1) that was presented to the Budget & Finance Policy Committee (Committee) on November 12, 2020.

Staff presented a preliminary list of funding requests to the Committee on October 8, 2020. An updated list was submitted to the Committee on October 22, 2020. Items highlighted in yellow reflect changes that were made between these two meetings. Additional items were added between the meetings on October 22, 2020, and November 12, 2020, and these items are highlighted in blue.

Staff is asking the Council to not take any action on AAO #1 tonight as the Budget & Finance Policy Committee is still reviewing funding requests. The Committee is scheduled to adopt their final funding recommendations on December 10, 2020. The Committee's recommendations will be submitted to the full Council for adoption on December 15, 2020.

The Council may add this item pursuant to the Brown Act under Government Code Section 54954.2(b).

The item may be added to the agenda because there is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda for this meeting being posted.

In order to add this item to the agenda, the council must vote by a 2/3 majority (six yes votes) to add the item to the agenda.

Once the item is added to the agenda (Consent or Action) it must be passed by the standard required vote threshold depending on the item (majority, two-thirds, or 7/9).

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
11	General Fund	City Attorney			\$25,000		Analysis of Litigation Claims & Settlements			X	Funds to hire a subject matter expert to conduct an analysis for the City of litigation claims and settlements
11	General Fund	City Clerk	City Clerk Operations	\$62,500			KMBS contract Annual Maintenance (OnBase)			X	baseline software contract maintenance and scheduled upgrades
11	General Fund	City Clerk	City Clerk Operations	\$51,400			Redistricting Commission support costs			X	Commissioner meeting stipends; demographer contingency amount
11	General Fund	City Clerk	Regular Elections	\$462,700			Election Costs	X			annual carryover to cover costs from 11/3/2020 election that will be billed between Dec, 2020 - May 2021
11	General Fund	City Manager	Administration	\$200,000			Berkeley Contracting Availability Study		X		Approved by Council on 6/25/19 as part of the FY 2020 & FY 2021 Budget Adoption (Resolution 69,010-N.S.)
11	General Fund	City Manager	Administration		\$163,000		Digital Communications Coordinator positions			X	Add 6 months of funding for two Digital Communications Coordinator positions to continue the website project and EOC support
11	General Fund	City Manager's Office	Animal Services	\$39,000			Shelter Generator			X	The division has pursued the purchase and installation of an emergency generator for the past couple years, but was unable to procure alternate funding. The generator is crucial for maintaining electricity in the event of a public safety power shutoff, and will allow the shelter to maintain refrigeration for deceased animals, veterinary medicine, and other crucial electrical functions for the essential service.
11	General Fund	City Manager's Office	Animal Services	\$16,000			Chameleon Platform			X	The system, quoted at \$20,000, will expand use of an existing platform to digitize the animal licensing renewal process, reducing duplicative processes by Animal Services and Finance staff and making the process accessible both remote and online. This will also allow for BACS to receive online donations for the first time.
11	General Fund	City Manager's Office	Neighborhood Services	\$15,000			Flex Fund			X	This fund will be used by Homeless Outreach to provide key resources and linkages for unhoused individuals who are not a part of the City's case management system, including bus and train vouchers, food, temporary hotel relief, medical supplies and appointments, etc. This was previously funded by HHCS, but with the transition of HOTT into an FSP model the funds will not transfer with the Homeless Outreach position into Neighborhood Services, a move that is expected to take place in late September / early October.
11	General Fund	City Manager's Office	Neighborhood Services	\$11,000			Homeless Outreach Coordinator			X	This position was funded at a higher level (Health Program Service Specialist) in a temporary capacity, but CMO intends to fund this position at its current class moving forward, due to their enhanced role in citywide homeless outreach as well as the supervision of the supplemental Homeless Outreach Coordinator position described below. This difference will need to be incorporated into the baseline personnel costs for Neighborhood Services moving forward.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
11	General Fund	City Manager's Office	Neighborhood Services	\$92,100			Second Homeless Outreach Coordinator			X	Prior to Homeless Outreach transitioning to Neighborhood Services, HHCS had identified a need for a supplemental Homeless Outreach Coordinator (Social Service Specialist). Step 5 for this position is \$150,724 (\$44.18/hour, \$91,905.44/year + benefits at 64%, \$58,820). HHCS had previous identified \$58,635.18 to fund this position, leaving \$92,089 to fully fund the position. This position will be funded by the Neighborhood Services carryover balance, in addition to the balance of funds from CM Admin noted in #4, but in future years this will need to be added to the baseline budget for Neighborhood Services.
11	General Fund	City Manager's Office	Neighborhood Services	\$60,000			Census plus Neighborhood Services Homeless Outreach			X	to fund remaining purchases in the Census enumeration and to supplement personnel costs in the recently transferred Homeless Outreach component of Neighborhood Services
11	General Fund	City Manager's Office	OED	\$80,000			Special Events Funds		X		Festivals and Special Events Funding approved by Council as part of the FY 2021 Mid-Biennial Budget Update adoption on 6/30/20
11	General Fund	City Manager's Office	OED	\$31,501			Berkeley Continuity Grants			X	\$1.0M allocated to small business continuity grants, there was approximately \$31,501 that was unspent. The City Council authorized staff to direct these funds
11	General Fund	City Manager's Office	OED	\$12,806			Civic Art Grants			X	FY20 Grants paid in FY21, adjusted from 3K to 12K (9.18.20)
11	General Fund	City Manager's Office	2020 Vision	\$60,200			Data Analysis plus 2020 Milestone			X	Carryover of funds to support two strategic plan projects, Data Analysis and 2020 Milestone, that have been delayed due to the pandemic and subsequent staffing and resource availability.
11	General Fund	Finance	Office of Finance Director	\$85,670			Banking Fees/Services - contract with Wells Fargo			X	Banking Fees/Services - Council Approved 4 year extension to contract with Wells Fargo. Finance neglected to encumber necessary amount.
11	General Fund	Finance	Office of Finance Director	\$100,000			ACCELA			X	Consulting Services for Implementation of Online Business License Payments (Accela). Especially important given closed customer service center.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
11	General Fund	Finance	Office of Finance Director	\$400,000			Replacement of Property Tax Assessment Software			X	Replacement of Property Tax Assessment Software - Current System is prone to errors; software support services are difficult to find for 30 year-old system; the single IT Dept staff who can assist may be retiring soon.
11	General Fund	Finance	Revenue Collection	\$150,000			Backfill for Revenue Collections Manager			X	Carryover of fund to backfill Revenue Collections Manager out on Maternity Leave for 9mos.
11	General Fund	Finance	Treasury	\$56,272			Banking Fees/Services - contract with Wells Fargo			X	Banking Fees/Services - Council Approved 4 year extension to contract with Wells Fargo. Finance neglected to encumber necessary amount.
11	General Fund	Fire	Fire Operations		\$90,200		Fouth Amulance Medical Supplies		X		Medical supplies for fourth ambulance approved by Council
11	General Fund	Fire	Fire Operations		\$39,714		Gurneys for Fire Department Ambulances		X		A sole source contract and any amendments with Stryker to finance the purchase of three additional gurneys and equip all seven ambulances with the powered cot fastener system (power load system) for Fire Department ambulances which will allow transport of the sick and injured, increasing the amount by \$39,714 for a total not to exceed annual amount of \$74,000. Approved by Council on 10/15/19 through Resolution No. 69,128 - N.S.
11	General Fund	Fire	Fire Operations		\$411,270		Wittman Enterprises LLC Contract		X		FY 2021 funds for Wittman Enterprises LLC contract to provide emergency response billing, fire inspection billing, and related hardware, software, and program oversight Approved by Council on 12/11/18 through Resolution No. 68,707-N.S.
11	General Fund	Fire	Fire Operations		\$63,000		Personal Protective Equipment for Firefighters		X		Appropriate funds for Personal Protective Equipment for Firefighters Ballistitcs contract. Approved by Council on 01/21/2020 through Resolution Nos. 69,242-N.S. and 69,243-N.S.
11	General Fund	Fire	Fire Operations		\$3,622		Fusako Donation		X		Appropriate remaining balance of Fusako Castro donation for purchase of a new fire water rescue boat. Donation was approved by Council on 1/23/18 through Resolution 68,285-N.S.
11	General Fund	Fire			\$250,000		Fire Recruit Academy			X	Appropriate funds to conduct a Fire Recruit Academy in FY 2021 to fill vacant sworn Firefighter positions.
11	General Fund	Fire			\$200,000		Electrical Work			X	Funds for electrical work at Fire Stations
11	General Fund	Fire			\$83,000		Priority Dispatching			X	An estimated amount of \$83,000 is needed to pay for the overtime of staff assigned to this project, community engagement, and hiring a third-party consultant to assist in designing the dispatch system.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
11	General Fund	Health, Housing & Community Services	Aging Services	\$72,730		HHAGFR2101	NBSC Renovation			X	Carryover of FY20 NBSC Renovation Budget
11	General Fund	Health, Housing & Community Services	Aging Services	\$32,650		HHAGRE2101	Senior Centers Rental Maintenance Fees			X	Carryover of funds for Senior Centers Rental Maintenance Fees
11	General Fund	Health, Housing & Community Services	Community Agencies	\$25,000		HHHCGA2101-NONPERSONN-COVID19 COMMUNITY AGENCY	East Bay Community Law Center		X		Carryover remaining funds for East Bay Community Law Center contract for its housing retention program to address the impact of the COVID-19 pandemic on existing housing insecurities in Berkeley. Approved by Council on 3/17/20
11	General Fund	Health, Housing & Community Services	Environmental Health	\$65,947		HHHSQU2101	Square One, Motel Vouchers			X	Carryover of fund for Square One and Motel Voucher balances to be used to on Rental Assistance
11	General Fund	Health, Housing & Community Services	Environmental Health	\$120,999		HHEGFF2101	Environmental Health General Fund			X	Carryover of fund to pay for a consultant to conduct a water quality investigation at Aquatic Park.
11	General Fund	Health, Housing & Community Services	Mental Health		\$78,000	HHMMPF2101-NONPERSONN-GRANT&G-CMMNTYAGY-	Measure P Funds		X		Measure P Funds for Youth Sprit Artworks Tiny Homes Case Management.
11	General Fund	Health, Housing & Community Services	Office of HHCS Director	\$51,188		HHOGFH2101	African American Holistic Center			X	Carryover of fund for African American Holistic Center program
11	General Fund	Health, Housing & Community Services	Public Health		\$98,675	HHPGHB2101	Sugar Sweetened Beverage Program Public Health Division		X		Revise Public Health Division Sugar Sweetened Beverage Program budget to match Council approved allocation of \$475,000 less deferred amount(\$30,000) in FY21. Approved by Council on 5/14/19 through Resolution No. 68,914-N.S.
11	General Fund	Health, Housing & Community Services	Public Health	\$27,000		HHPGHS2101	Public Health - Berkeley High School Health Center			X	\$27,000 from the general fund in the Berkeley High School Health Center was identified specifically to be encumbered under the Worldwide Travel Staffing nurse registry services contract (3200232 MH) at the time the contract was being developed. Although the amount and project string was provided to the contact at Mental Health (who was leading the effort), the PO was not entered in with the rest of the POs slated for this contract.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
11	General Fund	Health, Housing & Community Services	Public Health	\$3,000		HHPGDP2101	PH-Disparities Program purchase of computer			X	Carryover of fund to purchase a computer for Public Health Disparities Program.
11	General Fund	Health, Housing & Community Services	Public Health	\$20,000		HHPGHB2101	PH Healthy Berkeley (SSB) Program			X	Carryover request for a media campaign fund contract for PH Healthy Berkeley (SSB) Program
11	General Fund	Health, Housing & Community Services	Public Health	\$25,000		HHPGHO2101	Berkeley Free Clinic			X	Carryover of fund for Berkeley Free Clinic contract
11	General Fund	Health, Housing & Community Services	Public Health	\$11,873		HHPGHO2101	FY19 1011 University Utilities			X	Carryover of fund for FY19 1011 University Utilities charges not collected by PW.
11	General Fund	Health, Housing & Community Services	Public Health	\$29,855		HHPGHO2101	FY20 1011 University Utilities			X	Carryover of fund for FY20 1011 University Utilities charges not collected by PW.
11	General Fund	Health, Housing & Community Services	Public Health	\$1,500		HHPGHO2101	PH General Fund			X	Carryover of fund for FY20 PH Parking Permit fees - uncollected by other City Department
11	General Fund	Human Resources	Employee Relations	\$470,000			Labor Negotiations			X	Carryover of funds for ongoing labor negotiations in FY 2021.
11	General Fund	Human Resources	Employee Relations	\$102,443			Class & Compensation Studies for Labor Negotiations		X		Fund classification projects per Union agreement also conduct a study to see ERMA's impact on classifications
11	General Fund	Human Resources	Employee Relations	\$50,000			EEO Division Case Management Software		X		Approved by Council on 6/25/19 as part of the FY 2020 & FY 2021 Budget Adoption (Resolution 69,010-N.S.)
11	General Fund	Mayor & Council	Mayor & Council	\$68,983			Council FY20 Year End Balance Carryover			X	Council FY20 Year-End Balance carryover
11	General Fund	Non-Departmental			\$100,000		Specialized Care Unit		X		Allocate \$100,000 from the FY 2021 Unallocated General Fund Balance (of \$141,518 unallocated in the FY 2021 Adopted Budget) to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit. This Specialized Care Unit (SCU) consisting of trained crisis-response workers would respond to 911 calls that the operator evaluated as non-criminal and that posed no imminent threat to the safety of first responders. Approved by Council on 7-14-20
11	General Fund	Non-Departmental		\$415,966			Fair Election Campaign Funds			X	Carryover unspent FY 2020 Fair Election Campaign Funds to FY 2021 and transfer to the new Fair Election Campaign Fund.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
11	General Fund	Non-Departmental			\$719,017		Transfer to Public Liability Fund			X	Increase transfer to Public Liability Fund to pay for outside counsel, court costs, and claims and judgements in FY 2021
11	General Fund	Non-Departmental			\$406,952		Transfer to Workers' Compensation Fund		X		Transfer of Excess Property Transfer Tax Revenue to Capital Improvement Fund and then transferred to Workers' Compensation Fund to repay loan to purchase Premier Cru (University Center).
11	General Fund	Parks Recreation & Waterfront	PRW - Director	\$32,000			Berkeley Project/ ASUC			X	Berkeley Project (ASUC) was awarded a community agency contract with the City for Cal students' work on Berkeley Project Day. They were unable to sign the contract in FY20, so their allocation is requested to carryover into FY21.
11	General Fund	Parks Recreation & Waterfront	PRW - Recreation	\$25,800			Official Payments / Credit Card Fees			X	Official Payments is the credit card payment gateway for the City's recreation online software. The City is still working on the contract amendment to establish Official Payments as a vendor in ERMA, so that we can pay 9 months of FY20 invoices.
11	General Fund	Parks Recreation & Waterfront	PRW - Director	\$60,000			Waterfront Security Cameras			X	To cover purchase and installation of security cameras at Waterfront in berther lots, to deter criminal activity.
11	General Fund	Planning		\$160,000			BART Station Area Planning			X	Consultant services to complete planning and environmental review for Ashby and North Berkeley BART stations (including AB 2923 compliance).
11	General Fund	Planning		\$125,000			Objective Standards for Density / State Housing Law Compliance			X	Consultant services to develop objective development standards for mixed-use and multi-family residential projects in order to comply with recently passed State housing laws and to improve customer service by clarifying regulations and streamlining the permitting process.
11	General Fund	Planning		\$273,341			Green Buiding Program Manager			X	50% of cost for a new 2 year FTE, Green Building Program Manager, responsible for developing and facilitating the implementation of local green building codes.
11	General Fund	Planning		\$25,000			Planning Department Equity Consultant			X	Consultant services to assist with the development of a racial equity analysis toolkit specific to Planning Department services and projects.
11	General Fund	Public Works	Streets & Sanitation	\$129,892		PWSUCW1901	Fire Safety		X		Carryover of unspent Public Works funds for Fire Safety, Education, Prevention and Disaster Preparedness. Approved by Council on 11/27/18.
11	General Fund	Public Works	PW-Engineering	\$199,375		PWENCB2102	Public Safety Building Cooling System Redundancy			X	Contract with Stanton Engineering for the Redundant Cooling System for the Public Safety Data Center.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
11	General Fund	Public Works	PW-Engineering		\$360,437	PWENUD0906	Underground Utility District #48 Grizzly Peak			X	Appropriate funds for Survey of the Underground Utility District (UUD) No. 48 at Grizzly Peak
11	General Fund	Public Works	PW-Engineering	\$5,830		PWENSR1542	Sewer Laterals & CCTV			X	Carryover funds for the Sewer Laterals/CCTV project
11	General Fund	Public Works	PW-Engineering		\$99,543	PWT1CB1901	NBSC Seismic Retrofit			X	Requesting new appropriation to carry over funding provided by HHCS for NBSC miscellaneous building upgrades in FY 2019.
11	General Fund	Public Works	PW-Transportation		\$100,000	PWTRC2003	University Avenue Bus Stop Improvements		X		Appropriate funds for design and construction to widen bus stops and add sealing at Sacramento Street and Grant Street, with Rectangular Rapid Flashing Beacon at Grant Street and University Avenue. Funding was approved by Council on 11/27/18.
11	General Fund	Public Works	PW-Transportation	\$15,000	\$185,000	PWTRPL2001	Hopkins Corridor Study		X		Appropriate fund to start Hopkins Corridor study and planning work for this project. Council Budget referral 11.27.2018.
11	General Fund	Public Works	PW-Transportation		\$75,000		Berkeley Department of Transportation			X	\$75,000 will be needed to solicit outside resources to perform best practices research both nationally and internationally, and making programmatic recommendations on application of those practices in the City of Berkeley.
11	General Fund	Public Works	Streets & Sanitation	\$200,000			Illegal Dumping		X		Funding Illegal Dumping Component of "Clean & Livable Commons Initiative" Approved by Council on 12/3/19.
11	General Fund	Public Works	Streets & Sanitation	\$225,000			Measure P - Downtown Streets Team program expansion		X		Measure P Funds for Downtown Streets Team. Approved by Council on 12/3/19 and 1/21/20
11	General Fund	Public Works	PW-Engineering	\$350,265		PWENCB2102	Public Safety Building Cooling System Redundancy			X	Contract with Stanton Engineering for the Redundant Cooling System for the Public Safety Data Center.
11 Total				\$5,406,787	\$3,551,430						
105	Library - Foundation	Library	Administration		\$500,000		Central Library Interior Renovation Project		X		Revise Berkeley Public Library Foundation budget for funds for purchase of furniture, fixtures, and equipment for the Central Library Interior Renovation Project. Approved by Board of Library Trustees on 7/1/20 through Board of Library Trustees Resolution No: R20-038

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
105 Total				\$0	\$500,000						
111	Fund Raising Activities	Health, Housing & Community Services	Aging Services		\$10,000	HHADMO2101	MOW – Supplies			X	Appropriate fund for necessary supplies for the MOW Program
111	Fund Raising Activities	Health, Housing & Community Services	Aging Services		\$18,000	HHADNB2101	NBSC – Dining room Furniture			X	Appropriate fund for necessary supplies/furniture for the NBSC Program.
111 Total				\$0	\$28,000						
114	Gilman Field Reserve	Parks Recreation & Waterfront	Parks	\$56,506			Field Turf Contract			X	Carryover for Field Turf Contract for Gilman Sports Fields
114 Total				\$56,506	\$0						
120	Affordable Housing Mitigation	Health, Housing & Community Services	Housing & Community Services		\$100,166	HHHHMF2101-NONPERSONN-LOAN-DISBURSMNT-	Grayson Apartments Project		X		Housing Trust Fund allocation for the Grayson Apartment Project. Approved by Council on 2/28/17 through Resolution 67,844-N.S.
120 Total				\$0	\$100,166						
122	Inclusionary Housing Program	Health, Housing & Community Services	Housing & Community Services		\$1,182	HHHIHF2101-NONPERSONN-LOAN-DISBURSMNT-	Grayson Apartments Project		X		Housing Trust Fund allocation for the Grayson Apartment Project. Approved by Council on 2/28/17 through Resolution 67,844-N.S.
122	Inclusionary Housing Program	Health, Housing & Community Services	Housing & Community Services		\$19,937	HHHIHF2101-NONPERSONN-LOAN-DISBURSMNT-	1601 Oxford		X		Funds for 1601 Oxford Project. Approved by Council through Resolution 69,321-N.S.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
122 Total				\$0	\$21,119						
125	Playground Camp	Parks Recreation & Waterfront	PRW-Capital Improvement	\$775,208		PRWCP19001	BTC Construction Management			X	Carryover for BTC construction management, partial ENGEO testing & inspections, lodging, and permits.
125	Playground Camp	Parks Recreation & Waterfront	PRW-Capital Improvement		\$212,536	PRWCP19001	BTC Construction Management			X	Adjustment for partial ENGEO testing and inspections
125	Playground Camp	Parks Recreation & Waterfront	PRW-Capital Improvement		\$18,160,849	PRWCP19001	BTC Construction Management		X		Appropriating funding for Berkeley Tuolumne Camp Project for the contract with Robert E. Boyer construction contract. Approved by Council on 4/14/20 through Resolution No. 69,352-N.S.
125 Total				\$775,208	\$18,373,385						
127	State Transportation Tax	Public Works	PW - General Engineering	\$474,632		PWENST1901	Street Rehab FY 2019			X	Carryover of State Transportation Tax Fund for Street Rehab FY 2019 Project
127	State Transportation Tax	Public Works	PW - General Engineering	\$240,750		PWENST1902	Surface Seal FY 2019			X	Carryover of State Transportation Tax Fund for the Surface Seal FY 2019 Project
127	State Transportation Tax	Public Works	PW - General Engineering	\$22,500		PWENSD1819	Codornices Creek at Kains Avenue			X	Carryover of State Transportation Tax Fund for the Codornices Creek Restoration at Kains Avenue
127	State Transportation Tax	Public Works	PW - General Engineering	\$35,590		PWENSD1804	Hillview and Woodside			X	Carryover of State Transportation Tax Fund for Hillview Road and Woodside Road Drainage Improvement Project
127	State Transportation Tax	Public Works	PW - General Engineering	\$479,159		PWENST1801	Street Rehab FY 2-18			X	Carryover to complete the FY 2018 Street Rehabilitation project
127	State Transportation Tax	Public Works	PW - General Engineering	\$131,120		PWENSG1801	Measure M LID FY 18 Woolsey			X	Carryover for contingency on the Cratus construction contract
127	State Transportation Tax	Public Works	PW - General Engineering	\$439,159		PWENST2001	Street Rehab FY2020			X	Carryover to continue the street rehab now in the construction phase

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
127	State Transportation Tax	Public Works	PW - General Engineering	\$50,000		PWENST2101	Street Rehab FY2021			X	Carryover to continue the street rehab planning & designing
127	State Transportation Tax	Public Works	PW - General Engineering	\$299,800		PWENSW2002	Sidewalk Shaving - FY2020			X	Carryover to continue the sidewalk shaving project
127	State Transportation Tax	Public Works	PW - General Engineering	\$80,950		PWENSD1819	Codornices Creek at Kains			X	To continue the project into the construction phase
127 Total				\$2,253,660	\$0						
128	CDBG	Health, Housing & Community Services	Housing & Community Services		\$1,610,805	HHHCAD2101	CARES Act CDBG - CV		X		Special allocation for Berkeley of CDBG funds to prevent, prepare for, and respond to coronavirus (COVID-19). Funds were appropriated by Council in FY 2020 AAO #3 but were not spent in FY 2020.
128 Total				\$0	\$1,610,805						
130	Measure B - Local Streets & Roads	Public Works	PW - General Engineering	\$115,233		PWENST1801	Street Rehab FY 2-18			X	Carryover to complete the FY 2018 Street Rehabilitation project
130	Measure B - Local Streets & Roads	Public Works	PW - General Engineering	\$164,557		PWENSG1802	Measure M FY18 Street Impr			X	Carryover to complete the Measure M FY18 street improvement project
130	Measure B - Local Streets & Roads	Public Works	PW - Streets & Sanitation		\$10,000		Equipment Replacement			X	Appropriate fund to cover amortization shortfall vehicle # 2003
130	Measure B - Local Streets & Roads	Public Works	PW - Streets & Sanitation		\$35,000		Equipment Replacement			X	Appropriate fund for Streets share of purchase of Double Drum Vibratory Roller and Tilt Trailer for Roller, needed for repaving projects.
130 Total				\$279,790	\$45,000						
133	Measure F - Alameda County VRF Streets & Roads	Public Works	PW - Engineering	\$79,800		PWENSW2002	Sidewalk Shaving - FY2020			X	Carryover to continue the sidewalk shaving project
133	Measure F - Alameda County VRF Streets & Roads	Public Works	PW - Transportation		\$14,018	PWTRCT0918	Ashby/San Pablo Traffic Improvements			X	FY 2021 funds for the Ashby/San Pablo Traffic Improvements project

