



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING**

BERKELEY CITY COUNCIL SPECIAL MEETING

MONDAY, FEBRUARY 4, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: January 14, 2019**
2. **Review and Approve Draft Agendas:**
 - a. 2/19/19 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory Of**

Scheduling

5. **Council Worksessions Schedule**
6. **Council Referrals to Agenda Committee for Scheduling**
7. **Land Use Calendar**

Referred Items for Review

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

- 8. Adopt a resolution to denounce and oppose white nationalist and neo-Nazi groups including their actions**
From: Councilmember Davila and Councilmember Bartlett
Referred: January 29, 2019
Due: May 29, 2019
Recommendation: Adopt a resolution denouncing and opposing, in words and actions, white nationalist and neo-Nazi groups including their actions in the City of Berkeley.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, 981-7120
- 9. Guidelines for Developing and Writing Council Agenda Items**
Referred: January 29, 2019
Due: May 29, 2019

Referred to the Agenda and Rules Committee to consider amendments to the Guidelines related to opportunity costs and amendments to the Rules of Procedure related to automatic referrals of ordinances to policy committees.

Adjournment – Next Meeting Monday, February 11, 2019

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### **Additional items may be added to the draft agenda per Council Rules of Procedure.**

*Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items*

*Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.*

*The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.*

*The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.*

*This is a meeting of the Berkeley City Council Agenda Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Agenda Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Agenda Committee meeting.*

*Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting. After the deadline for submission, residents must provide 10 copies of written communications*

to the City Clerk at the time of the meeting.

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 31, 2019.

A handwritten signature in black ink, appearing to read "Mark Numainville".

Mark Numainville, City Clerk



**BERKELEY CITY COUNCIL AGENDA COMMITTEE  
SPECIAL MEETING MINUTES**

**BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES**

**MONDAY, JANUARY 14, 2019**

**2:30 P.M.**

2180 Milvia Street, 6<sup>th</sup> Floor – Redwood Room

Committee Members:

Mayor Arreguin, Councilmember Sophie Hahn, and Vacant  
(Alternate: Councilmember Ben Bartlett)

1. Roll Call: 2:33 p.m. Present: Bartlett, Hahn, Arreguin.
2. Public Comment: 0 speakers
3. M/S/C (Hahn/Bartlett) to approve the Minutes of January 7, 2019. All Ayes.
4. Review and Approve draft agendas:
  - a. M/S/C (Bartlett/Hahn) to approve the agenda of the 1/29/19 – 6:00 p.m. Regular City Council Meeting with the revisions noted below.
    - *Ceremonial Item: Roe v. Wade Proclamation*
    - *Ceremonial Item: Recognition of Max Dreskin*
    - *Item Added: Rules of Procedure Amendment (Hahn)*
    - *Item 7 Support SB 18 (Droste) – Removed from the agenda*
    - *Item 8 Support SB 24 (Droste) – Councilmembers Hahn, Kesarwani, and Wengraf added as co-sponsors*
    - *Item 9 Support SB 42 (Droste) – Councilmembers Hahn, Kesarwani, and Bartlett added as co-sponsors*
    - *Item 10 Support AB 68 (Droste) – Councilmember Bartlett added as a co-sponsor*
    - *Item 11 Support AB 69 (Droste) – Councilmember Bartlett added as a co-sponsor*
    - *Item 15 Cannabis Ordinance (City Manager) – Scheduled for February 19, 2019*

**Policy Committee Track Items**

- *Item 17 Cannabis Events (Arreguin) – Scheduled for February 19, 2019 Action Calendar. Councilmembers Bartlett and Davila added as co-sponsors.*
- *Item 18 Resolution to Denounce White Nationalists (Davila) – Scheduled for January 29, 2019 Action Calendar*
- *Item 19 Vision Zero (Droste) – Scheduled for January 29, 2019 Consent Calendar*

Order of Items on Action Calendar

Item 12 RPP

Item 14 ZAB Appeal

Item 13 Density Bonus

Item 16a/b Living Wage Ordinance

Item 18 Resolution Denouncing White Nationalists

1. Selection of item for the Berkeley Considers online engagement portal
  - Selected draft item #19 Vision Zero
- b. Adjournments in memory of – none
5. Council Items:
  - a. Council Worksessions
    - Scheduled Opportunity Zones for March 19
  - b. Council Referrals to Agenda Committee
    - M/S/C (Arreguin/Bartlett) to calendar #4 on Sanctuary Contracting for the 1/29/19 Action Calendar
  - c. Land Use Calendar – received and filed
6. M/S/C (Hahn/Bartlett) to adjourn the meeting. All Ayes.

