



Office of the City Manager

CONSENT CALENDAR
June 16, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David White, Deputy City Manager

Subject: Urgency Ordinance Declaring A Local Fiscal Emergency In Response to the Novel Coronavirus (COVID-19) Pandemic

RECOMMENDATION

Adopt an Urgency Ordinance declaring a fiscal emergency in response to the COVID-19 pandemic as required by Council policy to be able to access the General Fund Stability Reserve to cover deficits.

FISCAL IMPACTS OF RECOMMENDATION

Other than the staff time required to prepare the Urgency Ordinance, there are no additional costs. By adopting this Urgency Ordinance, the City will have the ability to take actions necessary to address the City's projected FY 21 budget deficit including, but not limited to, using funds from the General Fund Stability Reserve.

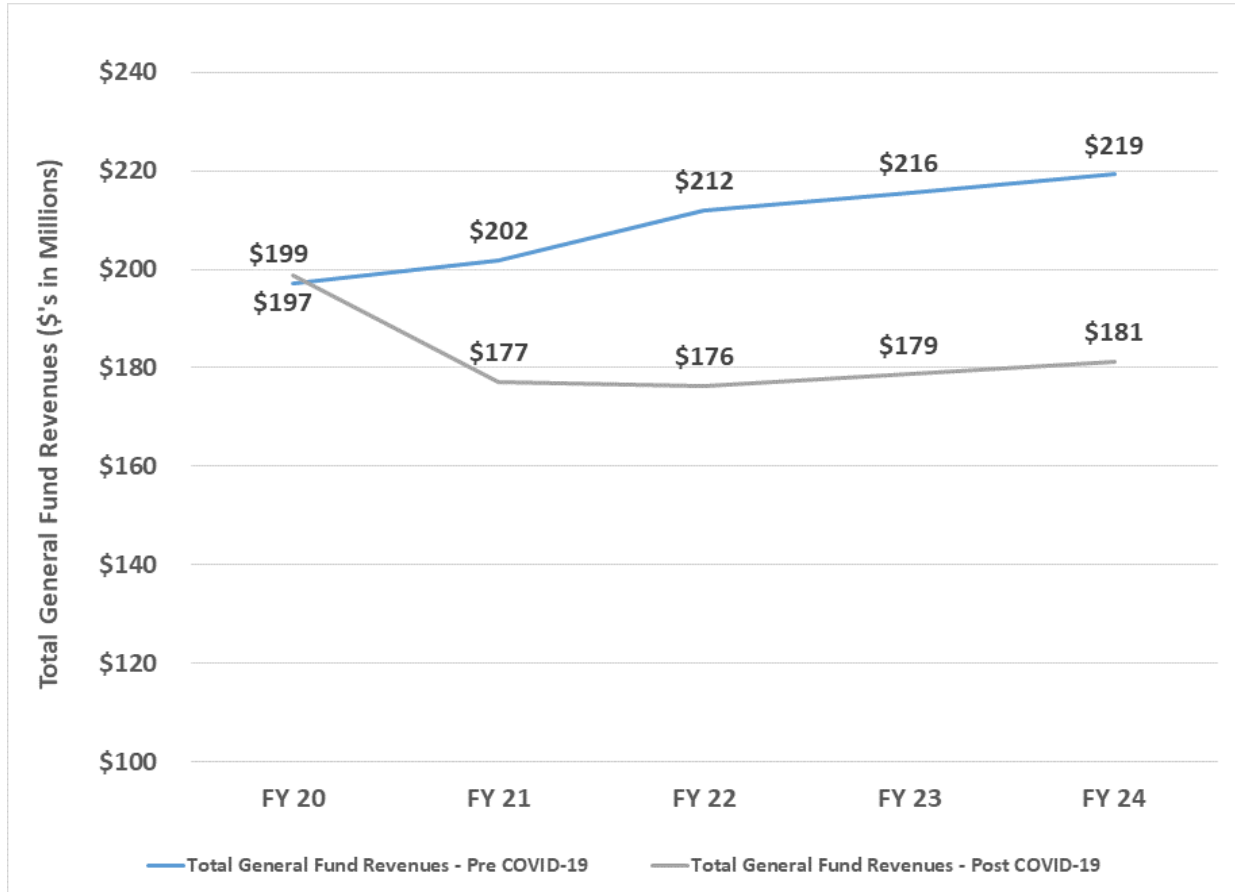
CURRENT SITUATION AND ITS EFFECTS

In February 2018, the City Council revised the General Fund Reserve Policy requiring a declaration of Fiscal Emergency, among other items, in order to be able to access the General Fund Stability Reserve to cover deficits.