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
133 Total				\$79,800	\$14,018						
134	Measure BB - Local Streets and Road	Non-Departmental			\$600,000		Measure T1 Fund Loan		X		Loan to Measure T1 Fund in FY 2021 to complete Phase 1 projects. Approved by Council on 9/15/20 through Resolution 69,457-N.S.
134	Measure BB - Local Streets and Road	Public Works	PW - Engineering	\$1,300,000		PWT1ST1907	Street improvement - Adeline and Hearst			X	Carryover of Measure BB Funds - FY20 project budget for street rehabilitation Adeline and Hearst, fund to be added to Contract#31900289
134	Measure BB - Local Streets and Road	Public Works	PW - Engineering	\$35,660		PWENST1902	Surface Seal FY 2019			X	Carryover of Measure BB Funds for the Surface Seal FY 2019 Project
134	Measure BB - Local Streets and Road	Public Works	PW - Engineering	\$16,710	\$70,415	PWENRW2001	Retaining Wall - Glendale			X	Carryover and new appropriation of Measure BB Funds for the Retaining Wall - Glendale project
134	Measure BB - Local Streets and Road	Public Works	PW - Engineering	\$599,862		PWT1ST1908	T1 Streets: Monterey & Ward			X	Carryover of funds for Measure T1 Streets: Monterey & Ward project
134	Measure BB - Local Streets and Road	Public Works	PW - Engineering	\$125,390		PWENSG1802	Measure M FY18 Street Impr			X	Carryover to complete the Measure M FY18 street improvement project
134 Total				\$2,077,622	\$670,415						
135	Measure BB - Bike & Pedestrian	Public Works	PW - Engineering	\$110,000		PWTRCT0918	Ashby/San Pablo Traffic Improvements			X	Carryover funds for the Ashby/San Pablo Traffic Improvements project
135	Measure BB - Bike & Pedestrian	Public Works	PW - Transportation	\$285,139	\$177,475	PWTRCT1803	North Berkeley BART/Sacramento Street Complete Streets			X	Carryover and appropriation of funds for the North Berkeley BART/Sacramento Street Complete Streets project
135 Total				\$395,139	\$177,475						

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
136	Measure BB - Paratransit	Health, Housing & Community Services	Aging Services		\$29,500	HHAMBB2101	Measure BB Taxi Scrip			X	Appropriate Measure BB fund for Taxi Scrip
136 Total				\$0	\$29,500						
138	Parks Tax	Non-Departmental			\$600,000		Measure T1 Fund Loan		X		Loan to Measure T1 Fund in FY 2021 to complete Phase 1 projects. Approved by Council on 9/15/20 through Resolution 69,457-N.S.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$58,407		PRWT119005	Live Oak Community Center			X	Carryover of Parks Tax Fund - unspent FY20 project budget for Live Oak Community Center facility upgrade for accessibility and seismic safety.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement		\$100,000	PRWPP15002	Aquatic Park South Pathways Project			X	Parks Tax Fund allocation for Aquatic Park - South Pathways for parking lot improvement
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$116,239		PRWPP15002	Aquatic Park South Pathways Project			X	Carryover of Parks Tax Fund - unspent FY20 project budget for Aquatic Park South Pathways Project
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement		\$150,000	PRWT119005	Live Oak Community Center		X		Parks Tax Fund allocation for Live Oak Community Center Project. Approved by Council on 09/15/2020 through Resolution 69,554-N.S.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement		\$40,100	PRWT119004	Grove Park Phase II			X	Measure T1 Fund allocation for Grove Park Phase II
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$181,903		PRWPK20003	Ohlone Park Improvements			X	Carryover of Parks Tax Fund from FY20 to FY21 for Ohlone Park Improvements.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$486,266		PRWPK15002	James Kenney Play Area			X	Carryover of Parks Tax Fund from FY20 to FY21 for James Kenney Play Area
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement		\$35,000	PRWPK19003	King School Park Renovation			X	Appropriate parks tax fund for DSA and building permit fees for King School Park Renovation

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$37,000		PRWPK19004	Land Use and Structural Alteration Permit			X	Appropriate Parks Tax Fund to cover Land Use Permit and Structural Alteration Permit
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$23,120		PRWPK19004	John Hinkel Park			X	Carryover of Parks Tax Fund - unspent FY2020 to FY2021 for John Hinkel Park Ampitheater Area Project
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement		\$222	PRWPK19004	Tree removal at John Hinkel Park			X	Appropriate Parks Tax Fund to pay for partial cost of tree removal at John Hinkel Park.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement		\$30,000	PRWPK210008	Civic Center Fountain Garden			X	Appropriate Parks Tax Fund for the Turtle Island project in Civic Center Park.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement		\$20,000	PRWPK21010	Wood - Measure AA grant application for Aquatic Park			X	Appropriate Parks Tax Fund for Wood to help prepare Measure AA grant application for Aquatic Park.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Parks		\$93,950	PRWPK21002	Parks Strategic Plan Funding		X		Appropriate Parks Tax Fund for FY21 Strategic Plan Tree Planting Program.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$437,231		PRWT119012	Rose Garden Pathways, Tennis, and Pergola			X	Carryover to complete construction at the Rose Garden.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$49,504		PRWPK19003	King School Park Reno			X	Carryover to complete design of MLK school playground.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$52,502		PRWPK14002	John Hinkel Park (Lower)			X	Carryover to complete construction of John Hinkel Park (Lower).
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$161,841		PRWT119011	Strawberry Creek Park Phase 2			X	Carryover to complete construction at Strawberry Creek Park.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement		\$8,120	PRWPK19004	John Hinkel Amphitheater			X	Adjustment for KISTER, SAVIO & REI to conduct survey work for JH park reconstruction.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
138	Parks Tax	Parks Recreation & Waterfront	PRW-Parks		\$15,000					X	COB JPA contribution for Gilman field turf replacement.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement	\$450		PRWPK20001	FY20 Parks Tax Minor Maintenance			X	Carryover to correct encumbrance for Hans Thiring Masonry LLC contract.
138	Parks Tax	Parks Recreation & Waterfront	PRW-Capital Improvement		\$50,064	PRWT119001	Aquatic Park Tide Tubes			X	Funds for Anchor Engineering to provide construction management and inspection services for the Aquatic Park Tide Tubes project
138 Total				\$1,604,463	\$1,142,456						
140	Measure GG - Fire Preparation Tax	Fire			\$90,500		Michael Brady Contract		X		Contract with Michael Brady to provide emergency management training for City Emergency Operations Center (EOC) and Department Operations Center (DOC) staff. Approved by Council on 1/21/20 through Resolution 69,244-N.S.
140 Total				\$0	\$90,500						
145	Bayer-Miles Lab	Parks Recreation & Waterfront	PRW-Capital Improvement	\$138,014		PRWPP15002	Aquatic Park South Pathways Project			X	Carryover of Bayer-Miles Lab Fund - unspent FY20 project budget for Aquatic Park South Pathways Project
145 Total				\$138,014	\$0						
147	UC Settlement	Public Works	PW - Transportation		\$126,592	PWTRCS2001	Southside Complete Streets			X	Carryover to continue project through PS&E phase
147 Total				\$0	\$126,592						
148	Cultural Trust	City Manager's Office	Economic Development	\$780			purchase of monitors			X	Carryover of Cultural Trust Fund from FY 2020 to FY 2021 to pay for monitors

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
148	Cultural Trust	City Manager's Office	Economic Development	\$6,006			John Toki Contract			X	Contract with John Toki for conservation and installation of artwork on Center Street in front of Berkeley Art Museum.
148	Cultural Trust	City Manager's Office	Economic Development	\$87,611	\$123,274		Various public art projects			X	Funds for Private Percent for public art projects in FY 2021.
148	Cultural Trust	City Manager's Office	Economic Development	\$634,839			Various public art projects			X	These funds - generated from fees paid by private developers in lieu of compliance with the Public Art in Private Development policy - are used to finance public art projects and maintenance. There are a number of pending Public Art projects to utilize this funding. This funding should be carried over from year to year, similar to the historic practice with the Public Art Fund.
148	Cultural Trust	Public Works	PW - Facilities Management	\$15,587			Rumford Statue Lighting Project			X	Carryover funds for the Rumford Statue Lighting project
148 Total				\$744,823	\$123,274						
149	Private Party Sidewalks	Public Works	PW - Engineering	\$50,000		PWENSW/2002	Sidewalk Shaving - FY2020			X	Carryover to continue the sidewalk shaving project
149 Total				\$50,000	\$0						
150	Public Art Fund	City Manager's Office	Economic Development	\$52,709			Various public art projects			X	There are a number of pending Public Art projects to utilize this funding. Historically this funding is carried over from year to year, in accordance with the City's Public Art policy.
150	Public Art Fund	Public Works	PW - Facilities Management	\$18,000			Rumford Statue Lighting Project			X	Carryover funds for the Rumford Statue Lighting project

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
150 Total				\$70,709	\$0						
152	Vital and Health Statistic	Health, Housing & Community Services	Office of HHCS Director		\$45,000	HHOVIT2101	Vital Statistics Trust Fund			X	Funds for an Intern Epidemiologist will be hired under two Trust Fund categories: 1.) Improvement in the collection and analysis of health-related birth certificate information and other community health data collections and analysis as appropriate. 2.) enhance service to the public to improve analytical capabilities of state and local health authorities in addressing the health needs of newborn children and maternal health problems, and to analyze the health status of the general population.
152 Total				\$0	\$45,000						
157	Tobacco Control	Health, Housing & Community Services	Public Health	\$62,400		HHPLLA2101	LLA Tobacco - State Tobacco			X	Carryover of Tobacco Control grant funds from FY 2020 to FY 2021 for consultant contract
157 Total				\$62,400	\$0						
158	Mental Health State Aid Realignment	Non-Departmental			\$230,000		Measure T1 Fund Loan		X		Loan \$230,000 from the Mental Health Realignment Fund balance to Measure T1 Fund to complete the Phase 1 Mental Health Adult Clinic renovation project and that authorizes the City Manager to repay the loans to the Mental Health Realignment Fund balance from the Phase 2 Measure T1 bond proceeds once they are available. Will be approved by Council on 12/1/20.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
158 Total				\$0	\$230,000						
305	Capital Grants - Federal	Public Works	PW - Transportation		\$976,925	PWTRCS2001	Southside Complete Streets			X	Appropriate fund to continue project through PS&E phase
305 Total				\$0	\$976,925						
306	Capital Grants - State	Public Works	PW - Transportation	\$30,000			Addison Bike Boulevard			X	Carryover of Capital Grants - State Fund for the Addison Bike Boulevard Project management and design services to Final PS&E
306	Capital Grants - State	Public Works	PW - Transportation	\$30,000			University Ave. Bus Stop Improvements			X	Carryover of Capital Grants - State Fund (AHSC Grant) for the University Ave. Bus Stop Improvements project for PE, PS&E, and construction through Bridget Housing.
306	Capital Grants - State	Public Works	PW - Transportation		\$2,711,846	PWTRBP1802	Milvia Bikeway Project		X		Appropriate Capital Grants -State Fund (AHSC Grant) for the conceptual design, preliminary engineering, environmental study, PS&E and construction of Milvia Bikeway. Approved by Council through Resolution 68,730-N.S.
306	Capital Grants - State	Public Works	PW - Transportation		\$205,000	PWTRBP2001	Addison Bike Boulevard		X		Appropriate Capital Grants -State Fund (AHSC Grant) for the Addison Bike Boulevard. Approved by Council through Resolution 68,730-N.S.
306	Capital Grants - State	Public Works	PW - Transportation		\$570,000	PWTRCS2003	University Ave. Bus Stop Improvements		X		Appropriate Capital Grants -State Fund (AHSC Grant) for the University Ave. Bus Stop Improvements project. Approved by Council through Resolution 68,730-N.S.
306 Total				\$60,000	\$3,486,846						
310	HUD HOME	Health, Housing & Community Services	Housing & Community Services		\$1,800,972	HHHME2101-NONPERSONN-LOAN-DISBURSMNT-	1601 Oxford		X		HUD Funds for 1601 Oxford Project. Approved by Council through Resolution 69,321-N.S.
310 Total				\$0	\$1,800,972						
311	ESGP	Health, Housing & Community Services	Housing & Community Services		\$808,117	HHHESG2101	CARES Act HESG-CV		X		Special allocation for Berkeley of ESG funds to prevent, prepare for, and respond to coronavirus (COVID-19). Funds were appropriated by Council in FY 2020 AAO #3 but not spent in FY 2020.
311 Total				\$0	\$808,117						

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
312	Health (General)	Health, Housing & Community Services	Public Health		\$10,151	HHHPLED2101	Childhood Lead Poisoning Prevention Program			X	Revise Childhood Lead Poisoning Prevention Grant to match approved allocation amount from the California Department of Public Health
312 Total				\$0	\$10,151						
313	Targeted Case Management	Health, Housing & Community Services	Public Health		\$13,232	HHPTCM2101	TCM FY15 Audit Reconciliation Payment	X			Appropriate TCM Fund for FY15 Audit reconciliation payment due to State.
313 Total				\$0	\$13,232						
315	Mental Health Services Act	Health, Housing & Community Services	Mental Health		\$3,268,909	Various codes	FY 2021 Mental Health Services Act Funding		X		Revise FY 2021 Mental Health Services Act budget to match amount approved by Council and State and to use prior year approved funds
315	Mental Health Services Act	Health, Housing & Community Services	Public Health		\$20,854	HHHPMHS2101	Public Health Mental Health Services Act			X	Appropriate Mental Health Services Act Funds for contract with with Bay Area Community Resources for AmeriCorps members at the Berkeley High School Health Center.
315 Total				\$0	\$3,289,763						
319	Youth Lunch	Parks Recreation & Waterfront	PRW-Recreation	\$90,522			Summer Lunch Program			X	Carryover of Youth Lunch Fund from FY2020 to FY2021 for Summer Lunch Program
319 Total				\$90,522	\$0						
321	C.F.P. Title X	Health, Housing & Community Services	Public Health		\$128,187		Title X Family Planning Subrecipient		X		Revise grant amount to new approved amount of \$271,000. Council approved grant on 5/12/20 via Resolution No. 69,387-N.S.
321 Total				\$0	\$128,187						
326	Alameda County Grant	Health, Housing & Community Services	Public Health		\$3,354	HHPSED2101	SEED			X	Appropriate Alameda County Grant fund to adjust FY21 award budget
326 Total				\$0	\$3,354						
329	CA Integrated Waste Management	Parks Recreation & Waterfront	PRW - Waterfront		\$6,000		Used Oil Program			X	Appropriate PRW portion of CA Integrated Waste Management Fund for the Used Oil Program
329	CA Integrated Waste Management	Public Works	PW - Facilities Management		\$39,000		Used Oil Program			X	Appropriate Public Works portion of CA Integrated Waste Management Fund for the Used Oil Program
329 Total				\$0	\$45,000						

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
336	One-Time Grant: No Cap Exp	Health, Housing & Community Services	Mental Health	\$23,696			Medication Assisted Treatment (MAT) Access Points Project (the "MAT Project")		X		Remaining funds from a \$50,000 grant from The Center at Sierra Health Foundation for expansion of Medication Assisted Treatment (MAT) services for individuals with Opioid Use Disorders at Berkeley Mental Health. Approved by Council on 10/15/19 through Resolution No. 69,126 - N.S.
336	One-Time Grant: No Cap Exp	Health, Housing & Community Services	Mental Health	\$182,499			Mental Health Adult Triage Grant		X		Carryover of grant funds from Mental Health Services Oversight and Accountability Commission from Mental Health crisis triage line. Approved by Council on 11/27/18 through Resolution 68,668-N.S.
336	One-Time Grant: No Cap Exp	Health, Housing & Community Services	Housing & Community Services	\$200,000		HHHEAP2101	Bay Area Community Services			X	Carryover funds from FY 2020 to FY 2021 to pay invoice from April to June 2020. Purchase order could not roll over to FY 2021 so a new purchase order created using carryover funds.
336	One-Time Grant: No Cap Exp	Health, Housing & Community Services	Mental Health		\$16,408	HHMTFC2101	Children's Triage			X	Revise Children's Triage grant budget to match award amount.
336	One-Time Grant: No Cap Exp	Health, Housing & Community Services	Mental Health		\$100,000	HHITH2101	Mental Health Tele-Health Grant		X		Mental Health awarded new grant for IT related items to support Tele-Health from the Sierra Health Foundation (pass-through State). Council approval of grant will be on 11/17/20 agenda.
336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	PRW - Parks	\$15,000		PRWPK17001	Berkeley Urban Reformation Program Grant			X	Carryover of unspent Berkeley Urban Reformation Program grant funds from FY 2020
336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	PRW - Parks	\$3,460		PRWPK17001	Berkeley Urban Reformation Program Grant			X	Carryover of Berkeley Urban Reformation Program grant fund to complete BURP grant activities
336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	PRW - Parks	\$10,430		PRWPK17001	Berkeley Urban Reformation Program Grant			X	Carryover to complete grant activities.
336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	PRW - Parks		\$165,500	PRWPK20005	Urban Greening Grant		X		Appropriate funds for Urban Greening Grant program. Approved by Council on 07/23/2019 through Resolution
336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	PRW - Parks	\$9,266		PRWT119007	Pier Ferry Facility Study			X	Carryover of WETA funds for pier study.
336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	PRW - Parks	\$61,867		HHHEAP2001	Homeless Emergency Aid Program			X	Carryover for portable toilets and handwashing stations.
336	One-Time Grant: No Cap Exp	Planning	Land Use		\$310,000		Ashby & North Berkeley BART Stations		X		Appropriate Senate Bill 2 Planning Grant funds for a contract with Van Meter Williams Pollock LLP to review zoning standards and prepare an environmental impact report for the Ashby and North Berkeley BART stations. Approved by Council on 2/25/20 through Resolution No. 69,297 - N.S.
336	One-Time Grant: No Cap Exp	Public Works	PW - General Engineering	\$225,000		PWENSD1819	Cordonices Creek at Kains Avenue			X	Carryover of One-Time Grant: No Cap Exp fund for the construction of Cordonices Creek Restoration at Kains Avenue

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
336	One-Time Grant: No Cap Exp	Public Works	PW - General Engineering	\$5,882		PWENSD1819	Codornices Creek at Kains			X	Carryover to continue the project into the construction phase
336	One-Time Grant: No Cap Exp	Public Works	Zero Waste		\$10,000		Mattress Recycling Enclosure			X	Appropriate grant fund from the Mattress Recycling Council of California to purchase a mattress recycling enclosure. Funds must be spent by October 31, 2020.
336	One-Time Grant: No Cap Exp	Non-Departmental	Non-Departmental		\$15,000		Grant for Paid Internships		X		Appropriate funds for the Chancellor's Community Partnership Fund Grant for Paid Internships. Approved by Council through Resolution No. 69,562-N.S.
336 Total				\$737,100	\$616,908						
339	MTC	Parks Recreation & Waterfront	PRW-Capital Improvement	\$34,609		PRWPP15001	Bay Trail			X	Carryover of MTC Funds for Bay Trail project
339 Total				\$34,609	\$0						
340	FEMA	Planning	Building & Safety		\$557,350		FEMA Grant		X		Hazard Mitigation Grant Program Funds for City of Berkeley grants for seismically vulnerable buildings. Authorization to apply for grant approved by Council on 9/10/19 through Resolution No. 69,085-N.S.
340	FEMA	Public Works	PW - Engineering	\$0		PWENCB1801	T1 NBSC Seismic Retrofit			X	Carryover to continue the on-going project currently in the construction phase
340 Total				\$0	\$557,350						
344	CALTRANS Grant	Public Works	PW - Transportation	\$1,248,678	\$98,617	PWTRCT1803	North Berkeley BART/Sacramento Street Complete Streets			X	Carryover and appropriation of funds for the North Berkeley BART/Sacramento Street Complete Streets project
344 Total				\$1,248,678	\$98,617						
345	Measure WW - Park Bond - Grant	Parks Recreation & Waterfront	PRW-Capital Improvement	\$31,404		PRWPK15002	James Kenney Play Area			X	Carryover of Measure WW Fund from FY20 to FY21 for James Kenney Play Area

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
345 Total				\$31,404	\$0						
350	Bioterrorism Grant	Health, Housing & Community Services	Public Health		\$400,523		COVID-19 Crisis Funding		X		Grant from the California Department of Public Health to prevent, prepare for, and respond to COVID-19. Approved by Council on 5/12/20 through Resolution No. 69,385
350 Total				\$0	\$400,523						
501	Capital Improvement Fund	City Manager's Office	Economic Development	\$4,959			John Toki Contract			X	Contract with John Toki for conservation and installation of artwork on Center Street in front of Berkeley Art Museum.
501	Capital Improvement Fund	Health, Housing & Community Services	Housing & Community Services		\$9,312	HHHGHF2101-NONPERSONN-GENERAL - CMMNTYAGY-	Grayson Apartments Project		X		Housing Trust Fund allocation for the Grayson Apartment Project. Approved by Council on 2/28/17 through Resolution 67,844-N.S.
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$230,809		PWENST1901	Street Rehab FY 2019			X	Carryover of Capital Improvement Fund for Street Rehab FY 2019 Project
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$8,880		PWENSD1804	Hillview and Woodside			X	Carryover of Capital Improvement Fund for Hillview Road and Woodside Road Drainage Improvement Project
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$119,392		PWENST1801	Street Rehab FY 2-18			X	Carryover to complete the FY 2018 Street Rehabilitation project
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$45,369	\$123,000	PWENSR1542	Sewer Laterals & CCTV			X	Carryover funds for the Sewer Laterals/CCTV project
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$133,278		PWENSG1801	Measure M LID FY 18 Woolsey			X	Carryover for contingency on the Cratus construction contract
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$151,516		PWENBM1903	Carpet Repl - CCB Finance			X	Carryover to continue the project - repairs Shaw Industries
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$78,724		PWENBM2001	FS#6 Emerg Floor Repair			X	Carryover for On-going repairs at FS #6

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$156,689		PWENBM2002	FS #3 Roof Upgrade			X	Carryover for On-going repairs at FS #3
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$18,054		PWENBM2003	FS#4 Roof Upgrade			X	Carryover for On-going repairs at FS #4
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$14,816		PWENBM2004	MHS Wall Repair			X	Carryover wall at 2636 MLK Inspected Spring 2019 Design for substantial damage at MHS 2636 MLK
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$100,880		PWENCB1507	FS#2 Kitchen Repairs			X	Carryover for On-going repairs at FS #2
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$157,463		PWENST2001	Street Rehab FY 2020			X	Carryover to continue the street rehab now in the construction phase
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$32,400		PWENSW2004	Pathways FY20			X	Carryover to continue pathway repairs
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$275,000		PWENSW2002	Sidewalk Shaving - FY2020			X	Carryover to continue the sidewalk shaving project
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$50		PWENSW2001	FY20 Sidewalk Repair Program			X	Carryover to continue sidewalk repairs
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$228,489		PWENCB1805	PSB Envelope Leak Repair			X	Carryover for On-going repairs at the PSB
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$550,000		PWENCB2002	PSB Cooling Redundancy			X	Carryover to continue the project, which started late fin FY 2020
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$504,280		PWENEN2001	EV Charging Station			X	Carryover to continue the project, which was deferred for further review

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
501	Capital Improvement Fund	Public Works	PW - General Engineering	\$197,105	\$52,895	PWENCB1906	125_127 University Ave Facilities Improvement			X	Appropriate fund to continue project moving into construction phase.
501	Capital Improvements	Public Works	PW - Streets & Sanitation	\$42,957		PWSUSW2004	Pathways FY20			X	Funding necessary for the sidewalk program back log
501	Capital Improvements	Public Works	PW - Streets & Sanitation	\$83,127		PWSUSW2005	Sidewalk Makesafe			X	Funding necessary for the sidewalk program back log
501	Capital Improvements	Public Works	PW - Streets & Sanitation	\$34,345		PWSUSW2007	OPs 50/50 PPSidewalk			X	Funding necessary for the sidewalk program back log
501	Capital Improvements	Public Works	PW - Streets & Sanitation	\$247,512		PWSUSW2105	Ops Sidewlk Makesafe FY21			X	Funding necessary for the sidewalk program back log
501	Capital Improvement Fund	Public Works	PW - Transportation		\$522,743	PWTRCT0918	Ashby/San Pablo Traffic Improvements			X	Carryover funds for the Ashby/San Pablo Traffic Improvements project
501 Total				\$3,416,094	\$707,950						
503	FUND\$ Replacement	Human Resources	Employee Relations		\$50,000		Telford Contract			X	New contract with Telfords, Inc. to provide support to FUND\$ Replacement project
503 Total				\$0	\$50,000						
506	Measure M - Street and Watershed Improvement	Public Works	PW - General Engineering		\$302,627	PWENSD1819	Cordonices Creek at Kains Avenue		X		Appropriation of Measure M fund for the Cordonices Creek Restoration at Kains Avenue. Approved by Council through Resolution No. 69,526-N.S.
506	Measure M - Street and Watershed Improvement	Public Works	PW - General Engineering	\$179,163		PWENST1801	Street Rehab FY 2-18			X	Carryover to complete the FY 2018 Street Rehabilitation project
506	Measure M - Street and Watershed Improvement	Public Works	PW - General Engineering	\$100,000		PWT1ST1907	T1 Streets: Adeline & Hearst			X	Carryover of funds for Measure T1 Streets: Adeline & Hearst project
506	Measure M - Street and Watershed Improvement	Public Works	PW - General Engineering	\$125,934		PWENSG1802	Measure M FY18 Street Impr			X	Carryover to complete the Measure M FY18 street improvement project
506 Total				\$405,097	\$302,627						