Adjourned at 3:10 p.m.



Mark Numainville, City Clerk

## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, February 19, 2019  
6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

## Preliminary Matters

### Roll Call:

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

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

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

## Consent Calendar

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

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

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

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

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

## Consent Calendar

- 1. Single Use Disposable Foodware and Litter Reduction Ordinance; Adding BMC Chapter 11.64**  
**From: Councilmember Hahn and Mayor Arreguin**  
**Recommendation:** Adopt second reading of Ordinance No. 7,639-N.S., the Single Use Foodware and Litter Reduction Ordinance, adding Chapter 11.64 to the Berkeley Municipal Code.  
**First Reading Vote:** All Ayes  
**Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, 981-7150
- 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 19, 2019**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$3,291,500  
Contact: Henry Oyekanmi, Finance, 981-7300



## Consent Calendar

**3. Contract: Pride Industries for Citywide Janitorial Services at Various Locations  
From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a three-year contract and any amendments with Pride Industries to provide Citywide Janitorial Services at twenty nine (29) various City locations and facilities for the period May 1, 2019 to April 30, 2022, in an amount not to exceed \$3,725,735, with an option for two (2) one-year extensions for a maximum five (5) year contract for an amount not to exceed \$6,414,881, subject to the City's annual budget appropriation process.

**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300

**4. Annual Purchase Orders for Turnouts, Personal Protective Equipment,  
Firefighting Tools and Equipment: L.N. Curtis and Sons  
From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute annual purchase orders and any amendments with L.N. Curtis and Sons for the purchases of: Turnouts, and personal protective equipment (PPE) such as wildland coats and pants, firehoses, gloves, helmets, gear for hearing and eye protection, fire boots; and Other firefighting tools and equipment such fire extinguishers, foam, firehose, ladders, bumps, and related devices on apparatus. The purchase order for FY 2019 shall not exceed \$220,000, with an annual increase no more than 5% each year up to a maximum of five years. A 20% contingency is added to cover costs arising from unforeseen incidents or operations for a total amount not to exceed (NTE) \$1,361,286.

**Financial Implications:** See report  
Contact: Dave Brannigan, Fire Chief, (510) 981-3473

**5. FY19 Expanded Winter Shelter: Additional Allocation of Funding and  
Authorization of Contract Amendment with Dorothy Day House for Winter  
Shelter Operations  
From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 10577D with Dorothy Day House to add \$114,960 to extend the Dorothy Day House Shelter at the Veteran's Building for a total contract amount not to exceed \$754,608 for the period July 1, 2017 through June 30, 2019; and allocate an additional \$59,000 in General Fund to support pest control, janitorial services and emergency maintenance costs at the expanded winter shelter.

**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400

## Consent Calendar

- 6. Memorandum of Understanding: Planning Phase for the viability of a potential WETA Ferry Service and Public Recreation Pier at the Berkeley Marina**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a Memorandum of Understanding (MOU) with the Water Emergency Transportation Authority (WETA) to accept \$250,000 in WETA funding for the Planning Phase (technical feasibility study and public engagement process) for the viability of a potential WETA ferry service and public recreation pier at the Berkeley Marina.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 7. Contract: Recruiting Advertising and Marketing Strategy for the Berkeley Police Department**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a police recruiting and marketing strategy contract with Epic Recruiting, in an amount not to exceed \$100,000 for a one-year period. The services provided in the contract are designed to assist the Berkeley Police Department with website design, video production, photography, branding, and social media/digital marketing with the goal of increasing the number of qualified recruit and lateral applicants.  
**Financial Implications:** General Fund - \$100,000  
Contact: Andrew Greenwood, Police, 981-5900
- 8. Contract: D’Arcy & Harty Construction, Inc. for Sanitary Sewer Rehabilitation and Replacement at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Mathews Street, Euclid Avenue and Backline, Mabel Street, Oregon Street, Derby Street, Fairview Street, Catalina Avenue Backline, Fairlawn Drive Backline, and Arlington Avenue; accepting the bid of the lowest responsive and responsible bidder, D’Arcy & Harty Construction, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$1,363,373.  
**Financial Implications:** Sanitary Sewer Fund - \$1,363,373  
Contact: Phillip Harrington, Public Works, 981-6300