Due to the COVID-19 pandemic, the City is projecting an unanticipated and rapid deterioration in revenues that is expected to result in what is currently estimated to be a \$28.7 million General Fund shortfall in FY 2021. When the City Council approved the FY 20 / FY 21 Biennial Budget in June 2019, it was projected that the City would generate approximately \$201.7 million in total General Fund revenues in FY 21. Due to the COVID-19 pandemic, the City now estimates that it will generate approximately \$177.1 million in total General Fund revenues (excluding property transfer tax for capital improvements). This is an unprecedented decline in revenues and given the limited information that is currently available, it is possible that revenues might further deteriorate thereby increasing the deficit. Further, as there is no vaccine currently available for COVID-19, prolonged community spread of the virus in conjunction with restrictions placed on business activity, travel and high unemployment could delay the economic recovery and result in a structural deficit well beyond FY 21. As depicted in

the figure below, city staff currently anticipates that it could be years before General Fund revenues recover to pre COVID-19 levels.

Figure 1
Estimated General Fund Revenues
FY 20 – FY 24



* FY 20 Total General Fund Revenues Post COVID-19 includes all Property Transfer Tax Revenues, which is estimated at \$21.9 million. Subsequent to FY 20, Property Transfer Tax Revenue is estimated at \$12.5 million.

In addition to the General Fund, the COVID-19 pandemic and Shelter-In-Place orders have impacted other funds as well, including, but not limited to the following:

- Off Street Parking Fund;
- Parking Meter Fund;
- Marina Fund; and
- Zero Waste.

The impacts to the Off-Street Parking Fund and Parking Meter Fund have been severe as these funds generated almost no revenue from the date the original Shelter-In-Place went into effect through May 2020 due to the widespread closure of businesses, along with arts and entertainment venues. It is anticipated that both of these funds will continue to experience significant losses in revenue. As a result, General Fund resources are required to assist these funds in meeting their debt service obligations attributable to the bonds that were issued to construct the Center Street Parking Garage. The Marina Fund, which has been struggling for years and has limited reserves, has experienced losses in revenue due to the inability of tenants to meet lease obligations, and Zero Waste experienced revenue reductions as customers have either requested service reductions or total cancelations.

The City's General Fund Reserve, which consists of a Stability Reserve and a Catastrophic Reserve, in total, consists of approximately \$34.5 million. Given that the City's General Fund Reserve is inadequate to cover the anticipated budget shortfall, the City took the following immediate actions to control spending:

- Implementing a hiring freeze that became effective on April 27, 2020.
- Delaying contracts that were identified as being discretionary and funded with General Fund resources.
- Placing part-time employees assigned to programs impacted by the Shelter-In-Place order on unpaid furlough and discontinuing the use of interns.

In order to align revenues with expenditures in FY 21 in the General Fund, departments were asked to provide for consideration tiered expenditure deferrals or 1-time reductions of 10 percent, 12 percent, and 15 percent of expenditures for FY 2021. Preliminary proposals developed by departments, at the 15 percent level, generates estimated savings of approximately \$25.5 million, which is still short of what is needed to balance the General Fund in FY 21. As a result, city staff continues to work with departments to identify additional deferrals to balance the budget.

Given the significant impact that deferrals or 1-time reductions will have on vital community services and the impacts of the pandemic on other funds, it will be necessary to draw on General Fund Reserves (Stability and Catastrophic) to not only mitigate the loss of revenue and service reductions but also provide the resources needed to support the City's response to the COVID-19 pandemic until such time that the City is able to seek reimbursement from FEMA or through other federal, state, and local grants.

BACKGROUND

In February 2018, the City Council amended the City' General Fund Reserve Policy, Resolution No, 68,332-N.S., to include criteria as to when the City can access the General Fund Stability Reserve to address anticipated deficits. In summary, the criteria approved by the City Council includes the following:

- City revenues are insufficient to meet normal operating expenses.
- A hiring freeze has been implemented.
- User fees and service charges are being fully utilized for those services for which they are collected.
- A declaration of fiscal emergency is made by ordinance.

A fiscal emergency is defined as the following:

- When general revenues increase less than 3% from the prior fiscal year.
- When the City needs to mitigate State or Federal budget actions that may reduce revenue or increase expenditures.
- When the City must absorb liability settlements in excess of available resources in the City's litigation designation.