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
511	Measure T1	City Manager's Office	Economic Development	\$210,000			Michael Arcega Contract		X		Contract with Michael Arcega for Public Artwork at San Pablo Park. Approved by Council on 12/3/19 through Resolution No. 69,191-N.S.
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$171,455		PRWT119001	Aquatic Parks Tide Tubes		X	X	Carryover of Measure T1 Funds for Aquatic Park Tide Tubes project
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$277,149		PRWT119005	Live Oak Community Center			X	Carryover of Measure T1 Fund - unspent FY20 project budget for Live Oak Community Center facility upgrade for accessibility and seismic safety.
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$98,000		PRWT190006	Spinnaker Way Pavement & Drainage Rehab Project			X	Carryover of Measure T1 funds for Task Order for Nichols Consulting for the Spinnaker Way Pavement and Drainage Rehab Project
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement		\$56,371	PRWT119005	Live Oak Community Center		X		Funds for contract with Mar Con Builders for the Live Oak Community Center Seismic Upgrade project. Approved by Council on 12/10/19 through Resolution No. 69,219-N.S.
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement		\$394,278	PRWT119004	Grove Park Phase II			X	Measure T1 Funds allocation for Grove Park Phase II
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement		\$1,000	PRWT119001	Aquatic Park Tide Tubes			X	Appropriate Measure T1 Fund to increase the printing costs for the Aquatic Park Tide Tubes Project.
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$170,993		PWT1190006	University Avenue, Marina, Spinnaker Street			X	Carryover Measure T1 Funds for the University Avenue, Marina, Spinnaker Street project for task order with Nichols Engineering.
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$197,025		PRWT119014	Tom Bates Restroom			X	Carryover for payment to ACTC
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement		\$92,975	PRWT119014	Tom Bates Restroom			X	Adjustment for payment to ACTC
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$300,000		PRWT119012	Rose Garden Pathways, Tennis, and Pergola			X	Carryover to complete construction at the Rose Garden - permit fees
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$27,725		PRWT119010	Citywide Restroom Assessment			X	Carryover to complete Citywide restroom assessment
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$6,079		PRWT119007	Pier Ferry Facility Study			X	Carryover to complete pier ferry study.
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$21,736		PRWT119003	Frances Albrier Community Center			X	Carryover to complete construction at Frances Albrier community center.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement	\$77,183		PRWT119016	Willard Clubhouse			X	Carryover to complete construction at the Willard Clubhouse.
511	Measure T1	Parks Recreation & Waterfront	PRW-Capital Improvement		\$11,000	PRWT119001	Aquatic Park Tide Tubes			X	Appropriate Measure T1 Fund for Wood Environmental to develop an operational manual for PW and PRW to operate the tide gates.
511	Measure T1	Public Works	PW-Engineering		\$1,011,006	PWT1EL1910	CorpYard and Marina Electrical Upgrade		X		Carryover of Measure T1 Fund for CorpYard and Marina CorpYard Maintenance Buildings electrical upgrade project and structural repair. Approved by Council on 6/2/20 through Resolution 69,433-N.S.
511	Measure T1	Public Works	PW-Engineering		\$48,072	PWT1PG1902	T1 Facilities/Equipment/Service s/Supplies			X	Appropriate FY 2021 Measure T1 funds for facilities, equipment, supplies, and services costs.
511	Measure T1	Public Works	PW-Engineering	\$1,034,239		PWENCB1405	Mental Health Renovation (2640 MLK Jr. Way)			X	Carryover of Measure T1 Fund for Adult Mental Health Clinic Renovation project located at 2640 MLK Jr. Way
511	Measure T1	Public Works	PW-Engineering	\$33,430		PWT1GI1906	Green Infrastructure Project			X	Carryover of Measure T1 Funds for the Green Infrastructure Project
511	Measure T1	Public Works	PW-Engineering	\$150,491		PWT1ST1907	T1 Streets: Adeline & Hearst			X	Carryover of funds for Measure T1 Streets: Adeline & Hearst project
511	Measure T1	Public Works	PW-Engineering	\$376,430		PWT1CB1902	Old City Hall/Vet's Building/Civic Center Park			X	Carryover of funds for Measure T1: Old City Hall/Vet's Building/Civic Center Park project
511	Measure T1	Public Works	PW-Engineering	\$3,407,410		PWT1CB1901	NBSC Seismic Retrofit			X	Carryover of funds for Measure T1: NBSC Seismic Retrofit
511	Measure T1	Public Works	PW-Engineering	\$88,501	\$23,809	PWT1EL1910	Electrical Upgrades - CY & Marina			X	Appropriate fund to complete T1 projects
511	Measure T1	Public Works	PW-Engineering	\$128,698		PWENCB1801	T1 NBSC Seismic Retrofit			X	Carryover for On-going project currently in the construction phase
511	Measure T1	Public Works	PW-Engineering	\$15,000		PWT1GI1905	Berkeley Rose Garden Drainage			X	Carryover for construction support
511	Measure T1	Public Works	PW-Engineering	\$28,812		PWENSD1819	Codornices Creek at Kains			X	To continue the project into the construction phase
511 Total				\$6,820,356	\$1,638,511						

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
512	Measure O	Health, Housing & Community Services	Housing & Community Services		\$4,179,091	HHHMEO2101-NONPERSONN-CONTRACTS-DISBURSMNT-	1601 Oxford		X		Measure O Funds for the 1601 Oxford Project. Approved by Council through Resolution 69,231-N.S.
512	Measure O	City Attorney	Legal Advice & Litigation		\$273,347		Berkeley Way Project		X		Appropriate Measure O Funds for City Attorney's Office reimbursable costs for the Berkeley Way Project. Approved by Council through Resolution 69,231-N.S.
512 Total				\$0	\$4,452,438						
601	Zero Waste	City Manager's Office	Neighborhood Services	\$48,600			Outstanding Transfer Station Invoice			X	Carryover of Zero Waste Fund for Outstanding Transfer Station Invoice
601	Zero Waste	Public Works	PW-Zero Waste		\$78,790		AMCS Software Contract		X		Appropriate Zero Waste Fund for contract with AMCS for Zero Waste Management Software System. Approved by Council on 7/23/2019 through Resolution 69,042-N.S.
601	Zero Waste	Public Works	PW-Zero Waste		\$11,125		Vehicle replacement - Chevy Bolt for Zero Waste			X	Appropriate Zero Waste Fund for the purchase of one Chevy Bolt including a charging station for Zero Waste (vehicle replacement)
601	Zero Waste	Public Works	PW-Zero Waste		\$165,000		Purchase of One (1) Model 435 Regenerative Air Sweeper		X		Appropriate Zero Waste Fund for the purchase of one Model 435 Regenerative Air Sweeper. Approved by Council on 09/15/2020 through Resolution 69,556-N.S.
601	Zero Waste	Public Works	PW-Zero Waste		\$60,256		Amortization shortfall vehicle #709 backhoe			X	Appropriate Zero Waste Fund for Amortization shortfall vehicle #709
601	Zero Waste	Public Works	PW-Zero Waste		\$317,052		New 160 Sweeper			X	Appropriate Zero Waste Fund for New Model 600X Sweeper at Clean Cities
601 Total				\$48,600	\$632,223						
606	Coastal Conservancy Grant Fund	Parks Recreation & Waterfront	PRW-Capital Improvement	\$16,356		PRWWF17003	S. Cove Accessible Ramp			X	Carryover to complete construction of S. Cove Accessible Ramp.
606 Total				\$16,356	\$0						
607	Marina - Dept. of Boating & Waterway	Parks Recreation & Waterfront	PRW-Capital Improvement	\$32,980		PRWWF20006	DBW SAVE Program			X	Carryover to remove derelict vessels from the Berkeley Marina.
607 Total				\$32,980	\$0						
608	Marina Operations	Parks Recreation & Waterfront	PRW-Capital Improvement	\$32,732		PRWWF17003	S. Cove Accessible Ramp			X	Carryover to complete construction of S. Cove Accessible Ramp.
608	Marina Operations	Parks Recreation & Waterfront	PRW-Capital Improvement	\$5,620		PRWWF20006	DBW SAVE Program			X	Carryover to remove derelict vessels from the Berkeley Marina.
608	Marina Operations	Parks Recreation & Waterfront	PRW-Waterfront		\$130,464		Marina Security & Monitors			X	Funds for security (\$86,275) and monitors (\$44,189) at the Marina

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
608 Total				\$38,352	\$130,464						
611	Sanitary Sewer Operation	Public Works	PW- General Engineering	\$398,489		PWENSR2005	Sanitary Sewer Rehab - FY 2020 Urgent Repairs			X	Carryover of Sanitary Sewer Operations Fund for the Sanitary Sewer Rehab - FY 2020 Urgent Repairs Project - payment to contractor
611	Sanitary Sewer Operation	Public Works	PW- General Engineering	\$703,751		PWENSR2001	Sanitary Sewer Rehab - San Pablo Avenue			X	Carryover of funds for the Sanitary Sewer Rehab - San Pablo Avenue project to pay the contractor.
611	Sanitary Sewer Operation	Public Works	PW- General Engineering	\$575,319		PWENSR2004	Sanitary Sewer Rehab - Frontage Road			X	Carryover of funds for Sanitary Sewer Rehab - Frontage Road project to pay the contractor
611	Sanitary Sewer Operation	Public Works	PW- General Engineering	\$26,830		PWENSR1903	FY 2019 Sanitary Sewer Rehab Allston, et al			X	carryover PWENSR1903 Sanitary Sewer rehab Allston Way
611	Sanitary Sewer Operation	Public Works	PW - Streets & Sanitation		\$30,000		Sewer Operations			X	Appropriate fund for Portable HDPE Fusing Machine
611	Sanitary Sewer Operation	Public Works	PW - Streets & Sanitation		\$10,000		Sewer Operations			X	Appropriate fund for SSO Trailer
611	Sanitary Sewer Operation	Public Works	PW - Streets & Sanitation		\$15,000		Sewer Operations			X	Appropriate fund for SSO Equipment
611	Sanitary Sewer Operation	Public Works	PW - Streets & Sanitation		\$35,000		Sewer Operations			X	Sanitary Sewer share of purchase of Double Drum Vibratory Roller and Tilt Trailer for Roller, needed for repaving projects.
611 Total				\$1,704,389	\$90,000						
631	Parking Meter Fund	Finance	Revenue Collection	\$40,000			Banking Fees/Services - contract with Wells Fargo			X	Banking Fees/Services - Council Approved 4 year extension to contract with Wells Fargo. Finance neglected to encumber necessary amount.
631	Parking Meter Fund	Public Works	PW- General Engineering		\$92,415	PWENCB1906	125_127 University Ave Facilities Improvement			X	Carryover to continue project moving into construction phase.
631	Parking Meter Fund	Public Works	PW- General Engineering	\$122,683	\$25,302	PWENCB1907	125_127 University Ave Parking Lot Improvement			X	Appropriate Parking Meter Fund to continue project moving into construction phase.
631 Total				\$162,683	\$117,717						
671	Equipment Replacement	Public Works	PW - Equipment Management		\$2,495,886		Vehicle replacement			X	Appropriate fund for additional amount needed to replace all vehicles (current and backlogged) scheduled to be replaced in FY21
671 Total				\$0	\$2,495,886						
672	Equipment Maintenance	Public Works	PW - Equipment Management		\$11,128		Equipment Maintenance			X	Appropriate fund to replace non-functioning pressure washer at Corp Yard

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
672	Equipment Maintenance	Public Works	PW - Equipment Management		\$16,754		Equipment Maintenance			X	Appropriate fund to replace aging pressure washer at Transfer Station
672	Equipment Maintenance	Public Works	PW - Equipment Management		\$9,000		Equipment Maintenance			X	Appropriate fund for Diesel Emissions Opacity Tester for mechanics
672	Equipment Maintenance	Public Works	PW - Equipment Management		\$50,000		Equipment Maintenance			X	Appropriate fund to complete Zonar GPS Sensor installation (Contract # 32000145 - funds approved but not encumbered)
672	Equipment Maintenance	Public Works	PW - Equipment Management		\$20,000		Equipment Maintenance			X	Appropriate fund for Training and memberships for Equipment Maintenance Personnel
672	Equipment Maintenance	Public Works	PW - Equipment Management		\$9,560		Equipment Maintenance			X	Appropriate fund for Scan tool for mechanics.
672	Equipment Maintenance	Public Works	PW - Equipment Management		\$68,000		Equipment Maintenance			X	Appropriate fund for Four fuel dispensers for Corp Yard to replace existing aging units.
672	Equipment Maintenance	Public Works	PW - General Engineering	\$90,004		PWENBM2005	CY Lift Pits - Bldg G			X	Carryover of fund for CY lift pits decommissioning bldg G-Equip Mtc shop and underground pit chemical collection
672 Total				\$90,004	\$184,442						
678	Public Liability Fund	City Attorney	Legal Advice & Litigation	\$258,339			Salary savings			X	Carryover of salary savings from FY20 vacancies for for outside counsel and court costs.
678	Public Liability Fund	City Attorney	Legal Advice & Litigation	\$210,808			PL Fund savings			X	Carryover of Public Liability Fund account for outside counsel and court costs.
678	Public Liability Fund	City Attorney	Legal Advice & Litigation		\$719,017		City Attorney Outside Counsel, Court Costs, and Claims & Judgements			X	Additional funds to pay for outside counsel, court costs, and claims and judgements in FY 2021
678 Total				\$469,147	\$719,017						
680	IT Cost Allocation Plan	Information Technology	Infrastructure Security & Ops	\$450,000			Network Hardware Replacement			X	Carryover of IT Cost Allocation fund for Fortigate and core switches replacement per Resolution No. XX,XXXX -N.S. 27OCT20 with Presidio Networked Solutions
680	IT Cost Allocation Plan	Information Technology	Infrastructure Security & Ops	\$100,000			Citywide Microsoft Licenses			X	Carryover of IT Cost Allocation fund for Additional licenses for citywide Microsoft EA
680	IT Cost Allocation Plan	Information Technology	Infrastructure Security & Ops	\$544,357			Cloud data backup solution			X	Carryover of IT Cost Allocation fund for citywide hosted cloud data backup solution per Resolution No. TBD -N.S., 15SEPT20
680	IT Cost Allocation Plan	Information Technology	Infrastructure Security & Ops	\$428,000			VoIP System Upgrade			X	Carryover of IT Cost Allocation fund for citywide VoIP system upgrade per Resolution No. 69,388-N.S. 12MAY20

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
680	IT Cost Allocation Plan	Information Technology	Project Management and Analytics	\$200,000			Robert Half Consultants			X	Carryover of IT Cost Allocation fund for Robert Half Consultants support of Finance Department
680	IT Cost Allocation Plan	Information Technology	Project Management and Analytics	\$136,401			CycloMedia Technologies			X	Carryover of IT Cost Allocation fund for infrastructure asset data acquisition per Resolution No. 69,482-N.S. 30JUN20
680	IT Cost Allocation Plan	Information Technology	Project Management and Analytics	\$224,228			Middleware Upgrade: WebMethods			X	Carryover of IT Cost Allocation fund for data integration's middleware platform with SoftwareAG per Resolution No. 69,412-N.S. 26MAY20
680	IT Cost Allocation Plan	Information Technology	Project Management and Analytics	\$200,000			Support for Accela Software			X	Carryover of IT Cost Allocation fund for Configuration services to support Accela. Vendor: TruePoint and Grey Quarter
680	IT Cost Allocation Plan	Information Technology	Project Management and Analytics	\$95,451			Geographic Technologies Group			X	Carryover of IT Cost Allocation fund for GIS Master Plan execution per Resolution No. 69,413-N.S. 26MAY20
680	IT Cost Allocation Plan	Public Works	PW-Engineering	\$0		PWENCB2102	Public Safety Building Cooling System Redundancy			X	Contract with Stanton Engineering for the Redundant Cooling System for the Public Safety Data Center.
680 Total				\$2,378,437	\$0						
778	CFD No. 1 Disaster Fire Protection Bond	Fire	Fire Suppression		\$1,425,000		Water Distribution System			X	Appropriate funds to increase the capability and the maintenance of the water distribution system.
778 Total				\$0	\$1,425,000						
779	CFD NO.1 MELLO-ROOS	Non-Departmental			\$1,425,000		Transfer to Fund 778			X	Increase transfer to Fund 778 (CFD No. 1 Disaster Fire Protection) for funds needed to increase the capability and the maintenance of the water distribution system
779 Total				\$0	\$1,425,000						
781	Berkeley Tourism BID	City Manager's Office	Economic Development	\$0	\$85,825		Berkeley Tourism BID			X	This funding belongs to the Berkeley Tourism BID and the City is obligated to disperse it.
781 Total				\$0	\$85,825						
782	Elmwood BID	City Manager's Office	Economic Development	\$0	\$37,537		Elmwood BID			X	This funding belongs to the Elmwood BID and the City is obligated to disperse it.
782 Total				\$0	\$37,537						

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Fund #	Fund Name	Department	Division	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
783	Solano Avenue BID	City Manager's Office	Economic Development	\$0	\$9,881		Solano Avenue BID			X	This funding belongs to the Solano BID and the City is obligated to disperse it.
783 Total				\$0	\$9,881						
784	Telegraph PBID	City Manager's Office	Economic Development	\$0	\$239,714		Telegraph PBID			X	This funding belongs to the Telegraph PBID and the City is obligated to disperse it.
784 Total				\$0	\$239,714						
785	North Shattuck PBID	City Manager's Office	Economic Development	\$0	\$2,468		North Shattuck PBID			X	This funding belongs to the North Shattuck PBID and the City is obligated to disperse it.
785 Total				\$0	\$2,468						
786	Downtown PBID	City Manager's Office	Economic Development	\$0	\$253,352		Downtown Berkeley PBID			X	This funding belongs to the Downtown Berkeley PBID and the City is obligated to disperse it.
786 Total				\$0	\$253,352						
Grand Total				\$31,779,730	\$54,115,130						



Office of the City Manager

ACTION CALENDAR

December 15, 2020

(Continued from November 17, 2020)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Teresa Berkeley-Simmons, Budget Manager
Subject: Amendment: FY 2021 Annual Appropriations Ordinance

RECOMMENDATION

Adopt first reading of an Ordinance amending the FY 2021 Annual Appropriations Ordinance No. 7,724–N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments authorized since July 1, 2020, in the amount of \$184,267,388 (gross) and \$179,848,051 (net).

FISCAL IMPACTS OF RECOMMENDATION

On June 30, 2020 the City Council adopted the FY 2021 Budget, authorizing gross appropriations of \$533,318,519 and net appropriations of \$447,702,457 (net of dual appropriations).

This first amendment to the Annual Appropriations Ordinance totals \$184,267,388 (gross) and \$179,848,051 (net), increasing the gross appropriations to \$717,585,907 and net appropriations to \$619,923,839 and represents the re-authorization of funding previously committed in FY 2020 and some new expenditures including new grant fund appropriations. The recommendations in this report also include funding for a number of capital projects. Funding is recommended for the following:

1. Encumbered contract obligations from FY 2020 totaling \$98,732,991;
2. Re-appropriating committed, unencumbered FY 2020 funding for all funds in the amount of \$31,779,729; and
3. Changes to fund appropriations primarily due to receipt of new grants and use of available fund balances adjustments in the amount of \$53,754,668.

The changes to the General Fund total \$16,149,582 which includes encumbrances of \$7,191,365, unencumbered carry-over requests of \$5,406,787, and adjustments of \$3,551,430. The Capital Improvement Fund increases by \$9,852,780 and includes encumbrances of \$5,728,736 unencumbered carry-over requests of \$3,416,094, and adjustments of \$707,950.

BACKGROUND

The Annual Appropriations Ordinance (AAO) establishes the expenditure limits by fund for FY 2021. Throughout the year, the City takes actions that amend the adopted budget. These may include, but are not limited to, the acceptance of new grants, revisions to existing grants, adjustments to adopted expenditure authority due to emergency needs, and transfers in accordance with Council's fiscal policies.

The adopted budget is also amended annually to reflect the re-appropriation of prior year funds for contractual commitments (i.e. encumbrances) as well as unencumbered carryover of unexpended funds previously authorized for one-time, non-recurring purposes. These budget modifications are periodically presented to the Council in the form of an Ordinance amending the Annual Appropriations Ordinance, which formally requires a two-thirds vote of the City Council. This report addresses re-appropriating FY 2020 spending authority to FY 2021 of available cash for commitments entered into in prior years and is the first amendment to the FY 2021 AAO.

When Council adopts an appropriations ordinance (budget), it is based on projected revenues and expenditures. If fund balances do not support the requested level of expenditures, no carryover is recommended.

The proposed changes, presented in their entirety in Exhibit A, are summarized as follows:

	Encumbered Recommended	Unencumbered Recommended	Other Adjustments	Total
General Fund (011)	\$ 7,191,365	\$ 5,406,787	\$ 3,551,430	\$ 16,149,582
Capital Improvement Fund (501)	\$ 5,728,736	\$ 3,416,094	\$ 707,950	\$ 9,852,780
All Other Funds	\$ 85,812,890	\$ 22,956,848	\$ 49,495,288	\$ 158,265,026
Total	\$ 98,732,991	\$ 31,779,729	\$ 53,754,668	\$ 184,267,388

Carryover Process

Departments were asked to submit information regarding the reasons for the unencumbered carryover requests to assist staff in determining which funds should be carried into FY 2021. In prior years, funds have been approved for carryover from one year to the next based on funding availability.

This report recommends approximately \$32 million in unencumbered carryover for Council review and approval, representing funding for priority projects and programs.

Types of Carryover

FY 2020 Encumbrance Rollovers, totaling \$98,732,991 reflect contractual obligations entered into in fiscal year 2020 which had not been paid as of June 30, 2020. Funding for these "encumbered" commitments is brought forward into the current fiscal year to provide for payment of these obligations. Funding the encumbered rollovers for the General Fund represents around 7% of the total recommended encumbered rollovers.

The FY 2021 Adjusted Budget currently includes the carry forward of FY 2020 encumbrances, since the City is obligated to pay for these commitments.

FY 2020 Unencumbered Carryover, totals \$31,779,729 and reflects the carryover of funding appropriated by the City Council for specific purposes that had not been encumbered by year-end. The carryover for the General Fund represents around 17% of the total recommended unencumbered carryover amount and is for priority projects. Capital Improvement Funds carryovers are for continuing projects and makes up 11% of the unencumbered carryover. The remaining 72% represents carryover items in non-discretionary funds.

FY 2021 Other Adjustments total \$53,754,668 and reflect actions taken by the City Council with the adoption of the FY 2021 budget as well as adjustments required or approved since the budget adoption. Many of these adjustments are within non-discretionary funds and reflect the appropriation of grant funding and the use of available fund balance.

Below is a summary of the FY 2020 Unencumbered Carryover and the FY 2021 Adjustments for the City's General Fund and Other Funds.

General Fund

The General Fund includes unencumbered carry-over requests of \$5,406,787 and other adjustments of \$3,551,430 including the following program allocations:

Carryover

- \$462,700 in the City Clerk's Office for the costs related to November 2020 General Election
- \$617,607 in the City Manager's Office carryover items including some of the following items:
 - \$200,000 for the Berkeley Contracting Availability Study
 - \$39,000 for an emergency generator at the Animal Shelter
 - \$92,100 to fund a second Homeless Outreach Coordinator position
 - \$80,000 for Special Events funding approved by Council with the FY 2021 Mid-Biennial Budget Adoption in June 2020
 - \$31,501 for Business Continuity Grants funds not fully spent in FY 2020
 - \$60,200 for the 2020 Vision program Data Analysis and 2020 Milestone projects
- \$791,942 in Finance for the Accela Online Business Payment System (\$100,000), replacement of the property tax assessment system (\$400,000), backfill for a Revenue Collection Manager on maternity leave (\$150,000), and banking fees/services contract (\$141,942)
- \$486,742 in Health, Housing & Community Services carryover items including funds for the North Berkeley Senior Center Renovation (\$72,730), Aquatic Park water consultant (\$120,999), and the African American Holistic Center (\$51,188).

- ❑ \$470,000 in the Human Resources Department for labor negotiations and \$102,443 for classification and compensation studies as part of labor negotiations
- ❑ \$415,996 in Fair Election Campaign Funds being carried over to FY 2021 and transferred to the newly created Fair Election Campaign Fund
- ❑ \$60,000 in Parks, Recreation & Waterfront to fund waterfront security cameras in the berther lots
- ❑ \$583,341 in Planning for the BART Station Area Planning (\$160,000), Objective Standards for Density / State Housing Law Compliance (\$125,000), Green Building Program Manager position (\$273,341), and a Planning Department Racial Equity consultant (\$25,000)
- ❑ \$1,125,362 in Public Works for the following items:
 - Fire Safety (\$129,892)
 - Public Safety Data Center project (\$550,000)
 - Sewer Laterals & CCTV (\$5,830)
 - Hopkins Corridor Study (\$15,000)
 - Illegal Dumping (\$200,000)
 - Measure P funds for the Downtown Streets Team program expansion (\$225,000).