## Consent Calendar

9. **Filling Vacancies Among the Elected Representatives of the Poor – Confirmation of Ms. Lisa Romo**  
**From: Human Welfare and Community Action Commission**  
**Recommendation:** Adopt a Resolution confirming the appointment of Ms. Lisa Romo (District 3), as an elected representative of the poor on the Human Welfare Community Action Commission (HWCAC), having been selected by the commission members at the HWCAC November 28, 2018 meeting, and that her term expires November 28, 2022.  
**Financial Implications:** None  
Contact: Marie-Claire Katz, Commission Secretary, 981-5400
10. **Filling Vacancies Among the Elected Representatives of the Poor – Confirmation of Ms. Denah Bookstein and Ms. Saba Deyhim**  
**From: Human Welfare and Community Action Commission**  
**Recommendation:** Adopt a Resolution confirming the appointments of Ms. Denah Bookstein (District 1) and Ms. Saba Deyhim (District 2) as elected representatives of the poor on the Human Welfare and Community Action Commission (HWCAC), having been voted at the HWCAC January 16, 2019 meeting, and that their terms expire November 28, 2022.  
**Financial Implications:** None  
Contact: Marie-Claire Katz, Commission Secretary, 981-5400

## Council Consent Items

11. **Berkeley Youth Alternatives' 15th Annual Crab Feed Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Davila**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$180 from Councilmember Cheryl Davila, to Berkeley Youth Alternatives, for their 15th Annual Crab Feed Fundraiser on February 28, 2019, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120

## Council Consent Items

- 12. Ohlone Park 50th Anniversary Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Harrison**  
**Recommendation:** 1. Adopt a Resolution co-sponsoring the celebration of Ohlone Park's 50th anniversary on June 1st, 2019  
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$250 from Councilmember Harrison, to the Friends of Ohlone Park, the fiscal sponsor of the 50th anniversary celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Harrison and any other Councilmembers who would like to contribute.  
**Financial Implications:** None  
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 13. Support for AB 161 (Skip the Slip)**  
**From: Councilmember Harrison**  
**Recommendation:** Send a letter of support for AB 161, which requires that proof of purchase (receipts) be provided only in electronic form unless the customer specifically requests paper, to Senator Skinner and Assemblymember Wicks  
**Financial Implications:** None  
Contact: Kate Harrison, Councilmember, District 4, 981-7140

## 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.*

## Action Calendar – Public Hearings

*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.*

- 14. Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus) (Continued from January 29, 2019. Item contains revised material.)**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing, and upon conclusion, adopt the first reading of Zoning Ordinance amendments that repeal obsolete Density Bonus regulations (Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus chapter (Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.  
**Financial Implications:** None  
Contact: Timothy Burroughs, Planning and Development, 981-7400
- 15. Cannabis Ordinance Revisions; Amending the Berkeley Municipal Code**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and adopt the first reading of five ordinances amending the Berkeley Municipal Code (BMC) which would:  
1. Streamline and clarify cannabis business operational standards and development standards, such as quotas and buffers, for all cannabis business types;  
2. Revise ordinance language to reflect State regulations;  
3. Create a path to allow a new business type (Retail Nursery Microbusinesses); and  
4. Protect youth by restricting cannabis advertising within the city.  
The ordinances would adopt BMC Chapters 12.21 and 20.40, amend Chapters 12.22, 23C.25 and Sub-Title 23E, and repeal Chapters 12.23, 12.25 and 12.27.  
**Financial Implications:** See report  
Contact: Timothy Burroughs, Planning and Development, 981-7400