The City's current financial condition meets the definition of a Fiscal Emergency as outlined in the General Fund Reserve Policy. Due to the COVID-19 pandemic, the City anticipates a significant decline in revenue that is generating a deficit in the General Fund in FY 21 of at least \$28.7 million.

In addition to being able to access the Stability Reserve, a declaration of Fiscal Emergency enables the City to take the following actions:

- Pursuant to the City's Charter, Article III, Section 6.2, in the event of Fiscal Emergency adopted by not less than a two-thirds vote, the City Council may suspend or reduce the amount of the appropriation to the Fair Elections Fund to preserve essential governmental services.

- Pursuant to Chapter 7.81 of the Berkeley Municipal Code, Special Tax to Fund Fire Protection and Emergency Response and Preparedness, if the City Council declares a Fiscal Emergency with at least a two-thirds vote, the City Council may allocate the proceeds of the Special Tax amongst the following categories in its sole discretion¹:
 - Eliminating the rotating closure of operating fire stations.
 - Providing advanced life support ("ALS") personnel (paramedics) and equipment on all first responder vehicles and hiring a training officer to provide Emergency Medical Service ("EMS") training for first responders.
 - Providing funding to hire staff to conduct Community Emergency Response Training and other similar public disaster training and preparedness efforts.
 - Acquiring and maintaining equipment to enhance emergency preparedness.

Finally, under the California Constitution, by declaring a Fiscal Emergency, the City has the ability to place a tax on a ballot in a non-regularly scheduled election.

ENVIRONMENTAL SUSTAINABILITY

There are no anticipated environmental impacts in adopting the Urgency Ordinance declaring a Fiscal Emergency.

RATIONALE FOR RECOMMENDATION

By adopting the Urgency Ordinance, City Council will have met all of the criteria necessary to access the General Fund Stability Reserve in order to help address the projected FY 21 General Fund deficit.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the attached Urgency Ordinance. This would preclude the City Council from being able to access the General Fund Stability Reserve and require that the City take other actions to address the projected FY 21 General Fund deficit.

CONTACT PERSON

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Attachments:

1: Ordinance

¹ In the absence of a fiscal emergency, Special Tax proceeds shall be allocated first to the estimated amount necessary to eliminate rotating closures of operating fire stations.

ORDINANCE NO. -N.S.

URGENCY ORDINANCE DECLARING A LOCAL FISCAL EMERGENCY IN
RESPONSE TO THE NOVEL CORONAVIRUS (COVID-19) PANDEMIC

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

Section 1. The City Council finds and declares as follows:

- a. On March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on the COVID-19 pandemic, which the City Council ratified on March 10, 2020.
- b. On March 4, 2020, Governor Gavin Newsom declared a State of Emergency in California and on March 13, 2020 the President of the United States declared a national state of emergency due to the number of confirmed cases of COVID-19.
- c. 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 to stay in their homes, with limited exceptions for essential activities and essential businesses.
- d. On March 19, 2020, Governor Newsom issued Executive Order N-33-20 ordering all individuals living in the State of California to stay at home except as needed to maintain continuity of operations of the federal critical infrastructure services, effective March 19, 2020, and in effect indefinitely until rescinded by the Governor.
- e. On March 31, 2020, the City of Berkeley's Shelter-In-Place order was extended to May 3, 2020, on April 29, 2020, it was extended through May 31, 2020, and on May 18, 2020 it was amended and continued until rescinded, superseded or further amended by the Health Officer.
- f. The threat presented by the COVID-19 pandemic, and the Shelter-In-Place orders, have significantly disrupted non-essential commerce activities such as patronage at restaurants, bars, service businesses, retail shopping, hotels, and arts and entertainment venues. In Berkeley, the City Auditor has estimated that 30,000 jobs could be impacted by business closures and approximately 27 percent of workers who live in Berkeley are at risk of losing their jobs.
- g. The City relies on tax revenue from sales and use tax, hotel occupancy, business license, and parking to fund many of its services. With many local businesses and arts and entertainment venues closed and unable to resume normal operations for an extended period in addition to the community spread of COVID-19, many of the City's tax revenues have or are anticipated to decline.