Other Adjustments

- ❑ \$25,000 in the City Attorney's Office to hire a subject matter expert to conduct an analysis for the City of litigation claims and settlements
- ❑ \$163,000 in the City Manager's Office for two Digital Communications Coordinator positions to continue the website project and EOC support
- ❑ \$1,140,806 in the Fire Department for the following items:
 - \$90,200 for 4th Ambulance Medical Supplies
 - \$39,714 for 3 additional gurneys from Stryker and equipping all seven ambulances with powered cot fastener systems
 - \$411,270 for the ambulance response and fire inspection billing contract with Wittman Enterprises LLC approved by Council
 - \$63,000 for Personal Protective Equipment for firefighters
 - \$250,000 for Fire recruit academy
 - \$200,000 for electrical work at fire stations
 - \$83,000 for priority dispatching
- ❑ \$78,000 in Measure P Funds for Youth Sprit Artworks Tiny Homes Case Management.
- ❑ \$98,675 for the Sugar Sweetened Beverage program to match the approved Council allocation
- ❑ \$100,000 approved by Council on July 14, 2020 for to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit
- ❑ \$719,017 transfer to the Public Liability Fund to pay for increased costs for outside counsel, court costs, and claims and judgement payments approved by Council

- ❑ \$406,925 transfer of FY 2020 Excess Property Transfer Tax Revenue transferred to Workers' Compensation Fund to repay loan to purchase Premier Cru (University Center)
- ❑ \$819,980 in Public Works for the following items:
 - \$360,437 for Survey of the Underground Utility District (UUD) No. 48 at Grizzly Peak
 - \$99,543 for building upgrades as part of the North Berkeley Senior Center project
 - \$100,000 for the University Avenue Bus Stop Improvements project
 - \$185,000 for the Hopkins Corridor Study
 - \$75,000 for the Berkeley Department of Transportation development study

Other Funds

Other City funds (including capital improvement project funds) total unencumbered carryover of \$26,372,942 and other adjustments of \$50,203,238 including the following project allocations:

Carryover

- ❑ \$775,208 in Playground Camp funds for construction management at Berkeley Tuolumne Camp
- ❑ \$2,253,660 in State Transportation Tax funds for Public Works street projects
- ❑ \$2,077,622 in Measure BB – Local Streets & Roads Funds for Public Works street projects
- ❑ \$1,604,463 in Parks Tax funds for various Parks, Recreation & Waterfront Department capital projects currently under way
- ❑ \$744,823 in Cultural Trust funds for public art projects
- ❑ \$737,100 in One Time Grant: No Capital Expenditure funds for grants in Health, Housing & Community Services, Public Works, and Parks, Recreation & Waterfront
- ❑ \$1,248,678 in CALTRANS Grant funds for the North Berkeley BART/Sacramento Street Complete Streets project
- ❑ \$3,416,094 in Capital Improvement Projects funding for Public Works projects
- ❑ \$405,097 in Measure M funds for Public Works projects
- ❑ \$6,820,356 in Measure T1 Funds for City Manager's Office, Parks, Recreation & Waterfront Department, and Public Works Department projects currently under way
- ❑ \$1,704,389 in Sewer Funds for Public Works sewer projects
- ❑ \$469,147 in Public Liability funds for outside counsel, court costs, and claims and judgements
- ❑ \$2,378,437 in IT Cost Allocation Plan funds for Information Technology projects currently under way

Other Adjustments

- ❑ \$500,000 in Library Foundation funds for the Central Library Renovation project

- ❑ \$18,373,385 in Playground Camps Fund for the Berkeley Tuolumne Camp project. This is appropriating insurance funds received to date for the reconstruction of Berkeley Tuolumne Camp. Construction is underway, and remains on schedule for re-opening Camp in the summer of 2022.
- ❑ \$1,610,805 in CDBG Cares Act funds to prevent, prepare for, and respond to Coronavirus
- ❑ \$670,415 in Measure BB – Local Streets & Roads for the loan to the Measure T1 Fund approved by Council (\$600,000) and for the Retaining Wall – Glendale project (\$70,415)
- ❑ \$1,142,456 in Parks Tax funds for the Measure T1 Fund loan approved by Council (\$600,000) and for other Parks, Recreation & Waterfront projects
- ❑ \$976,925 in Capital Grants – Federal funds for the Southside Complete Streets project
- ❑ \$3,486,846 in Capital Grants – State funds for the Milvia Bikeway project, Addison Bike Boulevard project, and the University Avenue Bus Stop Improvements project
- ❑ \$1,800,972 in HUD Home funds for the 1601 Oxford project
- ❑ \$808,117 in ESG Cares Act funds for to prevent, prepare for, and respond to Coronavirus
- ❑ \$3,289,763 in Mental Health Services Act funds to match the amount approved by Council and the State and for the contract with Bay Area Community Resources for AmeriCorps members at the Berkeley High School Health Center
- ❑ \$616,908 in One-Time No Capital Grant Expenditure funds for grant in Health, Housing & Community Services, Parks, Recreation & Waterfront, Planning & Development, and Public Works
- ❑ \$557,350 in FEMA funds for the Hazard Mitigation Grant Program funds for City of Berkeley grants for seismically vulnerable buildings
- ❑ \$400,523 in Bioterrorism Grant funds from the California Department of Public Health to prevent, prepare for, and respond to COVID-19
- ❑ \$707,950 in Capital Improvement funds for the Grayson Apartments project, Sewer Laterals & CCTV project, 125-127 University Avenue project, and the Ashby/San Pablo Avenue Traffic Improvements project
- ❑ \$302,627 in Measure M Funds for the Cordonices Creek at Kains Avenue project
- ❑ \$1,638,511 in Measure T1 – Infrastructure & Facilities Funds for project currently underway
- ❑ \$4,452,438 in Measure O funds for the 1601 Oxford project and the Berkeley Way project
- ❑ \$632,223 in Zero Waste funds for the Zero Waste Management software and vehicle purchases
- ❑ \$2,495,886 in Equipment Replacement funds for the additional amount needed to replace all vehicles (current and backlogged) scheduled to be replaced in FY 2021
- ❑ \$719,017 in Public Liability Funds for the funds transferred in from the General Fund for increased costs for outside counsel, court costs, and claims and judgement payments approved by Council

- \$1,425,000 in C.F.D. No. 1 Fire Protection Bond funds to increase the capability and the maintenance of the water distribution system.

This report has been discussed with the Budget & Finance Policy Committee at their October 8, 2020, October 22, 2020, and November 12, 2020 meetings.

Any changes made by the Council as part of the adoption of the FY 2020 Year-End/FY 2021 1st Quarter Report will need to be incorporated into the numbers presented in this report to reflect these additional appropriations.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the act of adopting the budget/appropriations ordinance/amendments. Actions included in the budget will be developed and implemented in a manner that is consistent with the City's environmental sustainability goals and requirements.

RATIONALE FOR RECOMMENDATION

The recommendation allows the City to amend the FY 2021 Adopted Budget, re-appropriating funds from FY 2020 to FY 2021 for contractual commitments that need to be paid and revising the budget to reflect approved carryover requests in both discretionary and non-discretionary funds.

The recommendations in this report deal with the unencumbered carryover in the funds listed above and the other adjustments in all funds. Staff has conducted a detailed analysis of the individual carryover requests submitted by departments and is presenting carryover recommendations for projects that are either currently under contract, represent council priorities, and/or are considered critical.

CONTACT PERSON

Teresa Berkeley-Simmons, Budget Manager, City Manager's Office, 981-7000
Rama Murty, Senior Management Analyst, City Manager's Office, 981-7000

Attachments:

1: Ordinance

Exhibit A: Annual Appropriation Ordinance Summary of Appropriations by Fund
2: FY 2020 Carryover Recommendations and FY 2021 Adjustments

ORDINANCE NO. -N.S.

AMENDING THE ANNUAL APPROPRIATIONS ORDINANCE NO. 7,724–N.S. FOR
FISCAL YEAR 2021

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 2021 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)	227,336,186
B. Special Funds (Funds 100-199)	142,328,402
C. Grant Funds (Funds 300-399)	49,357,775
D. Capital Projects Funds (Funds 500-550)	70,515,607
E. Debt Service Fund (Funds 551-599)	9,777,705
F. Enterprise Funds (Funds 600-669)	148,976,006
G. Internal Service Funds (Funds 146, 670-699)	54,657,166
H. Successor Agency (Funds 760-769)	57,120
I. Agency Funds (Funds 771-799)	8,357,381
J. Other Funds (Funds 800-899)	6,222,560
<u>K. Total</u>	
Total General Fund	227,336,186
Add: Total Other Than General Fund	490,249,722
Gross Revenue Appropriated	717,585,907
Less: Dual Appropriations	-43,004,902
Less: Revolving/Internal Service Funds	-54,657,166
Net Revenue Appropriated	619,923,839
A. General Fund (Funds 001-099)	227,336,186
B. Special Funds (Funds 100-199)	142,328,402
C. Grant Funds (Funds 300-399)	49,357,775

D. Capital Projects Funds (Funds 500-550)	70,515,607
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F. Enterprise Funds (Funds 600-669)	148,976,006
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Gross Revenue Appropriated	717,585,907
Less: Dual Appropriations	-43,004,902
Less: Revolving/Internal Service Funds	-54,657,166
Net Revenue Appropriated	619,923,839

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 UC Settlement Fund to General Fund and Clean Storm Water Fund.
- e. From Capital Improvement Fund to PERS Savings Fund; Berkeley Repertory Theater Fund; and 2010 COP (Animal Shelter) Fund.

- f. To the Public Art Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- g. To CFD#1 District Fire Protection Bond (Measure Q) from Special Tax Bonds CFD#1 ML-ROOS.
- h. To Private Sewer Lateral Fund from Sanitary Sewer Operation Fund.
- i. To Catastrophic Loss Fund from Permit Service Center Fund.
- j. To Catastrophic Loss Fund from Unified Program (CUPA) Fund.
- k. 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.
- l. 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.
- m. 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.
- n. 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.
- o. 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.

- p. 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.
- q. 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.

- r. 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.
- s. 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;

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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.

Attachment for Annual Appropriations Ordinance - Fiscal Year 2020**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	1,368,416
Equipment Replacement Fund	12,174,125
Equipment Maintenance Fund	8,657,942
Building Maintenance Fund	4,438,018
Central Services Fund	388,490
Workers' Compensation Fund	6,586,355
Public Liability Fund	3,476,706
Information Technology Fund	17,567,113
Subtotal Revolving/Internal Service Funds	\$ 54,657,166

DUAL APPROPRIATIONS - WORKING BUDGET

Dual appropriations are identified with revenues generated by one fund and transferred to another fund. Both funds are credited with the applicable revenue, and the total is reflected in the "Less Dual Appropriations" in item I. The dual appropriations are:

Transfers to the General Fund

<u>Indirect Cost Reimbursement</u>	
CDBG Fund	143,373
Street Light Assessment District Fund	115,865
Zero Waste Fund	2,326,015
Marina Enterprise Fund	415,427
Sanitary Sewer Fund	1,071,882
Clean Storm Water Fund	252,015
Permit Service Center Fund	1,874,805
Unified Program (CUPA) Fund	87,242
Subtotal Transfers to General Fund:	\$ 6,286,624

Transfer to Safety Members Pension Fund from General Fund	551,804
Transfer to Measure U1 Fund from General Fund	3,575,390
Transfer to Paramedic Tax Fund from General Fund	703,103
Transfer to Health State Aid Realignment from General Fund	1,953,018
Transfer to Fair Election Fund from General Fund	501,833
Transfer to Capital Improvement Fund (CIP) from General Fund	3,255,167
Transfer to Phone System Replacement - VOIP from General Fund	160,000
Transfer to Equipment Replacement Fund from General Fund	
Transfer to Public Liability Fund from General Fund	1,695,888
Transfer to Catastrophic Loss Fund from General Fund	2,295,334
Transfer to IT Cost Allocation Fund from General Fund	431,802
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 General Fund from General Fund Stabilization Reserves Fund	6,900,000
Transfer to General Fund from General Fund Catastrophic Reserves Fund	4,500,000
Transfer to Measure T1 Fund from Measure BB - Local Streets & Roads Fund	600,000
Transfer to Measure T1 Fund from Parks Tax Fund	600,000
Transfer to General Fund from UC Settlement Fund	907,554
Transfer to Clean Storm Water Fund from UC Settlement Fund	302,519
Transfer to General Fund from Health State Aid Realignment Fund	2,643,280
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	1,037,439
Transfer from Special Tax Bonds CFD#1 ML-ROOS to CFD#1 District Fire Protect Bond (Measure Q)	452,759
Transfer to First Source Fund from Parks Tax Fund	14,093
Transfer to First Source Fund from Capital Improvement Fund	26,943
Transfer to First Source Fund from Marina Fund	1,875
Transfer to Public Art Fund from Parks Tax Fund	21,140
Transfer to Public Art Fund from Capital Improvement Fund	40,414
Transfer to Public Art Fund from Marina Fund	2,813
Subtotal Transfers to Other Funds:	<u>36,718,278</u>
Sub-Total Dual Appropriations	<u>\$ 43,004,902</u>
Grand Total Dual Appropriations	\$ 97,662,068

SUMMARY OF APPROPRIATIONS BY FUND

ERMA Fund # Fund	FY 2021 Adopted	1st AAO				FY 2021 Revised #1
		Encumbered Rollovers	Unencum. Carryovers	Other Adjustments	Total Amend.	
11 General Fund Discretionary	194,718,710	7,191,365	5,406,787	3,551,430	16,149,582	210,868,292
16 Measure U1 - Housing	5,067,894				-	5,067,894
98 General Fund - Stabilization Reserves	6,900,000				-	6,900,000
99 General Fund - Catastrophic Reserves	4,500,000				-	4,500,000
101 Library - Tax	21,567,259	2,643,014			2,643,014	24,210,273
103 Library - Grants	64,089				-	64,089
104 Library - Friends & Gift	150,000	1,926			1,926	151,926
105 Library - Foundation	100,000	46		500,000	500,046	600,046
106 Asset Forfeiture	201,000				-	201,000
107 Special Tax Measure E	1,361,402				-	1,361,402
108 First Source Fund	48,083				-	48,083
110 Sec 108 Loan Gty Asst.	553,408				-	553,408
111 Fund Raising Activities	53,557			28,000	28,000	81,557
113 Sports Field (Vendor Oper)	189,807	30,813			30,813	220,620
114 Gilman Fields Reserve	-	2,694	56,506		59,200	59,200
115 Animal Shelter	52,480	5,192			5,192	57,672
116 Paramedic Tax	4,223,699				-	4,223,699
117 CA Energy Commission	-	44,249			44,249	44,249
119 Domestic Violence Prev - Vit Stat	26,462				-	26,462
120 Affordable Housing Mitigation	49,690	2,657,746		100,166	2,757,912	2,807,602
121 Affordable Child Care	13,275				-	13,275
122 Inclusionary Housing Program	148,044			21,119	21,119	169,163
123 Condo Conversion	37,520	997,980			997,980	1,035,500
124 Parking In Lieu Fee	-	82,010			82,010	82,010
125 Playground Camp	1,982,688	11,673,845	775,208	18,373,385	30,822,438	32,805,126
126 State-Prop 172 Pub.Safety	929,177	781			781	929,958
127 State Transportation Tax	6,041,284	1,758,208	2,253,660		4,011,868	10,053,152
128 CDBG	2,580,144	21,781		1,610,805	1,632,586	4,212,730
129 Rental Housing Safety Program	1,893,929	11,582			11,582	1,905,511
130 Measure B - Local St & Road	4,112,067	631,683	279,790	45,000	956,473	5,068,540
131 Measure B - Bike and Pedestrian	578,279	115,378			115,378	693,657
132 Measure B - Paratransit	490,125	21,927			21,927	512,052
133 Measure F Alameda County VRF St & Rd	799,084	17,281	79,800	14,018	111,099	910,183
134 Measure BB - Local St & Road	4,651,014	1,041,539	2,077,622	670,415	3,789,576	8,440,590
135 Measure BB - Bike & Pedestrian	493,297	213,986	395,139	177,475	786,600	1,279,897
136 Measure BB - Paratransit	387,847	40,864		29,500	70,364	458,211
137 One Time Funding	-	19,080			19,080	19,080
138 Parks Tax	14,311,368	2,019,588	1,604,463	1,142,456	4,766,507	19,077,875
139 Streets & Open Space IMPR	-	656,301			656,301	656,301
140 Measure GG - Fire Prep Tax	4,828,024	85,635		90,500	176,135	5,004,159
141 1st Response Advanced Life Support	-	2,000			2,000	2,000
142 Streetlight Assesment District	2,684,633	298,342			298,342	2,982,975
143 Berkeley Bus Ec Dev	156,387	11,550			11,550	167,937
145 Bayer (Miles Lab)	8,500	20,000	138,014		158,014	166,514
146 Employee Training	774,643	127,554			127,554	902,197
147 UC Settlement	1,231,292	10,532		126,592	137,124	1,368,416
148 Private Percent - Art Fund	22,380		744,823	123,274	868,097	890,477
149 Private Party Sidewalks	100,000		50,000		50,000	150,000
150 Public Art Fund	64,367	26,464	70,709		97,173	161,540
152 Vital & Health Statistics Trust Fund	29,893	560		45,000	45,560	75,453
156 Hlth State Aid Realign Trust	4,010,244				-	4,010,244
157 Tobacco Cont.Trust	334,284	15,476	62,400		77,876	412,160
158 Mental Health State Aid Realign	2,921,175	502,597			502,597	3,423,772
159 Citizens Option Public Safety Trust	258,921	83,040			83,040	341,961
161 Alameda Cty Abandoned Vehicle Abatement	99,852	1,229			1,229	101,081
165 Fair Elections	501,833				-	501,833
305 Capital Grants - Federal	-			976,925	976,925	976,925
306 Capital Grants - State	-	122,997	60,000	3,486,846	3,669,843	3,669,843
307 Shelter Plus Care	-	650,830			650,830	650,830
309 OTS DUI Enforcement Education Prg.	129,500				-	129,500
310 HUD/Home	651,399	14,057		1,800,972	1,815,029	2,466,428
311 ESGP	568,086			808,117	808,117	1,376,203
312 Health (General)	2,257,061	6,090		10,151	16,241	2,273,302
313 Target Case Management Linkages	869,706	69,621		13,232	82,853	952,559
314 Alameda County Tay Tip	35,812	8			8	35,820
315 Mental Health Service Act	9,018,458	970,782		3,289,763	4,260,545	13,279,003
316 Health (Short/Doyle)	3,823,059	281,959			281,959	4,105,018
317 EPSDT Expansion Proposal	386,235				-	386,235
318 Alcoholic Bev Ctr OTS/UC	52,804				-	52,804
319 Youth Lunch	101,900	192,574	90,522		283,096	384,996
320 Sr. Nutrition Title III	104,516				-	104,516
321 CFP Title X	142,813	196		128,187	128,383	271,196
324 BUSD Grant	310,992				-	310,992
325 Vector Control	328,281	10,074			10,074	338,355
326 Alameda County Grants	650,225			3,354	3,354	653,579
327 Senior Supportive Social Services	55,720				-	55,720

SUMMARY OF APPROPRIATIONS BY FUND

ERMA Fund # Fund	FY 2021 Adopted	1st AAO			Total Amend.	FY 2021 Revised #1
		Encumbered Rollovers	Unencum. Carryovers	Other Adjustments		
328 Family Care Support Program	68,254				-	68,254
329 CA Integrated Waste Management	5,244	2,760		45,000	47,760	53,004
333 CALHOME	363,100				-	363,100
334 Community Action	295,338	25,890	737,100	616,908	1,379,898	1,675,236
336 One-Time Grant: No Cap Exp	1,554,161	575,971			575,971	2,130,132
338 Bay Area Air Quality Management	60,000				-	60,000
339 MTC	125,000	1,106,408	34,609		1,141,017	1,266,017
340 FEMA	1,238,435	127,238		557,350	684,588	1,923,023
341 Alameda Cty Waste Mgt.	285,000				-	285,000
343 State Dept Conserv/Recylg	28,000				-	28,000
344 CALTRANS Grant	-	249,729	1,248,678	98,617	1,597,024	1,597,024
345 Measure WW - Park Bnd Grant	-	521,414	31,404		552,818	552,818
346 CALTRANS Safe Routes 2 Schools	-	9,757			9,757	9,757
347 Shelter+Care HUD	5,478,439	5,320			5,320	5,483,759
348 Shelter+Care County	568,219				-	568,219
349 JAG Grant	52,500				-	52,500
350 Bioterrorism Grant	364,386	3,201		400,523	403,724	768,110
501 Capital Improvement Fund	8,214,694	5,728,736	3,416,094	707,950	9,852,780	18,067,474
502 Phone System Replacement	160,000	3,508			3,508	163,508
503 FUND\$ Replacement	6,481,658	1,677,524		50,000	1,727,524	8,209,182
504 PEG-Public, Education & Government	100,000				-	100,000
506 Measure M Streets & Watershed IMP	-	49,247	405,097	302,627	756,971	756,971
511 Measure T1 - Infra & Facil.	2,265,231	14,221,513	6,820,356	1,638,511	22,680,380	24,945,611
512 Measure O - Housing	-	13,820,423		4,452,438	18,272,861	18,272,861
552 09 Measure FF Debt Service	1,621,745				-	1,621,745
553 2015 GORBS	2,604,905				-	2,604,905
554 2012 Lease Revenue Bonds BJPFA	502,298				-	502,298
555 2015 GORBS - 2002 G.O. Refunding Bonds	481,211				-	481,211
556 2015 GORBS (2007, Series A)	181,150				-	181,150
557 2015 GORBS (2008 Measure I)	610,791				-	610,791
558 2010 COP (Animal Shelter)	403,685				-	403,685
559 Measure M GO Street & Water Imps	1,641,863				-	1,641,863
560 Infrastructure & Facilities Measure T1	1,730,057				-	1,730,057
601 Zero Waste	50,012,836	3,604,293	48,600	632,223	4,285,116	54,297,952
606 Marina - Coastal Conservancy	-	27,992	16,356		44,348	44,348
607 Marina - Dept. of Boating & Waterways	-	29,600	32,980		62,580	62,580
608 Marina Operation	6,988,739	307,786	38,352		346,138	7,334,877
611 Sewer	23,850,686	11,595,615	1,704,389	90,000	13,390,004	37,240,690
612 Private Sewer Lateral FD	200,568				-	200,568
616 Clean Storm Water	5,290,391	775,459			775,459	6,065,850
621 Permit Service Center	20,855,324	1,428,222			1,428,222	22,283,546
622 Unified Program (CUPA)	896,131	5,504			5,504	901,635
627 Off Street Parking	6,484,575	486,732			486,732	6,971,307
631 Parking Meter	9,640,151	406,135	162,683	117,717	686,535	10,326,686
636 Building Purchases and Management	3,210,140	35,829			35,829	3,245,969
671 Equipment Replacement	5,415,733	4,262,506		2,495,886	6,758,392	12,174,125
672 Equipment Maintenance	7,926,789	456,707	90,004	184,442	731,153	8,657,942
673 Building Maintenance Fund	4,304,795	133,223			133,223	4,438,018
674 Central Services	384,569	3,921			3,921	388,490
676 Workers Compensation	6,422,651	163,704			163,704	6,586,355
678 Public Liability	1,922,551	365,991	469,147	719,017	1,554,155	3,476,706
680 Information Technology	14,357,042	831,634	2,378,437		3,210,071	17,567,113
762 Successor Agency - Savo DSF	57,120				-	57,120
774 Sustainable Energy Fin District	28,719				-	28,719
776 Thousand Oaks Underground	98,177				-	98,177
777 Measure H - School Tax	500,000	2			2	500,002
778 Measure Q - CFD#1 Dis. Fire Protect Bond	452,792	152,124		1,425,000	1,577,124	2,029,916
779 Spl Tax Bds. CFD#1 ML-ROOS	1,226,320			1,425,000	1,425,000	2,651,320
781 Berkeley Tourism BID	422,500			85,825	85,825	508,325
782 Elmwood Business Improvement District	30,000	1		37,537	37,538	67,538
783 Solano Ave BID	25,000			9,881	9,881	34,881
784 Telegraph Avenue Bus. Imp. District	515,637			239,714	239,714	755,351
785 North Shattuck BID	182,647			2,468	2,468	185,115
786 Downtown Berkeley Prop & Improv. District	1,244,686			253,352	253,352	1,498,038
801 Rent Board	6,096,209	126,351			126,351	6,222,560
GROSS EXPENDITURE:	533,318,519	98,732,991	31,779,729	53,754,668	184,267,388	717,585,907
Dual Appropriations	(43,650,640)	-	-	645,738	645,738	(43,004,902)
Revolving & Internal Service Funds	(41,965,422)	(6,228,219)	(2,937,588)	(3,525,937)	(5,065,075)	(54,657,166)
NET EXPENDITURE:	447,702,457	92,504,772	28,842,141	50,874,469	179,848,051	619,923,839

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
1	11	General Fund	City Attorney		\$25,000		Analysis of Litigation Claims & Settlements			X	Funds to hire a subject matter expert to conduct an analysis for the City of litigation claims and settlements
2	11	General Fund	City Clerk	\$62,500			KMBS contract Annual Maintenance (OnBase)			X	Baseline software contract maintenance and scheduled upgrades
3	11	General Fund	City Clerk	\$51,400			Redistricting Commission support costs			X	Commissioner meeting stipends; demographer contingency amount
4	11	General Fund	City Clerk	\$462,700			Election Costs	X			Annual carryover to cover costs from 11/3/2020 election that will be billed between Dec, 2020 - May 2021
5	11	General Fund	City Manager	\$200,000			Berkeley Contracting Availability Study		X		Approved by Council on 6/25/19 as part of the FY 2020 & FY 2021 Budget Adoption (Resolution 69,010-N.S.)
6	11	General Fund	City Manager		\$163,000		Digital Communications Coordinator positions			X	Add 6 months of funding for two Digital Communications Coordinator positions to continue the website project and EOC support
7	11	General Fund	City Manager's Office	\$39,000			Animal Shelter Generator			X	The division has pursued the purchase and installation of an emergency generator for the past couple years, but was unable to procure alternate funding. The generator is crucial for maintaining electricity in the event of a public safety power shutoff, and will allow the shelter to maintain refrigeration for deceased animals, veterinary medicine, and other crucial electrical functions for the essential service.
8	11	General Fund	City Manager's Office	\$16,000			Chameleon Platform			X	The system, quoted at \$20,000, will expand use of an existing platform to digitize the animal licensing renewal process, reducing duplicative processes by Animal Services and Finance staff and making the process accessible both remote and online. This will also allow for BACS to receive online donations for the first time.
9	11	General Fund	City Manager's Office	\$15,000			Flex Fund			X	This fund will be used by Homeless Outreach to provide key resources and linkages for unhoused individuals who are not a part of the City's case management system, including bus and train vouchers, food, temporary hotel relief, medical supplies and appointments, etc. This was previously funded by HHCS, but with the transition of HOTT into an FSP model the funds will not transfer with the Homeless Outreach position into Neighborhood Services, a move that is expected to take place in late September / early October.
10	11	General Fund	City Manager's Office	\$11,000			Homeless Outreach Coordinator			X	This position was funded at a higher level (Health Program Service Specialist) in a temporary capacity, but CMO intends to fund this position at its current class moving forward, due to their enhanced role in citywide homeless outreach as well as the supervision of the supplemental Homeless Outreach Coordinator position described below. This difference will need to be incorporated into the baseline personnel costs for Neighborhood Services moving forward.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
11	11	General Fund	City Manager's Office	\$92,100			Second Homeless Outreach Coordinator			X	Prior to Homeless Outreach transitioning to Neighborhood Services, HHCS had identified a need for a supplemental Homeless Outreach Coordinator (Social Service Specialist). Step 5 for this position is \$150,724 (\$44.18/hour, \$91,905.44/year + benefits at 64%, \$58,820). HHCS had previously identified \$58,635.18 to fund this position, leaving \$92,089 to fully fund the position. This position will be funded by the Neighborhood Services carryover balance, in addition to the balance of funds from CM Admin noted in the Census item below, but in future years this will need to be added to the baseline budget for Neighborhood Services.
12	11	General Fund	City Manager's Office	\$60,000			Census plus Neighborhood Services Homeless Outreach			X	To fund remaining purchases in the Census enumeration and to supplement personnel costs in the recently transferred Homeless Outreach component of Neighborhood Services
13	11	General Fund	City Manager's Office	\$80,000			Special Events Funds		X		Festivals and Special Events Funding approved by Council as part of the FY 2021 Mid-Biennial Budget Update adoption on 6/30/20
14	11	General Fund	City Manager's Office	\$31,501			Berkeley Continuity Grants			X	\$1.0M allocated to small business continuity grants, there was approximately \$31,501 that was unspent. The City Council authorized staff to direct these funds to supporting businesses make the transition to outdoor seating. Funds have not been spent as of yet. We are developing a plan to spend these funds on a citywide barricade loan program similar to what other jurisdictions have done. These funds will likely be spent in the next 1-2 months.
15	11	General Fund	City Manager's Office	\$12,806			Civic Art Grants			X	FY 2020 Grants paid in FY 2021, adjusted from 3K to 12K (9.18.20)
16	11	General Fund	City Manager's Office	\$60,200			Data Analysis plus 2020 Milestone			X	Carryover of funds to support two strategic plan projects, Data Analysis and 2020 Milestone, that have been delayed due to the pandemic and subsequent staffing and resource availability.
17	11	General Fund	Finance	\$85,670			Banking Fees/Services - contract with Wells Fargo			X	Banking Fees/Services - Council Approved 4 year extension to contract with Wells Fargo. Finance neglected to encumber necessary amount.
18	11	General Fund	Finance	\$100,000			ACCELA			X	Consulting Services for Implementation of Online Business License Payments (Accela). Especially important given closed customer service center.
19	11	General Fund	Finance	\$400,000			Replacement of Property Tax Assessment Software			X	Replacement of Property Tax Assessment Software - Current System is prone to errors; software support services are difficult to find for 30 year-old system; the single IT Dept staff who can assist may be retiring soon.
20	11	General Fund	Finance	\$150,000			Backfill for Revenue Collections Manager			X	Carryover of fund to backfill Revenue Collections Manager out on Maternity Leave for 9 months