## Action Calendar – Old Business

- 16. Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program (Continued from January 22, 2019.)**  
**From: Councilmembers Bartlett, Worthington, and Davila**  
**Recommendation:** That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.  
**Financial Implications:** Minimal  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130

## Action Calendar – Old Business

**17a. Council Referral-Proposed Amendments to Berkeley’s Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27** *(Continued from January 29, 2019.)*

**From: Commission on Labor**

**Recommendation:** Adopt first reading of an Ordinance proposing revisions to Berkeley’s Living Wage Ordinance, BMC Chapter 13.27, revising Sections .020, .050, .070, .080 and .090 and adding Sections .045, .110, .120, .130, and .140 to make the application and administration of the LWO consistent with the MWO where appropriate, and modifying Sections .040 and .050 to 1) limit waivers of the LWO for a maximum of one year, and 2) clarifying when employees covered by the LWO are entitled to receive the cash value of the health care benefit..

**Financial Implications:** None

Contact: Delfina Geiken, Commission Secretary, 981-5400

**17b. Companion Report: Council Referral-Proposed Amendments to Berkeley’s Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27** *(Continued from January 29, 2019.)*

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance amending BMC Chapter 13.27, which proposes: 1) adding a definition of “Department” in Section 13.27.020, 2) limiting new waivers of the LWO to one year in Section 13.27.040, 3) clarifying language related to wages and benefits in the Section 13.27.050 and adding Section 13.27.110 related to severability.

**Financial Implications:** None

Contact: Kelly Wallace, Housing and Community Services, 981-5400

## Action Calendar – New Business

**18. Referral Response: Updated Policy for Emergency Standby Officers for the Mayor and Councilmembers**

**From: City Manager**

**Recommendation:** Adopt a Resolution updating the selection process and criteria for the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 57,906-N.S.

**Financial Implications:** None

Contact: Mark Numainville, City Clerk, 981-6900; Farimah Brown, City Attorney, 981-6950

## Action Calendar – New Business

### 19a. Assessment of Vacant Properties

**From: Human Welfare and Community Action Commission**

**Recommendation:** Direct the City Manager to develop a plan to locate the 3,754 “vacant housing units” noted in the “Employment, Economy, Housing” data in the “City of Berkeley Fiscal years 2018 & 2019 Adopted Biennial Budget” and to assess what would be required to bring as many of the properties to market as possible.

**Financial Implications:** See report

Contact: Marie-Claire Katz, Commission Secretary, 981-5400

### 19b. Companion Report: Assessment of Vacant Properties

**From: City Manager**

**Recommendation:** Refer the issue of vacant housing units to Council’s process for setting priorities for Measure O funds.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400

### 20a. Resolution declaring City of Berkeley will not invest City funds in any entity involved in the production or upgrading of weapons

**From: Peace and Justice Commission**

**Recommendation:** Adopt Resolution submitted by the Peace and Justice Commission declaring the City of Berkeley will not invest City funds in any entity involved in the production or upgrading of weapons.

**Financial Implications:** None

Contact: Shallon Allen, Commission Secretary, 981-7071

### 20b. Companion Report: Resolution Declaring City of Berkeley Will Not Invest City Funds in Any Entity Involved in the Production or Upgrading of Weapons

**From: City Manager**

**Recommendation:** Continue to support the City of Berkeley’s existing investment policy which prohibits investments in gun manufacturers.