- h. The City Auditor has indicated that nearly 86% of UC Berkeley students have moved out of university residences, and the university cancelled all in-person classes starting March 10 and extending through the summer. If the university closure continues into the fall, businesses that count on income from the university community will suffer, and sales and use tax revenue and transient occupancy tax revenue, among others, will decrease further.
- i. The pandemic's impact on real estate values will affect property tax and property transfer tax revenues, which account for more than 40% of the City's projected General Fund revenues in FY 21.
- j. The COVID-19 outbreak has increased the demand for city services, and expenditures on emergency operations and protecting public health will continue to increase in proportion to the rate of transmission in Berkeley and the Bay Area. Such interventions include assisting unhoused residents, communicating safety guidelines to the public, increasing sanitation measures, distributing supplies such as food and water, and providing testing.
- k. The economic impacts associated from COVID-19 are difficult to predict; however, it is projected that the City faces a deficit in the range of at least \$28.7 million in FY 21 in the General Fund due to an unanticipated and significant loss in revenue, and other funds such as the Off-Street Parking Fund, Parking Meter Fund, Marina Fund, and Zero Waste are experiencing revenue declines, all with the potential to experience a continuing loss depending on the pace of the economic recovery.
- l. The City has instituted measures to control spending including, but not limited to: (i) a citywide hiring freeze that went into effect on April 27, 2020, with exceptions only to preserve critical organizational functions; (ii) delaying contracts that were identified as being discretionary and funded with General Fund resources; and (iii) . placing part-time employees assigned to programs impacted by the Shelter-In-Place order on unpaid furlough and discontinuing the use of interns
- m. Each department is identifying spending deferrals at 10%, 12%, and 15% levels to generate savings in FY 21 to address the projected deficit in FY 21. These deferrals will impact important community services.
- n. On February 13, 2018, the City Council passed Resolution No. 68,332-N.S. adopting a General Fund Reserve Policy, which created a Catastrophic Reserve "for the purpose of sustaining General Fund operations in the case of a public emergency such as a natural disaster or other catastrophic event," and a Stability Reserve "to mitigate loss of service delivery and financial risks associated with unexpected revenue shortfalls during a single fiscal year or during a prolonged recessionary period."

- o. The General Fund Catastrophic Reserve, which is currently at \$13.6 million, is insufficient to fully absorb the anticipated loss in revenue and increased expenses that will occur from the COVID-19 pandemic. A declaration of a fiscal emergency is required in order to draw upon the Stability Reserve.
- p. The Charter of the City of Berkeley, Art. III, Section 6.2 and Berkeley Municipal Code Section 7.81.010 authorize greater flexibility in making budget appropriations in order to respond to a fiscal emergency.
- q. The City Council hereby finds that the conditions described in the foregoing recitals related to COVID-19 warrant and necessitate the City Council's proclamation and declaration of a Fiscal Emergency in the City of Berkeley.

Section 2. Pursuant to, and in response to, the conditions identified in Section 1 of this Ordinance, the City Council hereby finds and declares the existence of a Fiscal Emergency directly related to the continuing threat and existence of COVID-19 in the community.

Section 3. The City Council hereby directs the City Manager to investigate and recommend further actions to mitigate the fiscal impact to the City's FY 20 and FY 21 budgets, including measures relating to personnel costs, operations, reduction in service levels, or other measures deemed necessary and reasonable to minimize the accelerated and significant reduction to the City's General Fund reserves, and submit said recommendations to the City Council for approval.

Section 4. The City Council hereby directs the City Manager to develop updated budget projections, including proposals for appropriation from the General Fund Reserves. Pursuant to Resolution No. 68,332-N.S., in the event General Fund Reserves are appropriated, the City Manager shall recommend a replenishment schedule for all monies withdrawn from the General Fund Reserves.

Section 5. Pursuant to the Charter of the City of Berkeley, Article III, Section 6.2, in the event of Fiscal Emergency adopted by not less than a two-thirds vote, the City Council may suspend or reduce the amount of the appropriation to the Fair Elections Fund to preserve essential governmental services.

Section 6. Pursuant to Chapter 7.81 of the Berkeley Municipal Code, in the event of Fiscal Emergency adopted by not less than a two-thirds vote, the City Council may allocate the proceeds of Special Tax to Fund Fire Protection and Emergency Response and Preparedness amongst certain categories in its sole discretion.

Section 7. Based upon the findings made herein and other substantial information available as part of the public record, in the event of an unanimous declaration of a Fiscal Emergency related to COVID-19, the City Council reserves the right to utilize such measures available to it, pursuant to, and in accordance with, Article XIII C of the California Constitution.

Section 8. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. Based on the findings set forth in Section 1 of this Ordinance, the City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.