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
21	11	General Fund	Finance	\$56,272			Banking Fees/Services - contract with Wells Fargo			X	Banking Fees/Services - Council Approved 4 year extension to contract with Wells Fargo. Finance neglected to encumber necessary amount.
22	11	General Fund	Fire		\$90,200		Fouth Amulance Medical Supplies		X		Medical supplies for fourth ambulance approved by Council
23	11	General Fund	Fire		\$39,714		Gurneys for Fire Department Ambulances		X		A sole source contract and any amendments with Stryker to finance the purchase of three additional gurneys and equip all seven ambulances with the powered cot fastener system (power load system) for Fire Department ambulances which will allow transport of the sick and injured, increasing the amount by \$39,714 for a total not to exceed annual amount of \$74,000. Approved by Council on 10/15/19 through Resolution No. 69,128 - N.S.
24	11	General Fund	Fire		\$411,270		Wittman Enterprises LLC Contract		X		FY 2021 funds for Wittman Enterprises LLC contract to provide emergency response billing, fire inspection billing, and related hardware, software, and program oversight Approved by Council on 12/11/18 through Resolution No. 68,707-N.S.
25	11	General Fund	Fire		\$63,000		Personal Protective Equipment for Firefighters		X		Appropriate funds for Personal Protective Equipment for Firefighters Ballistitcs contract. Approved by Council on 01/21/2020 through Resolution Nos. 69,242-N.S. and 69,243-N.S.
26	11	General Fund	Fire		\$3,622		Fusako Donation		X		Appropriate remaining balance of Fusako Castro donation for purchase of a new fire water rescue boat. Donation was approved by Council on 1/23/18 through Resolution 68,285-N.S.
27	11	General Fund	Fire		\$250,000		Fire Recruit Academy			X	Appropriate funds to conduct a Fire Recruit Academy in FY 2021 to fill vacant sworn Firefighter positions.
28	11	General Fund	Fire		\$200,000		Electrical Work			X	Funds for electrical work at Fire Stations
29	11	General Fund	Fire		\$83,000		Priority Dispatching			X	An estimated amount of \$83,000 is needed to pay for the overtime of staff assigned to this project, community engagement, and hiring a third-party consultant to assist in designing the dispatch system.
30	11	General Fund	Health, Housing & Community Services	\$72,730		HHAGFR2101	North Berkeley Senior Center Renovation			X	Carryover of FY 2020 North Berkeley Senior Center Renovation Budget
31	11	General Fund	Health, Housing & Community Services	\$32,650		HHAGRE2101	Senior Centers Rental Maintenance Fees			X	Carryover of funds for Senior Centers Rental Maintenance Fees
32	11	General Fund	Health, Housing & Community Services	\$25,000		HHHCGA2101- NONPERSONN- COVID19 COMMUNITY AGENCY	East Bay Community Law Center		X		Carryover remaining funds for East Bay Community Law Center contract for its housing retention program to address the impact of the COVID-19 pandemic on existing housing insecurities in Berkeley. Approved by Council on 3/17/20
33	11	General Fund	Health, Housing & Community Services	\$65,947		HHHSQU2101	Square One, Motel Vouchers			X	Carryover of fund for Square One and Motel Voucher balances to be used to on Rental Assistance

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
34	11	General Fund	Health, Housing & Community Services	\$120,999		HHEGFF2101	Environmental Health General Fund			X	Carryover of fund to pay for a consultant to conduct a water quality investigation at Aquatic Park.
35	11	General Fund	Health, Housing & Community Services		\$78,000	HHMMPF2101-NONPERSONN-GRANT&G-CMMNTYAGY-	Measure P Funds		X		Measure P Funds for Youth Sprit Artworks Tiny Homes Case Management.
36	11	General Fund	Health, Housing & Community Services	\$51,188		HHOGFH2101	African American Holistic Center			X	Carryover of fund for African American Holistic Center program
37	11	General Fund	Health, Housing & Community Services		\$98,675	HHPGHB2101	Sugar Sweetened Beverage Program Public Health Division		X		Revise Public Health Division Sugar Sweetened Beverage Program budget to match Council approved allocation of \$475,000 less deferred amount(\$30,000) in FY21. Approved by Council on 5/14/19 through Resolution No. 68,914-N.S.
38	11	General Fund	Health, Housing & Community Services	\$27,000		HHPGHS2101	Public Health - Berkeley High School Health Center			X	\$27,000 from the general fund in the Berkeley High School Health Center was identified specifically to be encumbered under the Worldwide Travel Staffing nurse registry services contract (32000232 MH) at the time the contract was being developed. Although the amount and project string was provided to the contact at Mental Health (who was leading the effort), the PO was not entered in with the rest of the POs slated for this contract.
39	11	General Fund	Health, Housing & Community Services	\$3,000		HHPGDP2101	PH-Disparities Program purchase of computer			X	Carryover of fund to purchase a computer for Public Health Disparities Program.
40	11	General Fund	Health, Housing & Community Services	\$20,000		HHPGHB2101	PH Healthy Berkeley (SSB) Program			X	Carryover request for a media campaign fund contract for PH Healthy Berkeley (SSB) Program
41	11	General Fund	Health, Housing & Community Services	\$25,000		HHPGHO2101	Berkeley Free Clinic			X	Carryover of fund for Berkeley Free Clinic contract
42	11	General Fund	Health, Housing & Community Services	\$11,873		HHPGHO2101	FY19 1011 University Utilities			X	Carryover of fund for FY 2019 1011 University Utilities charges not collected by PW.
43	11	General Fund	Health, Housing & Community Services	\$29,855		HHPGHO2101	FY20 1011 University Utilities			X	Carryover of fund for FY 2020 1011 University Utilities charges not collected by PW.
44	11	General Fund	Health, Housing & Community Services	\$1,500		HHPGHO2101	PH General Fund			X	Carryover of fund for FY 2020 PH Parking Permit fees - uncollected by other City Department
45	11	General Fund	Human Resources	\$470,000			Labor Negotiations			X	Carryover of funds for ongoing labor negotiations in FY 2021.
46	11	General Fund	Human Resources	\$102,443			Class & Compensation Studies for Labor Negotiations		X		Fund classification projects per Union agreement also conduct a study to see ERMA's impact on classifications
47	11	General Fund	Human Resources	\$50,000			EEO Division Case Management Software		X		Approved by Council on 6/25/19 as part of the FY 2020 & FY 2021 Budget Adoption (Resolution 69,010-N.S.)

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
48	11	General Fund	Mayor & Council	\$68,983			Council FY20 Year End Balance Carryover			X	Council FY 2020 Year-End Balance carryover
49	11	General Fund	Non-Departmental		\$100,000		Specialized Care Unit		X		Allocate \$100,000 from the FY 2021 Unallocated General Fund Balance (of \$141,518 unallocated in the FY 2021 Adopted Budget) to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit. This Specialized Care Unit (SCU) consisting of trained crisis-response workers would respond to 911 calls that the operator evaluated as non-criminal and that posed no imminent threat to the safety of first responders. Approved by Council on 7-14-20
50	11	General Fund	Non-Departmental	\$415,966			Fair Election Campaign Funds			X	Carryover unspent FY 2020 Fair Election Campaign Funds to FY 2021 and transfer to the new Fair Election Campaign Fund.
51	11	General Fund	Non-Departmental		\$719,017		Transfer to Public Liability Fund			X	Increase transfer to Public Liability Fund to pay for outside counsel, court costs, and claims and judgements in FY 2021
52	11	General Fund	Non-Departmental		\$406,952		Transfer to Workers' Compensation Fund		X		Transfer of Excess Property Transfer Tax Revenue to Capital Improvement Fund and then transferred to Workers' Compensation Fund to repay loan to purchase Premier Cru (University Center).
53	11	General Fund	Parks Recreation & Waterfront	\$32,000			Berkeley Project/ ASUC			X	Berkeley Project (ASUC) was awarded a community agency contract with the City for Cal students' work on Berkeley Project Day. They were unable to sign the contract in FY20, so their allocation is requested to carryover into FY21.
54	11	General Fund	Parks Recreation & Waterfront	\$25,800			Official Payments / Credit Card Fees			X	Official Payments is the credit card payment gateway for the City's recreation online software. The City is still working on the contract amendment to establish Official Payments as a vendor in ERMA, so that we can pay 9 months of FY 2020 invoices.
55	11	General Fund	Parks Recreation & Waterfront	\$60,000			Waterfront Security Cameras			X	To cover purchase and installation of security cameras at Waterfront in berth lots, to deter criminal activity.
56	11	General Fund	Planning	\$160,000			BART Station Area Planning			X	Consultant services to complete planning and environmental review for Ashby and North Berkeley BART stations (including AB 2923 compliance).
57	11	General Fund	Planning	\$125,000			Objective Standards for Density / State Housing Law Compliance			X	Consultant services to develop objective development standards for mixed-use and multi-family residential projects in order to comply with recently passed State housing laws and to improve customer service by clarifying regulations and streamlining the permitting process.
58	11	General Fund	Planning	\$273,341			Green Buiding Program Manager			X	50% of cost for a new 2 year FTE, Green Building Program Manager, responsible for developing and facilitating the implementation of local green building codes.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
59	11	General Fund	Planning	\$25,000			Planning Department Equity Consultant			X	Consultant services to assist with the development of a racial equity analysis toolkit specific to Planning Department services and projects.
60	11	General Fund	Public Works	\$129,892		PWSUCW1901	Fire Safety		X		Carryover of unspent Public Works funds for Fire Safety, Education, Prevention and Disaster Preparedness. Approved by Council on 11/27/18.
61	11	General Fund	Public Works	\$199,375		PWENCB2102	Public Safety Building Cooling System Redundancy			X	Contract with Stanton Engineering for the Redundant Cooling System for the Public Safety Data Center.
62	11	General Fund	Public Works		\$360,437	PWENUD0906	Underground Utility District #48 Grizzly Peak			X	Appropriate funds for Survey of the Underground Utility District (UUD) No. 48 at Grizzly Peak
63	11	General Fund	Public Works	\$5,830		PWENSR1542	Sewer Laterals & CCTV			X	Carryover funds for the Sewer Laterals/CCTV project
64	11	General Fund	Public Works		\$99,543	PWT1CB1901	NBSC Seismic Retrofit			X	Requesting new appropriation to carry over funding provided by HHCS for NBSC miscellaneous building upgrades in FY 2019.
65	11	General Fund	Public Works		\$100,000	PWTRC2003	University Avenue Bus Stop Improvements		X		Appropriate funds for design and construction to widen bus stops and add sealing at Sacramento Street and Grant Street, with Rectangular Rapid Flashing Beacon at Grant Street and University Avenue. Funding was approved by Council on 11/27/18.
66	11	General Fund	Public Works	\$15,000	\$185,000	PWTRPL2001	Hopkins Corridor Study		X		Appropriate fund to start Hopkins Corridor study and planning work for this project. Council Budget referral 11.27.2018.
67	11	General Fund	Public Works		\$75,000		Berkeley Department of Transportation			X	\$75,000 will be needed to solicit outside resources to perform best practices research both nationally and internationally, and making programmatic recommendations on application of those practices in the City of Berkeley.
68	11	General Fund	Public Works	\$200,000			Illegal Dumping		X		Funding Illegal Dumping Component of "Clean & Livable Commons Initiative" Approved by Council on 12/3/19.
69	11	General Fund	Public Works	\$225,000			Measure P - Downtown Streets Team program expansion		X		Measure P Funds for Downtown Streets Team. Approved by Council on 12/3/19 and 1/21/20

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
70	11	General Fund	Public Works	\$350,265		PWENCB2102	Public Safety Building Cooling System Redundancy			X	Contract with Stanton Engineering for the Redundant Cooling System for the Public Safety Data Center.
71	11 Total			\$5,406,787	\$3,551,430						
72	105	Library - Foundation	Library		\$500,000		Central Library Interior Renovation Project		X		Revise Berkeley Public Library Foundation budget for funds for purchase of furniture, fixtures, and equipment for the Central Library Interior Renovation Project. Approved by Board of Library Trustees on 7/1/20 through Board of Library Trustees Resolution No: R20-038
73	105 Total			\$0	\$500,000						
74	111	Fund Raising Activities	Health, Housing & Community Services		\$10,000	HHADMO2101	MOW – Supplies			X	Appropriate fund for necessary supplies for the MOW Program
75	111	Fund Raising Activities	Health, Housing & Community Services		\$18,000	HHADNB2101	North Berkeley Senior Center – Dining room Furniture			X	Appropriate fund for necessary supplies/furniture for the North Berkeley Senior Center Program.
76	111 Total			\$0	\$28,000						
77	114	Gilman Field Reserve	Parks Recreation & Waterfront	\$56,506			Field Turf Contract			X	Carryover for Field Turf Contract for Gilman Sports Fields
78	114 Total			\$56,506	\$0						
79	120	Affordable Housing Mitigation	Health, Housing & Community Services		\$100,166	HHHMF2101-NONPERSONN-LOAN-DISBURSMNT-	Grayson Apartments Project		X		Housing Trust Fund allocation for the Grayson Apartment Project. Approved by Council on 2/28/17 through Resolution 67,844-N.S.
80	120 Total			\$0	\$100,166						
81	122	Inclusionary Housing Program	Health, Housing & Community Services		\$1,182	HHHMF2101-NONPERSONN-LOAN-DISBURSMNT-	Grayson Apartments Project		X		Housing Trust Fund allocation for the Grayson Apartment Project. Approved by Council on 2/28/17 through Resolution 67,844-N.S.
82	122	Inclusionary Housing Program	Health, Housing & Community Services		\$19,937	HHHMF2101-NONPERSONN-LOAN-DISBURSMNT-	1601 Oxford		X		Funds for 1601 Oxford Project. Approved by Council through Resolution 69,321-N.S.
83	122 Total			\$0	\$21,119						
84	125	Playground Camp	Parks Recreation & Waterfront	\$775,208		PRWCP19001	BTC Construction Management			X	Carryover for BTC construction management, partial ENGEO testing & inspections, lodging, and permits.
85	125	Playground Camp	Parks Recreation & Waterfront		\$212,536	PRWCP19001	BTC Construction Management			X	Adjustment for partial ENGEO testing and inspections
86	125	Playground Camp	Parks Recreation & Waterfront		\$18,160,849	PRWCP19001	BTC Construction Management		X		Appropriating funding for Berkeley Tuolumne Camp Project for the contract with Robert E. Boyer construction contract. Approved by Council on 4/14/20 through Resolution No. 69,352-N.S.

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Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
87	125 Total			\$775,208	\$18,373,385						
88	127	State Transportation Tax	Public Works	\$474,632		PWENST1901	Street Rehab FY 2019			X	Carryover of State Transportation Tax Fund for Street Rehab FY 2019 Project
89	127	State Transportation Tax	Public Works	\$240,750		PWENST1902	Surface Seal FY 2019			X	Carryover of State Transportation Tax Fund for the Surface Seal FY 2019 Project
90	127	State Transportation Tax	Public Works	\$22,500		PWENSD1819	Codornices Creek at Kains Avenue			X	Carryover of State Transportation Tax Fund for the Codornices Creek Restoration at Kains Avenue
91	127	State Transportation Tax	Public Works	\$35,590		PWENSD1804	Hillview and Woodside			X	Carryover of State Transportation Tax Fund for Hillview Road and Woodside Road Drainage Improvement Project
92	127	State Transportation Tax	Public Works	\$479,159		PWENST1801	Street Rehab FY 2-18			X	Carryover to complete the FY 2018 Street Rehabilitation project
93	127	State Transportation Tax	Public Works	\$131,120		PWENSG1801	Measure M LID FY 18 Woolsey			X	Carryover for contingency on the Cratus construction contract
94	127	State Transportation Tax	Public Works	\$439,159		PWENST2001	Street Rehab FY2020			X	Carryover to continue the street rehab now in the construction phase
95	127	State Transportation Tax	Public Works	\$50,000		PWENST2101	Street Rehab FY2021			X	Carryover to continue the street rehab planning & designing
96	127	State Transportation Tax	Public Works	\$299,800		PWENSW2002	Sidewalk Shaving - FY2020			X	Carryover to continue the sidewalk shaving project
97	127	State Transportation Tax	Public Works	\$80,950		PWENSD1819	Codornices Creek at Kains			X	To continue the project into the construction phase
98	127 Total			\$2,253,660	\$0						
99	128	CDBG	Health, Housing & Community Services		\$1,610,805	HHHCAD2101	CARES Act CDBG - CV		X		Special allocation for Berkeley of CDBG funds to prevent, prepare for, and respond to coronavirus (COVID-19). Funds were appropriated by Council in FY 2020 AAO #3 but were not spent in FY 2020.
100	128 Total			\$0	\$1,610,805						
101	130	Measure B - Local Streets & Roads	Public Works	\$115,233		PWENST1801	Street Rehab FY 2-18			X	Carryover to complete the FY 2018 Street Rehabilitation project

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102	130	Measure B - Local Streets & Roads	Public Works	\$164,557		PWENSG1802	Measure M FY18 Street Impr			X	Carryover to complete the Measure M FY18 street improvement project
103	130	Measure B - Local Streets & Roads	Public Works		\$10,000		Equipment Replacement			X	Appropriate fund to cover amortization shortfall vehicle # 2003
104	130	Measure B - Local Streets & Roads	Public Works		\$35,000		Equipment Replacement			X	Appropriate fund for Streets share of purchase of Double Drum Vibratory Roller and Tilt Trailer for Roller, needed for repaving projects.
105	130 Total			\$279,790	\$45,000						
106	133	Measure F - Alameda County VRF Streets & Roads	Public Works	\$79,800		PWENSW2002	Sidewalk Shaving - FY2020			X	Carryover to continue the sidewalk shaving project
107	133	Measure F - Alameda County VRF Streets & Roads	Public Works		\$14,018	PWTRCT0918	Ashby/San Pablo Traffic Improvements			X	FY 2021 funds for the Ashby/San Pablo Traffic Improvements project
108	133 Total			\$79,800	\$14,018						
109	134	Measure BB - Local Streets and Road	Non-Departmental		\$600,000		Measure T1 Fund Loan		X		Loan to Measure T1 Fund in FY 2021 to complete Phase 1 projects. Approved by Council on 9/15/20 through Resolution 69,457-N.S.
110	134	Measure BB - Local Streets and Road	Public Works	\$1,300,000		PWT1ST1907	Street improvement - Adeline and Hearst			X	Carryover of Measure BB Funds - FY20 project budget for street rehabilitation Adeline and Hearst, fund to be added to Contract#31900289
111	134	Measure BB - Local Streets and Road	Public Works	\$35,660		PWENST1902	Surface Seal FY 2019			X	Carryover of Measure BB Funds for the Surface Seal FY 2019 Project
112	134	Measure BB - Local Streets and Road	Public Works	\$16,710	\$70,415	PWENRW2001	Retaining Wall - Glendale			X	Carryover and new appropriation of Measure BB Funds for the Retaining Wall - Glendale project
113	134	Measure BB - Local Streets and Road	Public Works	\$599,862		PWT1ST1908	T1 Streets: Monterey & Ward			X	Carryover of funds for Measure T1 Streets: Monterey & Ward project
114	134	Measure BB - Local Streets and Road	Public Works	\$125,390		PWENSG1802	Measure M FY18 Street Impr			X	Carryover to complete the Measure M FY18 street improvement project
115	134 Total			\$2,077,622	\$670,415						
116	135	Measure BB - Bike & Pedestrian	Public Works	\$110,000		PWTRCT0918	Ashby/San Pablo Traffic Improvements			X	Carryover funds for the Ashby/San Pablo Traffic Improvements project

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117	135	Measure BB - Bike & Pedestrian	Public Works	\$285,139	\$177,475	PWTRCT1803	North Berkeley BART/Sacramento Street Complete Streets			X	Carryover and appropriation of funds for the North Berkeley BART/Sacramento Street Complete Streets project
118	135 Total			\$395,139	\$177,475						
119	136	Measure BB - Paratransit	Health, Housing & Community Services		\$29,500	HHAMBB2101	Measure BB Taxi Scrip			X	Appropriate Measure BB fund for Taxi Scrip
120	136 Total			\$0	\$29,500						
121	138	Parks Tax	Non-Departmental		\$600,000		Measure T1 Fund Loan		X		Loan to Measure T1 Fund in FY 2021 to complete Phase 1 projects. Approved by Council on 9/15/20 through Resolution 69,457-N.S.
122	138	Parks Tax	Parks Recreation & Waterfront	\$58,407		PRWT119005	Live Oak Community Center			X	Carryover of Parks Tax Fund - unspent FY20 project budget for Live Oak Community Center facility upgrade for accessibility and seismic safety.
123	138	Parks Tax	Parks Recreation & Waterfront		\$100,000	PRWPP15002	Aquatic Park South Pathways Project			X	Parks Tax Fund allocation for Aquatic Park - South Pathways for parking lot improvement
124	138	Parks Tax	Parks Recreation & Waterfront	\$116,239		PRWPP15002	Aquatic Park South Pathways Project			X	Carryover of Parks Tax Fund - unspent FY20 project budget for Aquatic Park South Pathways Project
125	138	Parks Tax	Parks Recreation & Waterfront		\$150,000	PRWT119005	Live Oak Community Center		X		Parks Tax Fund allocation for Live Oak Community Center Project. Approved by Council on 09/15/2020 through Resolution 69,554-N.S.
126	138	Parks Tax	Parks Recreation & Waterfront		\$40,100	PRWT119004	Grove Park Phase II			X	Measure T1 Fund allocation for Grove Park Phase II
127	138	Parks Tax	Parks Recreation & Waterfront	\$181,903		PRWPK20003	Ohlone Park Improvements			X	Carryover of Parks Tax Fund from FY20 to FY21 for Ohlone Park Improvements.
128	138	Parks Tax	Parks Recreation & Waterfront	\$486,266		PRWPK15002	James Kenney Play Area			X	Carryover of Parks Tax Fund from FY20 to FY21 for James Kenney Play Area
129	138	Parks Tax	Parks Recreation & Waterfront		\$35,000	PRWPK19003	King School Park Renovation			X	Appropriate parks tax fund for DSA and building permit fees for King School Park Renovation
130	138	Parks Tax	Parks Recreation & Waterfront	\$37,000		PRWPK19004	Land Use and Structural Alteration Permit			X	Appropriate Parks Tax Fund to cover Land Use Permit and Structural Alteration Permit
131	138	Parks Tax	Parks Recreation & Waterfront	\$23,120		PRWPK19004	John Hinkel Park			X	Carryover of Parks Tax Fund - unspent FY 2020 to FY 2021 for John Hinkel Park Ampitheater Area Project
132	138	Parks Tax	Parks Recreation & Waterfront		\$222	PRWPK19004	Tree removal at John Hinkel Park			X	Appropriate Parks Tax Fund to pay for partial cost of tree removal at John Hinkel Park.
133	138	Parks Tax	Parks Recreation & Waterfront		\$30,000	PRWPK210008	Civic Center Fountain Garden			X	Appropriate Parks Tax Fund for the Turtle Island project in Civic Center Park.
134	138	Parks Tax	Parks Recreation & Waterfront		\$20,000	PRWPK21010	Wood - Measure AA grant application for Aquatic Park			X	Appropriate Parks Tax Fund for Wood to help prepare Measure AA grant application for Aquatic Park.
135	138	Parks Tax	Parks Recreation & Waterfront		\$93,950	PRWPK21002	Parks Strategic Plan Funding		X		Appropriate Parks Tax Fund for FY 2021 Strategic Plan Tree Planting Program.
136	138	Parks Tax	Parks Recreation & Waterfront	\$437,231		PRWT119012	Rose Garden Pathways, Tennis, and Pergola			X	Carryover to complete construction at the Rose Garden.
137	138	Parks Tax	Parks Recreation & Waterfront	\$49,504		PRWPK19003	King School Park Reno			X	Carryover to complete design of MLK school playground.