**Financial Implications:** None

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

## Council Action Items

21. **Short-Term Referral: Develop Ordinance permitting Cannabis Events and designate Cesar Chavez Park as an Approved Venue**  
**From: Mayor Arreguin**  
**Recommendation:** Short-Term Referral to the City Manager to develop ordinance amendments permitting cannabis events in the City of Berkeley and designating Cesar Chavez Park as an approved location for cannabis events, provided such events are organized and licensed as required by the State of California. The ordinance shall: 1) reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2) specify procedures for such events that replicate similar alcohol related event protocols.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100

## Action Calendar – Policy Committee Track Items

22. **Declaring a California Homelessness State of Emergency**  
**From: Mayor Arreguin, and Councilmembers Hahn, Davila, and Harrison**  
**Recommendation:** Adopt a Resolution requesting that Governor Newsom declare a California Homelessness State of Emergency, and direct more resources to State Departments (e.g. Caltrans). Send a copy of the Resolution to Governor Newsom, Congresswoman Barbara Lee, State Senator Nancy Skinner, State Assemblymember Buffy Wicks, State Superintendent of Public Education Tony Thurmond and Caltrans District Director Tony Tavares.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100
23. **Update BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation**  
**From: Councilmembers Harrison and Robinson**  
**Recommendation:** Adopt first reading of an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner occupied projects by modifying property lines so that no lot is large enough to construct five or more units. Adopt an updated resolution pursuant to BMC 22.20.065 (Affordable Housing Mitigation Fee) addressing the same issue for rental projects.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, 981-7140



## Action Calendar – Policy Committee Track Items

### 24. Missing Middle Initiative

**From: Councilmembers Droste, Bartlett, Robinson, and Kesarwani**

**Recommendation:** Refer to the City Manager an analysis and report of potential revisions to the zoning code to foster a broader range of housing types across Berkeley, particularly missing middle housing types (duplexes, triplex/fourplex, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services. Analysis should include, but is not limited to: - Current zoning structure to identify where missing middle housing is optimal/should be permitted, excluding ES-R zones and other high-risk fire zones. - Consideration of form-based zoning as a potential strategy. - Creation of incentives for building more than one unit on larger than average lots. - All sites under rezoning consideration should be subject to tenant protections, demolition controls, and no net loss provisions.

**Financial Implications:** See report

Contact: Lori Droste, Councilmember, District 8, 981-7180

## Information Reports

### 25. Referral Response: Supporting Worker Cooperatives

**From: City Manager**

Contact: Jordan Klein, Economic Development, 981-7530

### 26. Referral Response: City Maintained Below Market Rate Units (BMR) Online Resource

**From: City Manager**

Contact: Kelly Wallace, Housing and Community Services, 981-5400

### 27. Mental Health Commission 2018/2019 Work Plan

**From: Mental Health Commission**

Contact: Karen Klatt, Commission Secretary, 981-5400

## 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.

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Fax: 510-981-6901  
Email: [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info)

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

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Human Welfare and
Community Action Commission

CONSENT CALENDAR
February 19, 2019

To: Honorable Mayor and Members of the City Council
 From: Human Welfare and Community Action Commission
 Submitted by: Samuel Kohn, Temporary Chairperson, Human Welfare and Community Action Commission
 Subject: Filling Vacancies Among the Elected Representatives of the Poor – Confirmation of Ms. Lisa Romo

RECOMMENDATION

Adopt a Resolution confirming the appointment of Ms. Lisa Romo (District 3), as an elected representative of the poor on the Human Welfare Community Action Commission (HWCAC), having been selected by the commission members at the HWCAC November 28, 2018 meeting, and that her term expires November 28, 2022.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On November 28, 2018, the HWCAC held its regularly scheduled biennial election to fill six vacancies in the Representatives of the Poor category. District 3 candidate Lisa Romo was present at the meeting with the required ten signatures. Commissioner Omodele made a motion to nominate Lisa Romo to the HWCAC as a Representative of the Poor. The motion was seconded and carried by Commissioner Kohn and passed with the following vote: Ayes – Omodele, Kohn, Dunner, Sood; Absent – Whitson, Holman; Noes – None; Abstain – Romo.

BACKGROUND

The HWCAC is made up of fifteen members, nine of whom are appointed by Berkeley City Council members and six of whom are elected representatives of the poor. Berkeley Municipal Code Section 3.78.080 stipulates that elections of representatives of the poor are held biennially in the month of November in even numbered years. The next election will take place in November 2020. Subsection C of the code states, "...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election..." and that the, "...name of the selected representatives shall be submitted to the City Council for confirmation." BMC 3.78.030 (b) also states in part, that the remaining elected commission members shall recommend to the Council that the newly elected person fill out the term of the appointment.