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Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
138	138	Parks Tax	Parks Recreation & Waterfront	\$52,502		PRWPK14002	John Hinkel Park (Lower)			X	Carryover to complete construction of John Hinkel Park (Lower).
139	138	Parks Tax	Parks Recreation & Waterfront	\$161,841		PRWT119011	Strawberry Creek Park Phase 2			X	Carryover to complete construction at Strawberry Creek Park.
140	138	Parks Tax	Parks Recreation & Waterfront		\$8,120	PRWPK19004	John Hinkel Amphitheater			X	Adjustment for KISTER, SAVIO & REI to conduct survey work for John Hinkel park reconstruction.
141	138	Parks Tax	Parks Recreation & Waterfront		\$15,000		Gilman Field Turf Replacement			X	COB JPA contribution for Gilman field turf replacement.
142	138	Parks Tax	Parks Recreation & Waterfront	\$450		PRWPK20001	FY20 Parks Tax Minor Maintenance			X	Carryover to correct encumbrance for Hans Thiring Masonry LLC contract.
143	138	Parks Tax	Parks Recreation & Waterfront		\$50,064	PRWT119001	Aquatic Park Tide Tubes			X	Funds for Anchor Engineering to provide construction management and inspection services for the Aquatic Park Tide Tubes project
144	138 Total			\$1,604,463	\$1,142,456						
145	140	Measure GG - Fire Preparation Tax	Fire		\$90,500		Michael Brady Contract		X		Contract with Michael Brady to provide emergency management training for City Emergency Operations Center (EOC) and Department Operations Center (DOC) staff. Approved by Council on 1/21/20 through Resolution 69,244-N.S.
146	140 Total			\$0	\$90,500						
147	145	Bayer-Miles Lab	Parks Recreation & Waterfront	\$138,014		PRWPP15002	Aquatic Park South Pathways Project			X	Carryover of Bayer-Miles Lab Fund - unspent FY20 project budget for Aquatic Park South Pathways Project
148	145 Total			\$138,014	\$0						
149	147	UC Settlement	Public Works		\$126,592	PWTRCS2001	Southside Complete Streets			X	Carryover to continue project through PS&E phase
150	147 Total			\$0	\$126,592						
151	148	Cultural Trust	City Manager's Office	\$780			Purchase of monitors			X	Carryover of Cultural Trust Fund from FY 2020 to FY 2021 to pay for monitors
152	148	Cultural Trust	City Manager's Office	\$6,006			John Toki Contract			X	Contract with John Toki for conservation and installation of artwork on Center Street in front of Berkeley Art Museum.
153	148	Cultural Trust	City Manager's Office	\$87,611	\$123,274		Various public art projects			X	Funds for Private Percent for public art projects in FY 2021.
154	148	Cultural Trust	City Manager's Office	\$634,839			Various public art projects			X	These funds - generated from fees paid by private developers in lieu of compliance with the Public Art in Private Development policy - are used to finance public art projects and maintenance. There are a number of pending Public Art projects to utilize this funding. This funding should be carried over from year to year, similar to the historic practice with the Public Art Fund.
155	148	Cultural Trust	Public Works	\$15,587			Rumford Statue Lighting Project			X	Carryover funds for the Rumford Statue Lighting project

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156	148 Total			\$744,823	\$123,274						
157	149	Private Party Sidewalks	Public Works	\$50,000		PWENSW2002	Sidewalk Shaving - FY2020			X	Carryover to continue the sidewalk shaving project
158	149 Total			\$50,000	\$0						
159	150	Public Art Fund	City Manager's Office	\$52,709			Various public art projects			X	There are a number of pending Public Art projects to utilize this funding. Historically this funding is carried over from year to year, in accordance with the City's Public Art policy.
160	150	Public Art Fund	Public Works	\$18,000			Rumford Statue Lighting Project			X	Carryover funds for the Rumford Statue Lighting project
161	150 Total			\$70,709	\$0						
162	152	Vital and Health Statistic	Health, Housing & Community Services		\$45,000	HHOVIT2101	Vital Statistics Trust Fund			X	Funds for an Intern Epidemiologist will be hired under two Trust Fund categories: 1.) Improvement in the collection and analysis of health-related birth certificate information and other community health data collections and analysis as appropriate. 2.) enhance service to the public to improve analytical capabilities of state and local health authorities in addressing the health needs of newborn children and maternal health problems, and to analyze the health status of the general population.
163	152 Total			\$0	\$45,000						
164	157	Tobacco Control	Health, Housing & Community Services	\$62,400		HHPLLA2101	LLA Tobacco - State Tobacco			X	Carryover of Tobacco Control grant funds from FY 2020 to FY 2021 for consultant contract
165	157 Total			\$62,400	\$0						
166	305	Capital Grants - Federal	Public Works		\$976,925	PWTRCS2001	Southside Complete Streets			X	Appropriate fund to continue project through PS&E phase
167	305 Total			\$0	\$976,925						
168	306	Capital Grants - State	Public Works	\$30,000			Addison Bike Boulevard			X	Carryover of Capital Grants - State Fund for the Addison Bike Boulevard Project management and design services to Final PS&E
169	306	Capital Grants - State	Public Works	\$30,000			University Ave. Bus Stop Improvements			X	Carryover of Capital Grants - State Fund (AHSC Grant) for the University Ave. Bus Stop Improvements project for PE, PS&E, and construction through Bridget Housing.
170	306	Capital Grants - State	Public Works		\$2,711,846	PWTRBP1802	Milvia Bikeway Project		X		Appropriate Capital Grants -State Fund (AHSC Grant) for the conceptual design, preliminary engineering, environmental study, PS&E and construction of Milvia Bikeway. Approved by Council through Resolution 68,730-N.S.

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171	306	Capital Grants - State	Public Works		\$205,000	PWTRBP2001	Addison Bike Boulevard		X		Appropriate Capital Grants -State Fund (AHSC Grant) for the Addison Bike Boulevard. Approved by Council through Resolution 68,730-N.S.
172	306	Capital Grants - State	Public Works		\$570,000	PWTRCS2003	University Ave. Bus Stop Improvements		X		Appropriate Capital Grants -State Fund (AHSC Grant) for the University Ave. Bus Stop Improvements project. Approved by Council through Resolution 68,730-N.S.
173	306 Total			\$60,000	\$3,486,846						
174	310	HUD HOME	Health, Housing & Community Services		\$1,800,972	HHHME2101-NONPERSONN-LOAN-DISBURSMNT-	1601 Oxford		X		HUD Funds for 1601 Oxford Project. Approved by Council through Resolution 69,321-N.S.
175	310 Total			\$0	\$1,800,972						
176	311	ESGP	Health, Housing & Community Services		\$808,117	HHHESG2101	CARES Act ESG-CV		X		Special allocation for Berkeley of ESG funds to prevent, prepare for, and respond to coronavirus (COVID-19). Funds were appropriated by Council in FY 2020 AAO #3 but not spent in FY 2020.
177	311 Total			\$0	\$808,117						
178	312	Health (General)	Health, Housing & Community Services		\$10,151	HHHPLED2101	Childhood Lead Poisoning Prevention Program			X	Revise Childhood Lead Poisoning Prevention Grant to match approved allocation amount from the California Department of Public Health
179	312 Total			\$0	\$10,151						
180	313	Targeted Case Management	Health, Housing & Community Services		\$13,232	HHPTCM2101	TCM FY15 Audit Reconciliation Payment	X			Appropriate TCM Fund for FY 2015 Audit reconciliation payment due to State.
181	313 Total			\$0	\$13,232						
182	315	Mental Health Services Act	Health, Housing & Community Services		\$3,268,909	Various codes	FY 2021 Mental Health Services Act Funding		X		Revise FY 2021 Mental Health Services Act budget to match amount approved by Council and State and to use prior year approved funds
183	315	Mental Health Services Act	Health, Housing & Community Services		\$20,854	HHHPMHS2101	Public Health Mental Health Services Act			X	Appropriate Mental Health Services Act Funds for the contract with Bay Area Community Resources for AmeriCorps members at the Berkeley High School Health Center.
184	315 Total			\$0	\$3,289,763						
185	319	Youth Lunch	Parks Recreation & Waterfront	\$90,522			Summer Lunch Program			X	Carryover of Youth Lunch Fund from FY 2020 to FY 2021 for Summer Lunch Program
186	319 Total			\$90,522	\$0						
187	321	C.F.P. Title X	Health, Housing & Community Services		\$128,187		Title X Family Planning Subrecipient		X		Revise grant amount to new approved amount of \$271,000. Council approved grant on 5/12/20 via Resolution No. 69,387-N.S.
188	321 Total			\$0	\$128,187						
189	326	Alameda County Grant	Health, Housing & Community Services		\$3,354	HHPSED2101	SEED			X	Appropriate Alameda County Grant fund to adjust FY 2021 award budget
190	326 Total			\$0	\$3,354						

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191	329	CA Integrated Waste Management	Parks Recreation & Waterfront		\$6,000		Used Oil Program			X	Appropriate PRW portion of CA Integrated Waste Management Fund for the Used Oil Program
192	329	CA Integrated Waste Management	Public Works		\$39,000		Used Oil Program			X	Appropriate Public Works portion of CA Integrated Waste Management Fund for the Used Oil Program
193	329 Total			\$0	\$45,000						
194	336	One-Time Grant: No Cap Exp	Health, Housing & Community Services	\$23,696			Medication Assisted Treatment (MAT) Access Points Project (the "MAT Project")		X		Remaining funds from a \$50,000 grant from The Center at Sierra Health Foundation for expansion of Medication Assisted Treatment (MAT) services for individuals with Opioid Use Disorders at Berkeley Mental Health. Approved by Council on 10/15/19 through Resolution No. 69,126 - N.S.
195	336	One-Time Grant: No Cap Exp	Health, Housing & Community Services	\$182,499			Mental Health Adult Triage Grant		X		Carryover of grant funds from Mental Health Services Oversight and Accountability Commission from Mental Health crisis triage line. Approved by Council on 11/27/18 through Resolution 68,668-N.S.
196	336	One-Time Grant: No Cap Exp	Health, Housing & Community Services	\$200,000		HHHEAP2101	Bay Area Community Services			X	Carryover funds from FY 2020 to FY 2021 to pay invoice from April to June 2020. Purchase order could not roll over to FY 2021 so a new purchase order created using carryover funds.
197	336	One-Time Grant: No Cap Exp	Health, Housing & Community Services		\$16,408	HHMTFC2101	Children's Triage			X	Revise Children's Triage grant budget to match award amount.
198	336	One-Time Grant: No Cap Exp	Health, Housing & Community Services		\$100,000	HHITH2101	Mental Health Tele-Health Grant		X		Mental Health awarded new grant for IT related items to support Tele-Health from the Sierra Health Foundation (pass-through State). Council approval of grant will be on 11/17/20 agenda.
199	336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	\$15,000		PRWPK17001	Berkeley Urban Reforestation Program Grant			X	Carryover of unspent Berkeley Urban Reforestation Program grant funds from FY 2020
200	336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	\$3,460		PRWPK17001	Berkeley Urban Reforestation Program Grant			X	Carryover of Berkeley Urban Reforestation Program grant fund to complete BURP grant activities
201	336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	\$10,430		PRWPK17001	Berkeley Urban Reforestation Program Grant			X	Carryover to complete grant activities.
202	336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront		\$165,500	PRWPK20005	Urban Greening Grant		X		Appropriate funds for Urban Greening Grant program. Approved by Council on 07/23/2019 through Resolution No. 69,049 - N.S.
203	336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	\$9,266		PRWT119007	Pier Ferry Facility Study			X	Carryover of WETA funds for pier study.
204	336	One-Time Grant: No Cap Exp	Parks Recreation & Waterfront	\$61,867		HHHEAP2001	Homeless Emergency Aid Program			X	Carryover for portable toilets and handwashing stations.
205	336	One-Time Grant: No Cap Exp	Planning		\$310,000		Ashby & North Berkeley BART Stations		X		Appropriate Senate Bill 2 Planning Grant funds for a contract with Van Meter Williams Pollock LLP to review zoning standards and prepare an environmental impact report for the Ashby and North Berkeley BART stations. Approved by Council on 2/25/20 through Resolution No. 69,297 - N.S.

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206	336	One-Time Grant: No Cap Exp	Public Works	\$225,000		PWENSD1819	Cordonices Creek at Kains Avenue			X	Carryover of One-Time Grant: No Cap Exp fund for the construction of Cordonices Creek Restoration at Kains Avenue
207	336	One-Time Grant: No Cap Exp	Public Works	\$5,882		PWENSD1819	Codornices Creek at Kains			X	Carryover to continue the project into the construction phase
208	336	One-Time Grant: No Cap Exp	Public Works		\$10,000		Mattress Recycling Enclosure			X	Appropriate grant fund from the Mattress Recycling Council of California to purchase a mattress recycling enclosure. Funds must be spent by October 31, 2020.
209	336	One-Time Grant: No Cap Exp	Non-Departmental		\$15,000		Grant for Paid Internships		X		Appropriate funds for the Chancellor's Community Partnership Fund Grant for Paid Internships. Approved by Council through Resolution No. 69,562-N.S.
210	336 Total			\$737,100	\$616,908						
211	339	MTC	Parks Recreation & Waterfront	\$34,609		PRWPP15001	Bay Trail			X	Carryover of MTC Funds for Bay Trail project
212	339 Total			\$34,609	\$0						
213	340	FEMA	Planning		\$557,350		FEMA Grant		X		Hazard Mitigation Grant Program Funds for City of Berkeley grants for seismically vulnerable buildings. Authorization to apply for grant approved by Council on 9/10/19 through Resolution No. 69,085-N.S.
214	340 Total			\$0	\$557,350						
215	344	CALTRANS Grant	Public Works	\$1,248,678	\$98,617	PWTRCT1803	North Berkeley BART/Sacramento Street Complete Streets			X	Carryover and appropriation of funds for the North Berkeley BART/Sacramento Street Complete Streets project
216	344 Total			\$1,248,678	\$98,617						
217	345	Measure WW - Park Bond - Grant	Parks Recreation & Waterfront	\$31,404		PRWPK15002	James Kenney Play Area			X	Carryover of Measure WW Fund from FY 2020 to FY 2021 for James Kenney Play Area
218	345 Total			\$31,404	\$0						
219	350	Bioterrorism Grant	Health, Housing & Community Services		\$400,523		COVID-19 Crisis Funding		X		Grant from the California Department of Public Health to prevent, prepare for, and respond to COVID-19. Approved by Council on 5/12/20 through Resolution No. 69,385
220	350 Total			\$0	\$400,523						
221	501	Capital Improvement Fund	City Manager's Office	\$4,959			John Toki Contract			X	Contract with John Toki for conservation and installation of artwork on Center Street in front of Berkeley Art Museum.
222	501	Capital Improvement Fund	Health, Housing & Community Services		\$9,312	HHGHF2101-NONPERSONN-GENERAL - CMMNTYAGY-	Grayson Apartments Project		X		Housing Trust Fund allocation for the Grayson Apartment Project. Approved by Council on 2/28/17 through Resolution 67,844-N.S.
223	501	Capital Improvement Fund	Public Works	\$230,809		PWENST1901	Street Rehab FY 2019			X	Carryover of Capital Improvement Fund for Street Rehab FY 2019 Project
224	501	Capital Improvement Fund	Public Works	\$8,880		PWENSD1804	Hillview and Woodside			X	Carryover of Capital Improvement Fund for Hillview Road and Woodside Road Drainage Improvement Project

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
225	501	Capital Improvement Fund	Public Works	\$119,392		PWENST1801	Street Rehab FY 2-18			X	Carryover to complete the FY 2018 Street Rehabilitation project
226	501	Capital Improvement Fund	Public Works	\$45,369	\$123,000	PWENSR1542	Sewer Laterals & CCTV			X	Carryover funds for the Sewer Laterals/CCTV project
227	501	Capital Improvement Fund	Public Works	\$133,278		PWENSG1801	Measure M LID FY 18 Woolsey			X	Carryover for contingency on the Cratus construction contract
228	501	Capital Improvement Fund	Public Works	\$151,516		PWENBM1903	Carpet Repl - CCB Finance			X	Carryover to continue the project - repairs Shaw Industries
229	501	Capital Improvement Fund	Public Works	\$78,724		PWENBM2001	Fire Station #6 Emergency Floor Repair			X	Carryover for On-going repairs at FS #6
230	501	Capital Improvement Fund	Public Works	\$156,689		PWENBM2002	Fire Station #3 Roof Upgrade			X	Carryover for On-going repairs at FS #3
231	501	Capital Improvement Fund	Public Works	\$18,054		PWENBM2003	Fire Station #4 Roof Upgrade			X	Carryover for On-going repairs at FS #4
232	501	Capital Improvement Fund	Public Works	\$14,816		PWENBM2004	Mental Health Services Wall Repair			X	Carryover wall at 2636 MLK Inspected Spring 2019 Design for substantial damage at MHS 2636 MLK
233	501	Capital Improvement Fund	Public Works	\$100,880		PWENCB1507	Fire Station #2 Kitchen Repairs			X	Carryover for On-going repairs at FS #2
234	501	Capital Improvement Fund	Public Works	\$157,463		PWENST2001	Street Rehab FY 2020			X	Carryover to continue the street rehab now in the construction phase
235	501	Capital Improvement Fund	Public Works	\$32,400		PWENSW2004	Pathways FY20			X	Carryover to continue pathway repairs
236	501	Capital Improvement Fund	Public Works	\$275,000		PWENSW2002	Sidewalk Shaving - FY2020			X	Carryover to continue the sidewalk shaving project
237	501	Capital Improvement Fund	Public Works	\$50		PWENSW2001	FY20 Sidewalk Repair Program			X	Carryover to continue sidewalk repairs
238	501	Capital Improvement Fund	Public Works	\$228,489		PWENCB1805	PSB Envelope Leak Repair			X	Carryover for On-going repairs at the PSB
239	501	Capital Improvement Fund	Public Works	\$550,000		PWENCB2002	PSB Cooling Redundancy			X	Carryover to continue the project, which started late fin FY 2020
240	501	Capital Improvement Fund	Public Works	\$504,280		PWENEN2001	EV Charging Station			X	Carryover to continue the project, which was deferred for further review
241	501	Capital Improvement Fund	Public Works	\$197,105	\$52,895	PWENCB1906	125_127 University Ave Facilities Improvement			X	Appropriate fund to continue project moving into construction phase.
242	501	Capital Improvement Fund	Public Works	\$42,957		PWSUSW2004	Pathways FY20			X	Funding necessary for the sidewalk program back log
243	501	Capital Improvement Fund	Public Works	\$83,127		PWSUSW2005	Sidewalk Makesafe			X	Funding necessary for the sidewalk program back log
244	501	Capital Improvement Fund	Public Works	\$34,345		PWSUSW2007	OPs 50/50 PPSidewalk			X	Funding necessary for the sidewalk program back log
245	501	Capital Improvement Fund	Public Works	\$247,512		PWSUSW2105	Ops Sidewlk Makesafe FY21			X	Funding necessary for the sidewalk program back log
246	501	Capital Improvement Fund	Public Works		\$522,743	PWTRCT0918	Ashby/San Pablo Traffic Improvements			X	Carryover funds for the Ashby/San Pablo Traffic Improvements project
247	501 Total			\$3,416,094	\$707,950						

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
248	503	FUND\$ Replacement	Human Resources		\$50,000		Telford Contract			X	New contract with Telfords, Inc. to provide support to FUND\$ Replacement project
249	503 Total			\$0	\$50,000						
250	506	Measure M - Street and Watershed Improvement	Public Works		\$302,627	PWENSD1819	Cordonices Creek at Kains Avenue		X		Appropriation of Measure M fund for the Cordonices Creek Restoration at Kains Avenue. Approved by Council through Resolution No. 69,526-N.S.
251	506	Measure M - Street and Watershed Improvement	Public Works	\$179,163		PWENST1801	Street Rehab FY 2-18			X	Carryover to complete the FY 2018 Street Rehabilitation project
252	506	Measure M - Street and Watershed Improvement	Public Works	\$100,000		PWT1ST1907	T1 Streets: Adeline & Hearst			X	Carryover of funds for Measure T1 Streets: Adeline & Hearst project
253	506	Measure M - Street and Watershed Improvement	Public Works	\$125,934		PWENSG1802	Measure M FY18 Street Impr			X	Carryover to complete the Measure M FY 2018 street improvement project
254	506 Total			\$405,097	\$302,627						
255	511	Measure T1	City Manager's Office	\$210,000			Michael Arcega Contract		X		Contract with Michael Arcega for Public Artwork at San Pablo Park. Approved by Council on 12/3/19 through Resolution No. 69,191-N.S.
256	511	Measure T1	Parks Recreation & Waterfront	\$171,455		PRWT119001	Aquatic Parks Tide Tubes		X	X	Carryover of Measure T1 Funds for Aquatic Park Tide Tubes project
257	511	Measure T1	Parks Recreation & Waterfront	\$277,149		PRWT119005	Live Oak Community Center			X	Carryover of Measure T1 Fund - unspent FY20 project budget for Live Oak Community Center facility upgrade for accessibility and seismic safety.
258	511	Measure T1	Parks Recreation & Waterfront	\$98,000		PRWT190006	Spinnaker Way Pavement & Drainage Rehab Project			X	Carryover of Measure T1 funds for Task Order for Nichols Consulting for the Spinnaker Way Pavement and Drainage Rehab Project
259	511	Measure T1	Parks Recreation & Waterfront		\$56,371	PRWT119005	Live Oak Community Center		X		Funds for contract with Mar Con Builders for the Live Oak Community Center Seismic Upgrade project. Approved by Council on 12/10/19 through Resolution No. 69,219-N.S.
260	511	Measure T1	Parks Recreation & Waterfront		\$394,278	PRWT119004	Grove Park Phase II			X	Measure T1 Funds allocation for Grove Park Phase II
261	511	Measure T1	Parks Recreation & Waterfront		\$1,000	PRWT119001	Aquatic Park Tide Tubes			X	Appropriate Measure T1 Fund to increase the printing costs for the Aquatic Park Tide Tubes Project.
262	511	Measure T1	Parks Recreation & Waterfront	\$170,993		PWT1190006	University Avenue, Marina, Spinnaker Street			X	Carryover Measure T1 Funds for the University Avenue, Marina, Spinnaker Street project for task order with Nichols Engineering.
263	511	Measure T1	Parks Recreation & Waterfront	\$197,025		PRWT119014	Tom Bates Restroom			X	Carryover for payment to ACTC
264	511	Measure T1	Parks Recreation & Waterfront		\$92,975	PRWT119014	Tom Bates Restroom			X	Adjustment for payment to ACTC