At the November 28, 2018 HWCAC meeting, the commissioners selected Ms. Romo to fill one of the current vacancies.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts in adopting this resolution.

RATIONALE FOR RECOMMENDATION

Failure to maintain full membership on the HWCAC, which also acts as the Board of the Berkeley Community Action Agency (CAA), could result in a loss of Community Services Block Grant (CSBG) funding.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Mary-Claire Katz, Commission Secretary, HHCS, 981-5414

Attachments:

1: Resolution

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

CONFIRMING THAT MS. LISA ROMO MAY FILL ONE VACANCY AMONG THE ELECTED REPRESENTATIVES OF THE POOR THAT EXISTS ON THE HUMAN WELFARE AND COMMUNITY ACTION COMMISSION (HWCAC)

WHEREAS, Berkeley Municipal Code Section 3.78.080 stipulates that election of representatives of the poor are held biennially in the month of November in even numbered years, and the next election will take place in November 2020; and

WHEREAS, Subsection C states "...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election..." and that the "...name of the selected representatives shall be submitted to the City Council for confirmation"; and

WHEREAS, at the November 28, 2018 HWCAC regular meeting, the remaining commissioners selected Ms. Lisa Romo (District 3) to fill one vacancy with her term ending November 28, 2022.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that Ms. Lisa Romo (District 3) is confirmed as an elected representative of the poor serving on the Human Welfare and Community Action Commission until November 28, 2022 and that her term expires November 28, 2022.



Human Welfare and
Community Action Commission

CONSENT CALENDAR
February 19, 2019

To: Honorable Mayor and Members of the City Council
 From: Human Welfare and Community Action Commission
 Submitted by: Samuel Kohn, Temporary Chairperson, Human Welfare and Community Action Commission
 Subject: Filling Vacancies Among the Elected Representatives of the Poor – Confirmation of Ms. Denah Bookstein and Ms. Saba Deyhim

RECOMMENDATION

Adopt a Resolution confirming the appointments of Ms. Denah Bookstein (District 1) and Ms. Saba Deyhim (District 2) as elected representatives of the poor on the Human Welfare and Community Action Commission (HWCAC), having been voted at the HWCAC January 16, 2019 meeting, and that their terms expire November 28, 2022.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Failure to maintain full membership on the HWCAC, which also acts as the Board of the Berkeley Community Action Agency (CAA), could result in a loss of Community Services Block Grant (CSBG) funding. Vacancies on the Berkeley CAA Board were noted as a “finding” during the most recent desk review of this program conducted by the State Department of Community Services and Development.

BACKGROUND

The HWCAC is made up of fifteen members, nine of whom are appointed by Berkeley City Council members and six of whom are elected representatives of the poor. Berkeley Municipal Code Section 3.78.080 stipulates that elections of representatives of the poor are held biennially in the month of November in even numbered years. The next election will take place in November 2020. Subsection C of the code states, “...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election...” and that the, “...name of the selected representatives shall be submitted to the City Council for confirmation.” BMC 3.78.030 (b) also states in part, that the remaining elected commission members shall recommend to the Council that the newly elected person fill out the term of the appointment.

There were no elected representatives of the poor at the meeting; therefore, commissioners voted (M/S/C: Omodele/Dunner. Ayes – Omodele, Dunner, Sood, Kohn, Holman; Noes – None; Abstain – None; Absent: Vrankovecki, Whitson) to select Ms. Bookstein to fill one of the current vacancies;

and (M/S/C: Dunner/Omodele. Ayes – Omodele, Dunner, Sood, Kohn, Holman; Noes – None; Abstain – None; Absent: Vrankovecki, Whitson) to select Ms. Deyhim to fill one of the current vacancies.

ENVIRONMENTAL SUSTAINABILITY

There are no known environmental impacts associated with the recommendation of this report.