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
265	511	Measure T1	Parks Recreation & Waterfront	\$300,000		PRWT119012	Rose Garden Pathways, Tennis, and Pergola			X	Carryover to complete construction at the Rose Garden - permit fees
266	511	Measure T1	Parks Recreation & Waterfront	\$27,725		PRWT119010	Citywide Restroom Assessment			X	Carryover to complete Citywide restroom assessment
267	511	Measure T1	Parks Recreation & Waterfront	\$6,079		PRWT119007	Pier Ferry Facility Study			X	Carryover to complete pier ferry study.
268	511	Measure T1	Parks Recreation & Waterfront	\$21,736		PRWT119003	Frances Albrier Community Center			X	Carryover to complete construction at Frances Albrier community center.
269	511	Measure T1	Parks Recreation & Waterfront	\$77,183		PRWT119016	Willard Clubhouse			X	Carryover to complete construction at the Willard Clubhouse.
270	511	Measure T1	Parks Recreation & Waterfront		\$11,000	PRWT119001	Aquatic Park Tide Tubes			X	Appropriate Measure T1 Fund for Wood Environmental to develop an operational manual for PW and PRW to operate the tide gates.
271	511	Measure T1	Public Works		\$1,011,006	PWT1EL1910	CorpYard and Marina Electrical Upgrade		X		Carryover of Measure T1 Fund for CorpYard and Marina CorpYard Maintenance Buildings electrical upgrade project and structural repair. Approved by Council on 6/2/20 through Resolution 69,433-N.S.
272	511	Measure T1	Public Works		\$48,072	PWT1PG1902	T1 Facilities/Equipment/Services/Supplies			X	Appropriate FY 2021 Measure T1 funds for facilities, equipment, supplies, and services costs.
273	511	Measure T1	Public Works	\$1,034,239		PWENCB1405	Mental Health Renovation (2640 MLK Jr. Way)			X	Carryover of Measure T1 Fund for Adult Mental Health Clinic Renovation project located at 2640 MLK Jr. Way
274	511	Measure T1	Public Works	\$33,430		PWT1GI1906	Green Infrastructure Project			X	Carryover of Measure T1 Funds for the Green Infrastructure Project
275	511	Measure T1	Public Works	\$150,491		PWT1ST1907	T1 Streets: Adeline & Hearst			X	Carryover of funds for Measure T1 Streets: Adeline & Hearst project
276	511	Measure T1	Public Works	\$376,430		PWT1CB1902	Old City Hall/Vet's Building/Civic Center Park			X	Carryover of funds for Measure T1: Old City Hall/Vet's Building/Civic Center Park project
277	511	Measure T1	Public Works	\$3,407,410		PWT1CB1901	North Berkeley Senior Center Seismic Retrofit			X	Carryover of funds for Measure T1: NBSC Seismic Retrofit
278	511	Measure T1	Public Works	\$88,501	\$23,809	PWT1EL1910	Electrical Upgrades - CY & Marina			X	Appropriate fund to complete T1 projects
279	511	Measure T1	Public Works	\$128,698		PWENCB1801	T1 NBSC Seismic Retrofit			X	Carryover for On-going project currently in the construction phase
280	511	Measure T1	Public Works	\$15,000		PWT1GI1905	Berkeley Rose Garden Drainage			X	Carryover for construction support
281	511	Measure T1	Public Works	\$28,812		PWENSD1819	Codornices Creek at Kains			X	To continue the project into the construction phase
282	511 Total			\$6,820,356	\$1,638,511						
283	512	Measure O	Health, Housing & Community Services		\$4,179,091	HHHME02101-NONPERSONN-CONTRACTS-DISBURSMNT-	1601 Oxford		X		Measure O Funds for the 1601 Oxford Project. Approved by Council through Resolution 69,231-N.S.
284	512	Measure O	City Attorney		\$273,347		Berkeley Way Project		X		Appropriate Measure O Funds for City Attorney's Office reimbursable costs for the Berkeley Way Project. Approved by Council through Resolution 69,231-N.S.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
285	512 Total			\$0	\$4,452,438						
286	601	Zero Waste	City Manager's Office	\$48,600			Outstanding Transfer Station Invoice			X	Carryover of Zero Waste Fund for Outstanding Transfer Station Invoice
287	601	Zero Waste	Public Works		\$78,790		AMCS Software Contract		X		Appropriate Zero Waste Fund for contract with AMCS for Zero Waste Management Software System. Approved by Council on 7/23/2019 through Resolution 69,042-N.S.
288	601	Zero Waste	Public Works		\$11,125		Vehicle replacement - Chevy Bolt for Zero Waste			X	Appropriate Zero Waste Fund for the purchase of one Chevy Bolt including a charging station for Zero Waste (vehicle replacement)
289	601	Zero Waste	Public Works		\$165,000		Purchase of One (1) Model 435 Regenerative Air Sweeper		X		Appropriate Zero Waste Fund for the purchase of one Model 435 Regenerative Air Sweeper. Approved by Council on 09/15/2020 through Resolution 69,556-N.S.
290	601	Zero Waste	Public Works		\$60,256		Amortization shortfall vehicle #709 backhoe			X	Appropriate Zero Waste Fund for Amortization shortfall vehicle #709
291	601	Zero Waste	Public Works		\$317,052		New 160 Sweeper			X	Appropriate Zero Waste Fund for New Model 600X Sweeper at Clean Cities
292	601 Total			\$48,600	\$632,223						
293	606	Coastal Conservancy Grant Fund	Parks Recreation & Waterfront	\$16,356		PRWWF17003	S. Cove Accessible Ramp			X	Carryover to complete construction of S. Cove Accessible Ramp.
294	606 Total			\$16,356	\$0						
295	607	Marina - Dept. of Boating & Waterway	Parks Recreation & Waterfront	\$32,980		PRWWF20006	DBW SAVE Program			X	Carryover to remove derelict vessels from the Berkeley Marina.
296	607 Total			\$32,980	\$0						
297	608	Marina Operations	Parks Recreation & Waterfront	\$32,732		PRWWF17003	S. Cove Accessible Ramp			X	Carryover to complete construction of S. Cove Accessible Ramp.
298	608	Marina Operations	Parks Recreation & Waterfront	\$5,620		PRWWF20006	DBW SAVE Program			X	Carryover to remove derelict vessels from the Berkeley Marina.
299	608 Total			\$38,352	\$0						
300	611	Sanitary Sewer Operation	Public Works	\$398,489		PWENSR2005	Sanitary Sewer Rehab - FY 2020 Urgent Repairs			X	Carryover of Sanitary Sewer Operations Fund for the Sanitary Sewer Rehab - FY 2020 Urgent Repairs Project - payment to contractor
301	611	Sanitary Sewer Operation	Public Works	\$703,751		PWENSR2001	Sanitary Sewer Rehab - San Pablo Avenue			X	Carryover of funds for the Sanitary Sewer Rehab - San Pablo Avenue project to pay the contractor.
302	611	Sanitary Sewer Operation	Public Works	\$575,319		PWENSR2004	Sanitary Sewer Rehab - Frontage Road			X	Carryover of funds for Sanitary Sewer Rehab - Frontage Road project to pay the contractor

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
303	611	Sanitary Sewer Operation	Public Works	\$26,830		PWENSR1903	FY 2019 Sanitary Sewer Rehab Allston, et al			X	carryover PWENSR1903 Sanitary Sewer rehab Allston Way
304	611	Sanitary Sewer Operation	Public Works		\$30,000		Sewer Operations			X	Appropriate fund for Portable HDPE Fusing Machine
305	611	Sanitary Sewer Operation	Public Works		\$10,000		Sewer Operations			X	Appropriate fund for SSO Trailer
306	611	Sanitary Sewer Operation	Public Works		\$15,000		Sewer Operations			X	Appropriate fund for SSO Equipment
307	611	Sanitary Sewer Operation	Public Works		\$35,000		Sewer Operations			X	Sanitary Sewer share of purchase of Double Drum Vibratory Roller and Tilt Trailer for Roller, needed for repaving projects.
308	611 Total			\$1,704,389	\$90,000						
309	631	Parking Meter Fund	Finance	\$40,000			Banking Fees/Services - contract with Wells Fargo			X	Banking Fees/Services - Council Approved 4 year extension to contract with Wells Fargo. Finance neglected to encumber necessary amount.
310	631	Parking Meter Fund	Public Works		\$92,415	PWENCB1906	125_127 University Ave Facilities Improvement			X	Carryover to continue project moving into construction phase.
311	631	Parking Meter Fund	Public Works	\$122,683	\$25,302	PWENCB1907	125_127 University Ave Parking Lot Improvement			X	Appropriate Parking Meter Fund to continue project moving into construction phase.
312	631 Total			\$162,683	\$117,717						
313	671	Equipment Replacement	Public Works		\$2,495,886		Vehicle replacement			X	Appropriate fund for additional amount needed to replace all vehicles (current and backlogged) scheduled to be replaced in FY 2021
314	671 Total			\$0	\$2,495,886						
315	672	Equipment Maintenance	Public Works		\$11,128		Equipment Maintenance			X	Appropriate fund to replace non-functioning pressure washer at Corp Yard
316	672	Equipment Maintenance	Public Works		\$16,754		Equipment Maintenance			X	Appropriate fund to replace aging pressure washer at Transfer Station
317	672	Equipment Maintenance	Public Works		\$9,000		Equipment Maintenance			X	Appropriate fund for Diesel Emissions Opacity Tester for mechanics
318	672	Equipment Maintenance	Public Works		\$50,000		Equipment Maintenance			X	Appropriate fund to complete Zonar GPS Sensor installation (Contract # 32000145 - funds approved but not encumbered)
319	672	Equipment Maintenance	Public Works		\$20,000		Equipment Maintenance			X	Appropriate fund for Training and memberships for Equipment Maintenance Personnel
320	672	Equipment Maintenance	Public Works		\$9,560		Equipment Maintenance			X	Appropriate fund for Scan tool for mechanics.

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
321	672	Equipment Maintenance	Public Works		\$68,000		Equipment Maintenance			X	Appropriate fund for Four fuel dispensers for Corp Yard to replace existing aging units.
322	672	Equipment Maintenance	Public Works	\$90,004		PWENBM2005	CY Lift Pits - Bldg G			X	Carryover of fund for CY lift pits decommissioning bldg G-Equip Mtc shop and underground pit chemical collection
323	672 Total			\$90,004	\$184,442						
324	678	Public Liability Fund	City Attorney	\$258,339			Salary savings			X	Carryover of salary savings from FY 2020 vacancies for for outside counsel and court costs.
325	678	Public Liability Fund	City Attorney	\$210,808			PL Fund savings			X	Carryover of Public Liability Fund account for outside counsel and court costs.
326	678	Public Liability Fund	City Attorney		\$719,017		City Attorney Outside Counsel, Court Costs, and Claims & Judgements			X	Additional funds to pay for outside counsel, court costs, and claims and judgements in FY 2021
327	678 Total			\$469,147	\$719,017						
328	680	IT Cost Allocation Plan	Information Technology	\$450,000			Network Hardware Replacement		X		Carryover of IT Cost Allocation fund for Fortigate and core switches replacement per Resolution No. XX,XXXX-N.S. 30NOV20 with Presidio Networked Solutions
329	680	IT Cost Allocation Plan	Information Technology	\$100,000			Citywide Microsoft Licenses			X	Carryover of IT Cost Allocation fund for Additional licenses for citywide Microsoft EA
330	680	IT Cost Allocation Plan	Information Technology	\$544,357			Cloud data backup solution		X		Carryover of IT Cost Allocation fund for citywide hosted cloud data backup solution per Resolution No. 69,520-N.S., 28JUL20
331	680	IT Cost Allocation Plan	Information Technology	\$428,000			VoIP System Upgrade		X		Carryover of IT Cost Allocation fund for citywide VoIP system upgrade per Resolution No. 69,388-N.S. 12MAY20
332	680	IT Cost Allocation Plan	Information Technology	\$200,000			Robert Half Consultants			X	Carryover of IT Cost Allocation fund for Robert Half Consultants support ofr Finance Department
333	680	IT Cost Allocation Plan	Information Technology	\$136,401			CycloMedia Technologies		X		Carryover of IT Cost Allocation fund for infrastructure asset data acquisition per Resolution No. 69,482-N.S. 30JUN20
334	680	IT Cost Allocation Plan	Information Technology	\$224,228			Middleware Upgrade: WebMethods		X		Carryover of IT Cost Allocation fund for data integration's middleware platform with SoftwareAG per Resolution No. 69,412-N.S. 26MAY20
335	680	IT Cost Allocation Plan	Information Technology	\$200,000			Support for Accela Software			X	Carryover of IT Cost Allocation fund for Configuration services to support Accela. Vendor: TruePoint and Grey Quarter
336	680	IT Cost Allocation Plan	Information Technology	\$95,451			Geographic Technologies Group		X		Carryover of IT Cost Allocation fund for GIS Master Plan execution per Resolution No. 69,413-N.S. 26MAY20
337	680 Total			\$2,378,437	\$0						

FY 2020 Departmental Carryover Requests and FY 2021 Adjustments

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Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
338	778	CFD No. 1 Disaster Fire Protection Bond	Fire		\$1,425,000		Water Distribution System			X	Appropriate funds to increase the capability and the maintenance of the water distribution system.
339	778 Total			\$0	\$1,425,000						
340	779	CFD NO.1 MELLO-ROOS	Non-Departmental		\$1,425,000		Transfer to Fund 778			X	Increase transfer to Fund 778 (CFD No. 1 Disaster Fire Protection) for funds needed to increase the capability and the maintenance of the water distribution system
341	779 Total			\$0	\$1,425,000						
342	781	Berkeley Tourism BID	City Manager's Office	\$0	\$85,825		Berkeley Tourism BID			X	This funding belongs to the Berkeley Tourism BID and the City is obligated to disperse it.
343	781 Total			\$0	\$85,825						
344	782	Elmwood BID	City Manager's Office	\$0	\$37,537		Elmwood BID			X	This funding belongs to the Elmwood BID and the City is obligated to disperse it.
345	782 Total			\$0	\$37,537						
346	783	Solano Avenue BID	City Manager's Office	\$0	\$9,881		Solano Avenue BID			X	This funding belongs to the Solano BID and the City is obligated to disperse it.
347	783 Total			\$0	\$9,881						
348	784	Telegraph PBID	City Manager's Office	\$0	\$239,714		Telegraph PBID			X	This funding belongs to the Telegraph PBID and the City is obligated to disperse it.
349	784 Total			\$0	\$239,714						
350	785	North Shattuck PBID	City Manager's Office	\$0	\$2,468		North Shattuck PBID			X	This funding belongs to the North Shattuck PBID and the City is obligated to disperse it.
351	785 Total			\$0	\$2,468						
352	786	Downtown PBID	City Manager's Office	\$0	\$253,352		Downtown Berkeley PBID			X	This funding belongs to the Downtown Berkeley PBID and the City is obligated to disperse it.
353	786 Total			\$0	\$253,352						
354	Grand Total			\$31,779,730	\$53,754,666						



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Cheryl Davila
Subject: Support Loan Forgiveness to Berkeley Youth Alternatives

RECOMMENDATION

Adopt a Resolution supporting the forgiveness of the City's \$100,000 loan to Berkeley Youth Alternatives (BYA), and direct the City Manager or her designee to process the loan forgiveness to BYA and release the deed of trust.

CURRENT SITUATION AND ITS EFFECTS

BYA has contacted the City to request forgiveness of the City's \$100,000 loan made to BYA in 1994. The loan was used for rehabilitation and seismic safety of BYA's 33,000 sq. ft. building at 2141 Bonar, which had been constructed in 1912. The purpose of the rehabilitation was to comply with local building standards, as well as with the Americans with Disabilities Act of 1990. As an important addition to other resources from the California Youth Center and Shelter Act of 1990, the City's loan helped BYA to transform its building from a former bread factory to a safe, comprehensive youth and family center.

BYA is in the final stages of securing new capital financing which will support its multiple programs and services. The City's deed of trust from 1994 is the only impediment to closing the financing.

BYA's tentative plans for the new financing include the hiring of or contracting with a Chief Financial Officer, contracting with a Fund Development firm to secure major grants and gifts, installing solar panels to reduce its greenhouse gas emissions, and improving its data system. In addition, Berkeley Youth Alternatives would like to develop a microenterprise operated by young adults, which generates income for them and enables its organization to self-fund activities as much as possible.

BACKGROUND

Berkeley Youth Alternatives (BYA) is a community based 501(c) 3 organization established in 1969 as a runaway youth shelter. BYA has since expanded its operations to include support for youth and families, with an emphasis on education, health/well-being, and economic self-sufficiency. BYA provides quality-of-life services such as mental health, case management, academic support, mentoring, health education, sports, fitness, recreation, job training and youth internships.

BYA's holistic services are designed to shift so-called "individuals at-risk" into "individuals with promise" by utilizing a continuum of care approach that emphasizes 3 core areas: Education, Health and Well-Being, and Economic Self-Sufficiency. To do this work, BYA creates teams of diverse professionals from the fields of education, mental health, workforce development, and recreation that work collaboratively to meet the psycho-social, emotional, and economic needs of those most vulnerable in our community.

FISCAL IMPACTS OF RECOMMENDATION

Loans such as this are sometimes forgiven and the benefits of supporting BYAs future outweigh pursuing it more than 25 years later

ENVIRONMENTAL SUSTAINABILITY

Supporting our youth is itself an act of environmental sustainability.

CONTACT PERSON

Cheryl Davila,
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENT:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY SUPPORTING
LOAN FORGIVENESS TO BERKELEY YOUTH ALTERNATIVES

WHEREAS, BYA has contacted the City to request forgiveness of the City's \$100,000 loan made to BYA in 1994. The loan was used for rehabilitation and seismic safety of BYA's 33,000 sq. ft. building at 2141 Bonar, which had been constructed in 1912. The purpose of the rehabilitation was to comply with local building standards, as well as with the Americans with Disabilities Act of 1990. As an important addition to other resources from the California Youth Center and Shelter Act of 1990, the City's loan helped BYA to transform its building from a former bread factory to a safe, comprehensive youth and family center; and

WHEREAS, BYA is in the final stages of securing new capital financing which will support its multiple programs and services. The City's deed of trust from 1994 is the only impediment to closing the financing; and

WHEREAS, BYA's tentative plans for the new financing include the hiring of or contracting with a Chief Financial Officer, contracting with a Fund Development firm to secure major grants and gifts, installing solar panels to reduce its greenhouse gas emissions, and improving its data system. In addition, Berkeley Youth Alternatives would like to develop a microenterprise operated by young adults, which generates income for them and enables its organization to self-fund activities as much as possible; and

WHEREAS, Berkeley Youth Alternatives (BYA) is a community based 501(c) 3 organization established in 1969 as a runaway youth shelter. BYA has since expanded its operations to include support for youth and families, with an emphasis on education, health/well-being, and economic self-sufficiency. BYA provides quality-of-life services such as mental health, case management, academic support, mentoring, health education, sports, fitness, recreation, job training and youth internships; and

WHEREAS, BYA's holistic services are designed to shift so-called "individuals at-risk" into "individuals with promise" by utilizing a continuum of care approach that emphasizes 3 core areas: Education, Health and Well-Being, and Economic Self-Sufficiency. To do this work, BYA creates teams of diverse professionals from the fields of education, mental health, workforce development, and recreation that work collaboratively to meet the psycho-social, emotional, and economic needs of those most vulnerable in our community; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley to forgive the City's \$100,000 loan to Berkeley Youth Alternatives (BYA), and direct the City Manager or her designee to process the loan forgiveness to BYA and release the deed of trust.



City Manager

ACTION CALENDAR

December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: D. Williams-Ridley, City Manager
 Submitted by: A. R. Greenwood, Chief of Police
 Subject: Amendments to Berkeley Police Department Policy 300, Use of Force

RECOMMENDATION

A) Adopt the proposed amendments to Policy 300 as proposed by the City Manager, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Department's recommendation for section 300.1.2;

-OR-

B) Adopt the proposed amendments to Policy 300 as proposed by the Police Review Commission, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Police Review Commission's recommendation for Sections 300.1.2 and 300.1.3.

SUMMARY

On July 23, 2020, the City Council approved the Berkeley Police Department Policy 300 Use of Force. Effective January 1, 2021, California Senate Bill 230 (Government Code 7286) requires agencies to have certain additional elements in their use of force policies. Further, through the implementation process of Policy 300, a few additional needs for clarification of language and terms within Policy 300 became apparent. Amending language was prepared and provided to the Police Review Commission for their review. On November 18, 2020, the Police Review Commission met and provided input on BPD's proposed amendments. The Department is in agreement with the PRC on all but one of the amendments, and has incorporated fully the language recommended by the Commission into the amendments below.

We request Council approve the amended language, to either (a) approve the department's recommendation, to add "strive to" to existing language in Section 300.1.2, or (b) approve the Police Review Commission's recommendation, to delete "strive to" in Section 300.1.2 and 300.1.3. The department's rationale is below, and the PRC has provided a document, attached, with the rationale underlying their recommendation. There is agreement between the PRC and the department on all other amendments to the language.

FISCAL IMPACTS OF RECOMMENDATION

Staff costs associated with training of BPD officers on the policy changes.

CURRENT SITUATION AND ITS EFFECTS

Given impending state law requirements, and the need to clarify certain elements of the policy, the City Council is asked to review and approve amendments to Policy 300, prior to January 1, 2021.

Recommendations for Amendments to Language and Rationale

Below we provide recommendations for amending language, as well as the rationale for each recommendation. Within each rationale section, the Police Review Commission's November 18 actions are noted, with changes incorporated into the amendments. New text is underlined and deleted language is shown in strikethrough text.

300.1.2 USE OF FORCE STANDARD

Policy 300's Core Principle of De-Escalation and Minimization declares that "... in any encounters that do call for applying force, officers must always strive to use the minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective." Additionally, existing language under section 300.1.2 Use of Force Standard requires officers to "... strive to use alternatives to physical force whenever reasonably possible. Therefore, for clarity and consistency with this existing language, "strive to" is placed in two other sentences within section 300.1.2. The addition of these terms ensure consistency across section 300.1.2 and the Core Principle of De-escalation and Force Minimization, as follows:

Section 300.1.2, Paragraph 1: "In all cases where physical force is used, officer shall strive to use the minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.

Section 300.1.2, Paragraph 4: "First, it imposes a higher duty upon officers to strive to use the minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective."

Rationale: These amendments ensure consistency across Use of Force Standard and Core Principles of De-escalation and Force Minimization. Including "strive to" indicates there is a range of force options which meet a "minimal" standard, and are objectively reasonable in a given situation.

Without these phrases, the policy would require officers use a specific minimum amount of force, *and* that there is only a single point on the force continuum that would be acceptable. Determining that exact minimum point on a continuum is problematic. Every situation is unique, and officers must be able to confidently make instantaneous

decisions while remaining in policy, in order to keep themselves and others safe. This issue arose during departmental training, when interpreting exactly what a specific minimal amount of force would be in a given situation resulted in differing responses from different officers, supervisors and trainers, when faced with the same scenario.

The proposed amendments are consistent with other agencies whose policies were noted during discussion with the PRC, including the Bay Area Rapid Transit (BART) Police Department, and the San Francisco Police Department. BART Police are required to “strive to” use the minimal amount of force necessary:

Bay Area Rapid Transit Police (BART) policy 300.1, para 3: Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. *Officers must strive to use the minimal amount of force necessary.* [Section 300.1, para. 3, *emphasis added.*]

The San Francisco Police Department explicitly states that within the minimal amount of force there is a range of objectively reasonable force options which are acceptable:

MINIMAL AMOUNT OF FORCE NECESSARY. The lowest level of force *within the range* of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others. [SFPD DGO 5.1, II (C), *emphasis added.*]

The Department seeks Council approval to add “strive to” in two locations within the policy.

The PRC voted 8-1 to reject the suggested amendments to 300.1.2, and instead recommended the removal of existing language of “strive to” in the first paragraph of 300.1.2, “with the understanding that “objectively reasonable” and other discussions about the policy show that there is not one single right answer as to what constitutes “minimum” and that there can be a range of force options which satisfy the “minimum” requirement.” [PRC draft minutes, Nov. 18 meeting.] The PRC further voted 8-0, with one abstention, to remove “strive to” from Section 300.1.3, Core Principles, De-escalation and Force Minimization.

The Department appreciates the PRC’s acknowledgement and agrees that there is not one single right answer as to what constitutes “minimum” and that there can be a range of force options which satisfy the “minimum” requirement. The department nevertheless believes it is best to include the “strive to” wording as it currently appears, and amend the language with “strive to” in two additional paragraphs, within the policy itself.

300.1.4 DEFINITIONS

Adds definitions for the terms “feasible, “objectively reasonable,” and “totality of the circumstances”:

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Rationale: This is the definition under Gov. Code 7286(a), and is referred to under 7286(b)(1), which requires that “... officers utilize de-escalation techniques... when feasible.” The PRC accepted this amendment, with the removal of a Government Code reference, by an 8-0 vote, with one abstention.

Objectively Reasonable – “Objectively reasonable” means an officer’s conduct will be evaluated through the eyes of the hypothetically reasonable officer standing in the shoes of the involved officer.

Rationale: This phrase is used numerous times through the policy, and is a commonly accepted legal meaning of this phrase. The PRC accepted this amendment by a 9-0 vote.

Totality of the circumstances – All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

Rationale: This is a defined phrase in Penal Code 835a(e), which was added as a result of AB 392. The PRC accepted this amendment by a 9-0 vote.

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY AND PROPORTIONALITY OF FORCE

Amend (m) to add the word “bystanders.”

(m) Potential for injury to officers, suspects, bystanders, and others.

Rationale: This word is included to meet a requirement within Government Code 7286(b)(5). The PRC accepted this amendment by general consent.

300.3.5 DE-ESCALATION TACTICS

Amend the language of the 4th paragraph, last sentence to replace “shall” with “should,” to read:

Officers should ~~shall~~ move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

Rationale: This mandatory requirement to tactically reposition must be made discretionary because it is overly restrictive in directing officers’ actions, given the variety of circumstances they may face, and is in conflict with Section 300.3.1 above, which states there is “no duty to retreat.” The PRC proposed the word “should” instead of “may”, by a 9-0 vote, and the PRC’s recommendation is incorporated above.

300.4 USE OF DEADLY FORCE

Amend the language of the 4th paragraph, redrafting a double-negative sentence phrase for clarity:

An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily unless it is objectively reasonable that using deadly force would not endanger innocent people.

Rationale: The amended sentence eliminates a double-negative sentence structure and provides greater clarity and direction. The PRC accepted this amendment by general consent.

300.4.1 DRAWING AND POINTING FIREARMS

Given that individuals may ~~might~~ perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines:

- a. If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- b. If it is objectively reasonable that a significant threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward said threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

Rationale: Government Code 7286(a)(4) requires an agency's use of force policy must contain "...clear and specific guidelines regarding situations in which officer may or may not draw a firearm or point a firearm at a person." This section is new. Staff used Lexipol's recommendations to meet the new requirements under GC 7286(a)(4). The PRC accepted this amendment with a 9-0 vote, replacing "might" with "may" in the first sentence, and removing a citation to the government code. The PRC's recommendation is incorporated above.

300.6.2 USE OF FORCE REPORTING LEVELS

Level 1

Delete section (a), which is in direct conflict with Section 300.1.4.

~~(a) Subject allowed themselves to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.~~

And amend language under Level 3:

Level 3

~~(a) Would have otherwise been classified as a Level 2, except one or more of the following apply:~~

- ~~1. Suspect injury or complaint of injury or continuing pain due to interaction with the officer.~~
- ~~2. Officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.~~

~~(a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.~~

~~(b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.~~

~~(c)(b) The officer used any of the following force options:~~

- ~~1. Chemical Agents/Munitions~~
- ~~2. Impact Weapon Strikes~~
- ~~3. Personal Body Weapons~~

Rationale: Removal of the Level 1 language resolves a direct contradiction within Policy 300, where the definition of "Force" (in Section, 300.1.4 Definitions), specifically states: "It is *not* a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained." [*Emphasis added.*] This edit leaves intact the list of types of force which are to be reported as Level 1 uses of force. The PRC accepted this amendment and in the same motion requested a further modification of language under Level 3, all by a 9-0 vote. These amendments are incorporated above.

Level 1, Level 2, and Level 3

Amend language in Levels 1, 2, and 3 respectively, to reflect functionality of the Blue Team software.

Under Level 1:

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team and ~~attach a completed Use of Force Investigation Checklist~~ template with a brief summary.

Under Level 2:

If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team and ~~attach a completed Use of Force Investigation Checklist~~ template with a brief summary.

Under Level 3:

If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team and ~~attach a completed Use of Force Investigation Checklist~~ template.

The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process. Suspect and witness statement from the crime report will be attached to the use of force investigation.

Rationale: This amended language provides clarity to reflect functionality of the Blue Team software. The PRC accepted these amendments by a 9-0 vote.