RATIONALE FOR RECOMMENDATION

Failure to maintain full membership on the HWCAC could threaten future CSBG funding.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Mary-Claire Katz, Commission Secretary, HHCS, (510) 981-5414

Attachments:

1: Resolution

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

CONFIRMING THAT MS. DENAH BOOKSTEIN AND MS. SABA DEYHIM MAY FILL TWO VACANCIES AMONG THE ELECTED REPRESENTATIVES OF THE POOR THAT EXISTS ON THE HUMAN WELFARE AND COMMUNITY ACTION COMMISSION (HWCAC)

WHEREAS, Berkeley Municipal Code Section 3.78.080 stipulates that election of representatives of the poor are held biennially in the month of November in even numbered years, and the next election will take place in November 2020; and

WHEREAS, Subsection C states "...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election..." and that the "...name of the selected representatives shall be submitted to the City Council for confirmation"; and

WHEREAS, at the January 16, 2019 HWCAC regular meeting, the Commission elected Ms. Denah Bookstein (District 1) to fill one vacancy with her term ending November 28, 2020; and

WHEREAS, at the January 16, 2019 HWCAC regular meeting, the Commission elected Ms. Saba Deyhim (District 2) to fill one vacancy with her term ending November 28, 2020; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that Ms. Denah Bookstein (District 1) and Ms. Saba Deyhim (District 2) are confirmed as elected representatives of the poor serving on the Human Welfare and Community Action Commission until November 28, 2020.



Councilmember
Cheryl Davila
District 2

CONSENT CALENDAR
February 19, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Cheryl Davila
Subject: Berkeley Youth Alternatives' 15th Annual Crab Feed Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$180 from Councilmember Cheryl Davila, to Berkeley Youth Alternatives, for their 15th Annual Crab Feed Fundraiser on February 28, 2019, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$180 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (budget code 011 11 102 000 0000 000 411).

ENVIRONMENTAL SUSTAINABILITY

None.

BACKGROUND

Berkeley Youth Alternatives (BYA) is community based 501(c)3 organization that was 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 services such as mental health, case management, academic support, mentoring, health education, sports, fitness, recreation, job training and youth internships. BYA will be holding their 15th Annual Crab Feed Fundraiser on February 28, 2019. The fundraiser is a joyous celebration of food and entertainment.

CONTACT PERSON

Cheryl Davila, Councilmember, District 2 510.981.7120

ATTACHMENT: 1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Cheryl Davila has discretionary funds in her office expenditure account (budget code 011 11 102 000 0000 000 411); and

WHEREAS, Berkeley Youth Alternatives (BYA) is community based 501(c)3 organization that was established in 1969 as a runaway youth shelter; and

WHEREAS, 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; and

WHEREAS, BYA provides quality services such as mental health, case management, academic support, mentoring, health education, sports and fitness, recreation, job training and youth internships; and

WHEREAS, BYA will be holding their 15th Annual Crab Feed Fundraiser on February 28, 2019; and

WHEREAS, the fundraiser is a joyous community celebration of food, and entertainment.

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 Berkeley Youth Alternative to fund the above services for their 15th Annual Crab Feed.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
February 19th, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Kate Harrison
Subject: Ohlone Park 50th Anniversary Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

1. Adopt a Resolution co-sponsoring the celebration of Ohlone Park's 50th anniversary on June 1st, 2019
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$250 from Councilmember Harrison, to the Friends of Ohlone Park, the fiscal sponsor of the 50th anniversary celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Harrison and any other Councilmembers who would like to contribute.

BACKGROUND

Ohlone Park was created in 1969 as a result of the BART tunnel which runs directly underneath it. As a monument to both our modern mass transportation system and to the Ohlone peoples who have lived on this land for millennia, the park has significant symbolic value for our City, as well as aesthetic and functional benefits. Ohlone Park includes four playlots, a dog park, a four-sided mural commemorating the Ohlone people, a community garden, sports fields, and open spaces.

Acting as a liaison with the City Parks Department and Parks and Waterfront Commission, Friends of Ohlone Park preserves and enhances the beauty and functionality of the park by consulting with neighbors and undertaking surveys about the needs of the area, including lighting and garbage removal.