300.6.2 USE OF FORCE REPORTING LEVELS – LEVEL 2

Amend the language in (b)(1) as follows:

(b) Officer's use of force was limited to the following:

1. Firearm drawn from the holster or otherwise deployed during ~~in~~ an interaction with an individual, and/or pointed at an individual.

For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.

Rationale: Amending the language clarifies that BPD report a use of force when firearms are drawn and pointed at someone, in order to gain compliance. The PRC voted 8-0 to amend the department's language, and provided clarifying language, which is fully incorporated above.

300.6.3 EMPLOYEE USE OF FORCE

Amend this section by adding (a) and (b) below to the existing language, so that the section reads, in whole:

When any Berkeley Police Department employee has engaged in a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.
- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

Rationale: This addition of (a) and (b) ensures language in General Order U-2 which was specifically drafted and incorporated into the use of force policy as part of the settlement agreement in Law et al v. City of Berkeley et al 15-5343 JSC, is retained in the Use of Force policy. The PRC accepted this amendment by an 8-0 vote.

300.6.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Delete the last sentence referring to the Records Management Policy, to read:

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. ~~See the Records Management Policy.~~

Rationale: Reporting statistical data regarding all officer-involved shootings and incidents is required by California Government Code § 12525.2; a separate reference to a BPD policy is not needed. The PRC accepted this amendment by general consent.

300.6.5 PUBLIC RECORDS

Adds "(f)," to the existing language to specify the reference.

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and Department Policy R-23.

Rationale: This adds specifying language. The PRC accepted this amendment by general consent.

300.10 TRAINING

Amend the section by completely replacing existing language with expanded language to address training requirements as mandated by Gov. Code 7286(b)(15).

~~Officers shall receive periodic training on this policy and demonstrate their knowledge and understanding as per SB 230.~~

Officers, investigators, and supervisors will receive periodic training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, the Personnel and Training Sergeant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include:

- a. Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- b. Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

Rationale: Adopt the language in order to address the training requirements of Gov. Code 7286(b) (15). The PRC accepted this amendment, with the removal of government code citations, by an 8-0 vote.

300.12 CIVILIAN COMPLAINTS

Amend the language by inserting the word "respective" as follows

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police

Review Commission (PRC) or its successor entity. Complaints will be investigated in compliance with the respective applicable policies and procedures of the IAB and the PRC and its successor entities.

Rationale: This adds specifying language. The PRC accepted this amendment by general consent.

RATIONALE FOR RECOMMENDATIONS

Rationales are included for each suggested amendment above.

ALTERNATIVE ACTIONS CONSIDERED

None; Action is needed in order to ensure Policy 300 is in compliance with state law and provides clear direction to personnel.

CONTACT PERSON

A.R. Greenwood, Chief of Police (510) 981-5700

Attachments:

1. Policy 300, with Redline
2. Police Review Commission Draft Minutes, Nov. 18, 2020 Meeting

Amended Policy 300 – Redline Version
BPD/PRC revisions 11-18-2020
As contained in Council Item

Policy
300

Berkeley Police Department
Policy Manual

Use of Force

300.1 SANCTITY OF LIFE

The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force. Officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

300.1.1 PURPOSE AND SCOPE

This policy sets forth criteria governing the use of force. All officers are responsible for knowing and complying with this policy and conducting themselves in a manner that reflects the Berkeley Police Department's Use of Force Core Principles. Violations of this policy may result in disciplinary action, including and up to termination, and may subject the officer to criminal prosecution. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it.

300.1.2 USE OF FORCE STANDARD

In dealing with suspects, officers shall strive to use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall **strive to** use the minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.

The United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), held that, in order to comply with the U.S. Constitution, an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force. But these standards merely set the minimum standard for police conduct, below which an officer's conduct would be regarded as unlawful.

In fulfilling this Department's mission to safeguard the life, dignity, and liberty of officers themselves and all members of the community they are sworn to protect and serve, this policy requires more of our officers than simply not violating the law. As a result, this policy is more restrictive than the minimum constitutional standard and state law in two important respects.

First, it imposes a higher duty upon officers to strive to use the minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective. And, second, this policy imposes a stricter obligation on officers to exert only such force that is objectively proportionate to the circumstances, requiring a consideration of the seriousness of the suspected offense, the availability of de-escalation and other less aggressive techniques, and the risks of harm presented to members of the public and to the officers involved.

Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force.

300.1.3 CORE PRINCIPLES

A. DE-ESCALATION AND FORCE MINIMIZATION. Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always strive to use the minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

B. PROPORTIONALITY. When determining the appropriate level of force, at all times officers shall balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is unarmed or armed with a weapon other than a firearm.

C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

D. DUTY TO INTERCEDE. Whenever possible, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

E. VULNERABLE POPULATIONS. Officers should be particularly sensitive when considering the use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities, and people with limited English proficiency.

F. FOSTER STRONG COMMUNITY RELATIONSHIPS. The Berkeley Police Department understands that uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. The Department is committed to fostering strong community relations by building on its historic tradition of progressive policing, ensuring accountability and transparency, and striving to increase trust with our community.

G. FAIR AND UNBIASED POLICING. Members of the Berkeley Police Department shall carry out their duties, including the use of force, in a manner that is fair and unbiased, in accordance with Policy 401, Fair and Impartial Policing.

300.1.4 DEFINITIONS

Definitions related to this policy include:

Minimal amount necessary – The least amount of force that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm).

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person (Government Code 7286(a)).

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained.

Less-Than-Lethal Force – Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options. Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

Non-Lethal Force – Any use of force other than lethal force or less-than lethal force.

Compliant Suspect – Cooperative and/or responsive to lawful commands.

Passive Resistance - When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way.

Examples: A person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.

Active Resistance - An individual who is uncooperative and fails to comply with the lawful verbal commands of a police officer, and attempts to avoid physical control and/or arrest by physically struggling to free oneself from being restrained. The individual may also use verbal non-compliance (refusing a lawful order or direction).

Examples: A person who attempts to avoid physical control and/or arrest by pulling or pushing away from the officer, tensing arm or muscles, hiding from the officer, and/or fleeing.

Combative Resistance - An individual not only resists the officer, but poses a threat of harm to the officer or others, in an aggressive manner that may cause physical injury.

Examples: A person who violently attempts to or attacks an officer. This action is sometimes preceded by “pre-assault” cues such as taking a threatening stance (clenching fists, facial expressions, threats, etc.) and verbal non-compliance.

Control Hold - Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.). A control hold can be applied without implementing pain.

Pain Compliance Technique - Involves either the manipulation of a person's joints or activating certain pressure points intended to create sufficient pain for the purpose of motivating a person to comply with verbal commands (examples of pressure points include buccal nerve, gum nerve, sternum rub).

Control Techniques – Personal Impact Weapons and Take Downs.

Personal Body Weapons - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of kinetic energy transfer (impact) to gain control of a subject.

Blue Team (BT) – Computer software that allows officers to enter use of force and other incidents from a Department computer.

Concealment - Anything which conceals a person from view.

Cover - Anything which provides protection from bullets or other projectiles fired or thrown. Cover is subjective and its effectiveness depends upon the threat's ballistic capability (handgun, rifle, etc.).

Blocking - The positioning of a police vehicle in the path of an occupied subject vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal.

Ramming - The use of a vehicle to intentionally hit another vehicle

Serious Bodily Injury - A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement or results in a prolonged loss or impairment of the functioning of any bodily member or organ.

Officer (or) Police Officer - Any sworn peace officer.

Authorized Employee - Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.

Employee – Any non-sworn employee of the Berkeley Police Department, including those deemed “authorized employees.”

Objectively Reasonable – “Objectively reasonable” means an officer's conduct will be evaluated through the eyes of the hypothetically reasonable officer standing in the shoes of the involved officer.

Totality of the circumstances – All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

300.2.1 DUTY TO INTERCEDE AND DUTY TO REPORT

Any officer who observes another officer or member of the Berkeley Police Department using force that is clearly in violation of this policy shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, when in a position to do so, physical intervention. Further, any officer who learns of a potentially unauthorized use of force, even if the officer did not witness it personally, shall promptly report this information to an on-duty sergeant or a command officer at the first opportunity.

Any officer who observes an employee or member of a different law enforcement agency use force that exceeds the degree of force permitted by law shall promptly report these observations to an on-duty sergeant or a command officer at the first opportunity.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable, objectively necessary, and proportional force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance

or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance. For purposes of this policy, “retreat” does not mean tactical repositioning or other de-escalation tactics.

300.3.2 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use objectively reasonable, objectively necessary, and proportional force to lawfully seize evidence and to prevent the destruction of evidence. In the instance when force is used an officer shall not use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the department for the specific purpose of collecting evidence.

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY, AND PROPORTIONALITY OF FORCE

When determining whether to apply force and evaluating whether an officer has used objectively reasonable, objectively necessary, and proportional force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer
- (e) The effects of drugs or alcohol.
- (f) The individual's apparent mental state or capacity
- (g) The individual's apparent ability to understand and comply with officer commands
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness).
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.

- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force. It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is objectively reasonable, objectively necessary, and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- Compliant – In general, when dealing with a compliant person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- Passive resistance – In general, when dealing with a suspect involved in passive resistance, officers may rely on police presence, verbal control techniques, or control holds, but should not use greater force.
- Active resistance – In general, in dealing with a suspect involved in active resistance, in addition to the options available for passive resistance, officers may rely on pain compliance techniques or takedowns, but should not use greater force.
- Combative resistance – In general, in dealing with a suspect involved in combative resistance, officers have all use-of-force options available to them, but deadly force shall only be used in compliance with this policy as described in Section 300.4.

300.3.4 USE OF FORCE CONTINUUM

The Department uses a “use of force continuum” that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.

Continuum of Force

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
 - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
 - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**

- Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
- Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Weaponless defense — Officers use bodily force to gain control of a situation.**
 - *Pain compliance and control holds.* Officers use grabs, holds and joint locks to restrain an individual.
 - *Personal body weapons.* Officers may use punches and kicks to restrain an individual.
- **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**
 - *Blunt impact.* Officers may use a baton or projectile to immobilize a combative person.
 - *Chemical.* Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
- **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

300.3.5 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so, De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.

Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers ~~shall~~ **should** move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

- a) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
- b) Officers should recognize that they may withdraw to a position that is tactically

advantageous or allows them greater distance to de-escalate a situation.

- c) Officers should consider a variety of options, including lesser force or no force options.
- d) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.
- e) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
- f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.
- g) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.
- h) Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.
- i) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

When time and circumstances allow, officers shall consider the following tactical principles:

- (a) Make a tactical approach to the scene.
- (b) Maintain a safe distance.
- (c) Use available cover or concealment and identify escape routes.
- (d) Stage Berkeley Fire Department.
- (e) Control vehicle and pedestrian traffic.
- (f) Establish communication, preferably with one officer.
- (g) Create an emergency plan and a deliberate plan with contingencies.
- (h) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

300.3.6 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance and threat posed by the person.
- (b) Whether the person can comply with the direction or orders of the officer.

- (c) Whether the person has been given sufficient opportunity to comply.

The purpose of pain compliance is to direct a person's actions. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.7 USE OF NON-LETHAL FORCE

When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use objectively reasonable, objectively necessary, and proportional approved non-lethal force techniques and weapons in the following circumstances:

- a) To protect themselves or another person from physical injury;
- b) To restrain or subdue a resistant individual; or
- c) To bring an unlawful situation safely and effectively under control.

300.3.7.1 RESTRAINT AND CONTROL DEVICES

Restraint and control devices shall not be used to punish, to display authority or as a show of force. Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302. Batons, approved less-lethal projectiles, and approved chemical agents shall only be used consistent with Policy 303. As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

300.3.8 CHOKEHOLD PROHIBITION

The use of a Carotid Restraint Hold is prohibited. Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."

The term bar-arm refers to a variety of techniques. The use of any chokehold is strictly prohibited. A chokehold is any hold or contact with the neck – including a carotid restraint -- that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

300.4 USE OF DEADLY FORCE

An officer's use of deadly force is justified only when it is objectively reasonable, based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a

suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided that it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.

An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily endanger innocent people unless it is objectively reasonable that using deadly force would not

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

300.4.1 DRAWING AND POINTING FIREARMS

Given that individuals may might perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- a. If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- b. If it is objectively reasonable that a significant threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward said threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

300.4.2 DIRECTED FIRE

Officers may use controlled gunfire that is directed at the suspect, reducing the suspect’s ability to return fire while a group or individual movement is conducted, such as in a rescue operation.

Officers may only employ this tactic when dealing with a suspect who poses an immediate and ongoing lethal threat and only under circumstances where the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Officers remain accountable for every round fired under these circumstances. Officers must consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

Absent exigent circumstances, officers shall not discharge firearms from a moving vehicle.

Firearms shall not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.

Officers shall not move into, remain, or otherwise position themselves in the path of a vehicle in an effort to detain or apprehend the occupants. Any officer in the path of a moving vehicle shall immediately attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.

Because this policy may not cover every situation that may arise, a deviation from this policy may be objectively reasonable and objectively necessary depending on the totality of the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.

Factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle include:

- (a) The availability and use of cover, distance and / or tactical relocation
- (b) Incident command and personnel placement
- (c) Tactical approach
- (d) Regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers

300.5 USE OF VEHICLES

Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.

The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal. VCT shall only to be used on vehicles that are either stationary or moving at a slow speed. This technique is designed to contain a suspect vehicle to a single stationary location, thereby preventing a pursuit from initiating, or a potentially violent situation (e.g. a hostage situation or person barricaded inside a vehicle) from becoming mobile.

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation.

300.6 REPORTING REQUIREMENTS

All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a "Use of Pepper Spray

Report.” Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a “Use of Restraint Device Report” and document, review and report such uses in accordance with section 300.11.

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.

300.6.1 SUPERVISOR RESPONSIBILITY

When a supervisor is able to respond to an incident in which there has been a reported application of force as defined in 300.6.2 and the scene is secure, the supervisor should:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports
- (f) Review body worn camera footage related to the incident.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.6.2 USE OF FORCE REPORTING LEVELS

Level 1

~~(a) Subject allowed themselves to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.~~

(b) (a) The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject did not experience more than momentary discomfort:

1. Control holds/ pain compliance techniques
2. Leverage
3. Grab
4. Bodyweight
5. The officer lowered the subject to a seated position or to the ground while partially or

completely supporting the person's bodyweight.

6. Takedown

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team ~~template and attach a completed Use of Force Investigation Checklist~~ with a brief summary.

Level 2

(a) No suspect injury or complaint of continuing pain due to interaction with officer.

(b) Officer's use of force was limited to the following:

1. Firearm drawn from the holster or otherwise deployed during ~~in~~ an interaction with an individual and/or displayed, and/or pointed at an individual.

For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.

2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor, when feasible, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of all involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team ~~template and attach a completed Use of Force Investigation Checklist~~ with a brief summary.

Level 3

~~(a) Would have otherwise been classified as a Level 2, except one or more of the following apply:~~

- ~~1. Suspect injury or complaint of injury or continuing pain due to interaction with the officer.~~
- ~~2. Officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.~~

(a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.

(b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.

~~(c)(b)~~ The officer used any of the following force options:

1. Chemical Agents/Munitions
2. Impact Weapon Strikes
3. Personal Body Weapons

An uninvolved supervisor, when practical, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team ~~template and attach a completed Use of Force Investigation Checklist~~.

The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation.

Level 4

Any incident involving deadly force or any force likely to cause death or serious bodily injury will be investigated under the protocols outlined in Policy P-12.

300.6.3 EMPLOYEE USE OF FORCE

When any Berkeley Police Department employee has engaged in a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.
- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

300.6.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. ~~See the Records Management Policy.~~

300.6.5 PUBLIC RECORDS

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and Department Policy R-23.

300.7 MEDICAL CONSIDERATION

When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall promptly provide, if properly trained, or otherwise promptly procure medical assistance when reasonable and safe to do so in order to ensure that the subject receives appropriate medical care

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical evaluation as soon as practicable and have medical personnel stage away if appropriate.

300.8 WATCH COMMANDER RESPONSIBILITY

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

300.9 USE OF FORCE ADMINISTRATIVE REVIEW

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.

The Chief of Police shall make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

Any determination concerning the propriety of force used shall be based on the facts and information available to the officer at the time the force was employed, and not upon information gained after the fact.

All Use of Force Reports shall be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; 3) require further investigation; and/or, 4) require revision or additional training.

Use of Force Reports shall be held in file for at least five (5) years

300.10 TRAINING

~~Officers shall receive periodic training on this policy and demonstrate their knowledge and understanding as per SB-230~~

Officers, investigators, and supervisors will receive periodic training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, the Personnel and Training Sergeant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include:

- a. Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- b. Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

300.11.1 USE OF FORCE ANALYSIS

The Professional Standards Division Captain or his or her designee shall prepare a comprehensive analysis report on use of force incidents. The report shall not contain the names of officers, suspects or case numbers, and should include but not be limited to:

- (a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.

-
- (b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2)
 - (c) The identification of any trends in the use of force by members.
 - (d) Training needs recommendations.
 - (e) Equipment needs recommendations.
 - (f) Policy revisions recommendations.

300.11.2 REPORTING FREQUENCY

- (a) On a quarterly basis via the City’s Open Data Portal website;
- (b) On a quarterly basis to the Police Review Commission; and
- (c) On a yearly basis as part of the Police Department’s Annual Crime Report to Council.

300.12 CIVILIAN COMPLAINTS

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Review Commission (PRC). Complaints will be investigated in compliance with the respective applicable policies and procedures of the IAB and the PRC.

300.13 POLICY REVIEW AND UPDATES

This policy shall be regularly reviewed and updated to reflect developing practices and procedures.

At least annually, the Berkeley Police Department and the Police Review Commission shall convene to review and update the Use of Force Policy to reflect developing practices and procedures per SB 230.

Excerpt of draft minutes of the Nov. 18, 2020 Police Review Commission meeting

10. NEW BUSINESS (discussion and action)

- a. Review proposed amendments to Policy 300, Use of Force

Motion to remove the words “strive to” from the first sentence of Section 300.1.2, Use of Force Standard, and reject the recommendation to add “strive to” in the first and fourth paragraphs of 300.1.2; with the understanding that the “objectively reasonable” and other discussions about the policy show that there is not one right answer and that a range of force options is available.

Moved/Second (Saginer/Perezvelez) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: Mikiten Abstain: None Absent: Chang

Motion to accept the proposed insertion of the definition of “Feasible” in Section 300.1.4, Definitions, without the reference to Government Code section 7286(a).

Moved/Second (Calavita/Saginer) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None Abstain: Mizell Absent: Chang

Motion to delete “strive to” in Section 300.1.3, Core Principles, Subsection A, De-escalation and Force Minimization.

Moved/Second (Perezvelez/Saginer) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None Abstain: Mikiten Absent: Chang

Motion to accept the definitions of “Objectively Reasonable” and “Totality of the Circumstances” in Section 300.1.4, Definitions.

Moved/Second (Calavita/Leftwich) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None Abstain: None Absent: Chang

Motion to accept the addition of “bystanders” in Section 300.3.3, Factors Use to Determine the Reasonableness, Necessity, and Proportionality of Force, item (m).

Moved/Second (Perezvelez/Calavita) **Motion carried by general consent.**

Motion to reject “may” and instead use “should” in place of “shall” in the fourth paragraph of Section 300.3.5, De-escalation Tactics.

Moved/Second (Perezvelez/Calavita) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None Abstain: None Absent: Chang

Excerpt of draft minutes of the Nov. 18, 2020 Police Review Commission meeting

Motion to accept the rewording in the third paragraph of Section 300.4, Use of Deadly Force.

Moved/Second (Saginer/Allamby) **Motion Carried by general consent.**

Motion to accept the addition of Section 300.4.1, Drawing and Pointing Firearms, with the replacement of “might” with “may” in the first sentence.

Moved/Second (Saginer/Perezvelez)

Friendly amendment: and to delete reference to the Government Code.

Moved by Calavita, accepted by Saginer and Perezvelez

Motion, as amended, Carried

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang

Motion to approve, in Section 300.6.2, Use of Force Reporting Levels, the deletion of subsection (a) under Level 1, and the modification of Level 3 to read:

- (a) Suspect has sustained an injury or complains of injury or continuing pain dueto interaction with the officer.**
- (b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.**
- (c) The officer used any of the following force options:**
 - 1. Chemical Agents/Munitions**
 - 2. Impact Weapon Strikes**
 - 3. Personal Body Weapons**

Moved/Second (Calavita/Saginer) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang

Motion to accept the deletion of references to attaching a completed a Use of Force Investigation checklist and specifying “template” in reference to the Blue Team, under Levels 1, 2, and 3 of Section 300.6.2, Use of Force Reporting Levels.

Moved/Second (Perezvelez/Calavita) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang

(Recess 10:02 – 10:15 p.m.)

Motion to amend the language in 300.6.2, Use of Force Reporting Levels, Level 2, subsection (b) to read:

- 1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual and/or pointed at an individual.**

Excerpt of draft minutes of the Nov. 18, 2020 Police Review Commission meeting

For the purposes of this section, “interaction” shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.

An individual complaining of an attempt to compel an action with a firearm, shall be reportable for this purpose.

Moved/Second (Mizell/Saginer)

Friendly amendment: to drop the last sentence.

Moved by Calavita, accepted by Mizell and Saginer.

Motion, as amended, Carried

Ayes: Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang, Allamby

Motion to accept added subsections (a) and (b) in Section 300.6.3, Employee Use of Force.

Moved/Second (Calavita/Leftwich) **Motion Carried**

Ayes: Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang, Allamby

Motion to accept deletion in Section 300.6.4, Reporting to California Department of Justice, and the addition of “(f)” to Government Code section 6254 in Section 300.6.5, Public Records.

Moved/Second (Calavita/Mizell) **Motion Carried by general consent.**

Motion to accept revised Section 300.10, Training, but omitting the two references to Government Code section 7286(b).

Moved/Second (Calavita/Leftwich) **Motion Carried**

Ayes: Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

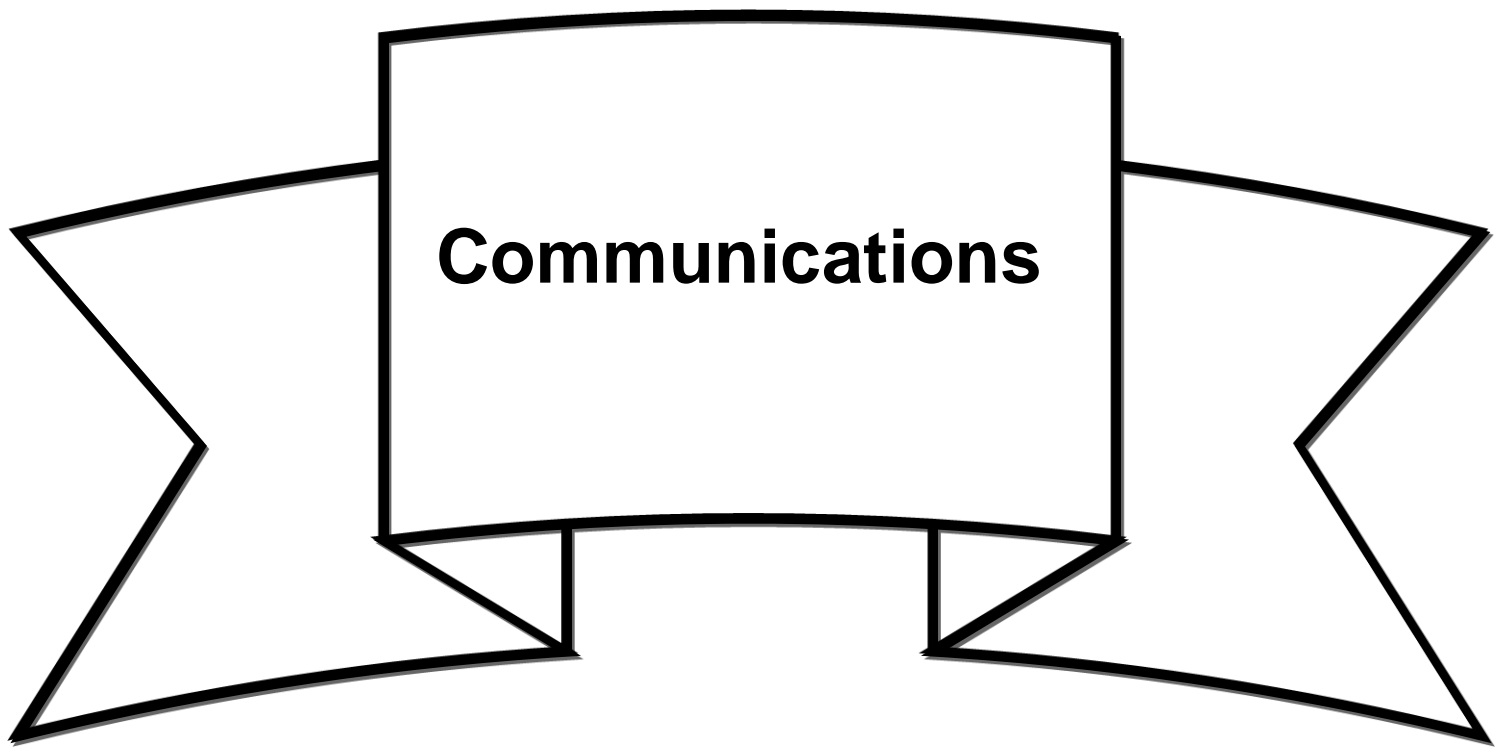
Noes: None

Abstain: None

Absent: Chang, Allamby

Motion to accept the revision to Section 300.12, Civilian Complaints.

Moved/Second (Calavita/Leftwich) **Motion Carried by general consent.**



All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department

2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

Records Online

<http://www.cityofberkeley.info/recordsonline>

To search for communications associated with a particular City Council meeting using Records Online:

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