We are proposing that City Councilmembers make individual grants of up to \$500 to the Friends of Ohlone Park to commemorate and honor the park and all it stands for. The event is being held on June 1st, 2019.

FISCAL IMPACTS OF RECOMMENDATION

No impact to the General Fund.

ENVIRONMENTAL SUSTAINABILITY

Minimal.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

Attachments:

- 1: Resolution for City Sponsorship
- 2: Resolution for Council Expenditures

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

CITY SPONSORSHIP OF THE OHLONE PARK 50TH ANNIVERSARY CELEBRATION

WHEREAS, the Ohlone Park 50th Anniversary Celebration will take place on June 1, 2019; and

WHEREAS, Ohlone Park represents a significant point of pride for the City of Berkeley by providing open space, beauty, recreation, and history; and

WHEREAS, the Ohlone Park 50th Anniversary Celebration will enrich the City and people of Berkeley through cultural education provided by members of the Muwekma Ohlone tribe, as well as celebrating the Park more generally;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby co-sponsors the Ohlone Park 50th Anniversary 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 Ohlone Park 50th Anniversary 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, Councilmember Kate Harrison has surplus funds in her office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, the Friends of Ohlone Park, seeks funds in the amount of \$500 to provide the following public services to publicly commemorate and honor the 50 year history of Ohlone Park; and

WHEREAS, the celebration will include invaluable educational benefits for the people of Berkeley presented by members of the Muwekma Ohlone tribe;

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 \$500 per office shall be granted to the Friends of Ohlone Park to fund the celebration of Ohlone Park and related cultural activities.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
February 19th, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Kate Harrison
Subject: Support for AB 161 (Skip the Slip)

RECOMMENDATION

Send a letter of support for AB 161, which requires that proof of purchase (receipts) be provided only in electronic form unless the customer specifically requests paper, to Senator Skinner and Assemblymember Wicks

BACKGROUND

AB 161 (Ting) requires that following retail sale of food, goods, and services, the proof of purchase be provided only in electronic form unless the customer specifically requests a paper receipt. Violations would result in small administrative fines assessed on the noncompliant business, enforced by the same officers authorized to enforce the California Retail Food Code.

According to Green America¹ 10 million trees and 21 billion gallons of water are used to create proof of purchase receipts every year in America. After they are produced, receipts generate 686 million pounds of solid waste and 12 billion pounds of carbon dioxide. These 10 million trees represent more than 15% of the 68 million trees used to produce paper.

A 2018 study² showed that 93% of tested paper receipts had elements of bisphenol A (BPA) or bisphenol S (BPS), chemicals with notable negative effects on hormones and metabolism. Exposure to BPA or BPS during pregnancy has been found to affect fetal impact and is linked to ADHD, obesity, and type 2 diabetes. Retail workers and other people who handle receipt paper as a part of their job are at especially high risk of exposure; though the chemicals are present in some plastics, roughly 88% of BPS exposure comes from handling receipts. The City of Berkeley has already acknowledged the negative effects of BPA-treated receipt paper. On September 25th, 2018, the City Council voted to implement a community education effort on the adverse

¹ <https://greenamerica.org/skiptheslip>

² https://www.ecocenter.org/sites/default/files/healthy-stuff/Ecology%20Center%20Receipt%20Study%202018%20Report%20final_0.pdf

health effects of BPA-treated paper. AB 161 represents a tangible way to reduce everyday exposure to BPA.

In addition to the health impacts, thermal paper cannot be recycled, and traces of BPA contaminate other recovered fibers.

Decreasing reliance on receipt paper would improve California's environmental and human health.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

The production and disposal of paper receipts generates billions of pounds of carbon dioxide every year. Decreasing California's reliance on paper receipts would have a significant positive effect on the environment.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

Attachments:

- 1: Draft Letter of Support
- 2: Text of AB 161 (Ting)

The Honorable Buffy Wicks
Member of the Assembly
State Capitol, Room 5160
Sacramento, CA, 95814

Re: AB 161 (Ting)

Dear Assemblymember Wicks,

Berkeley City Council writes in support of AB 161 (Ting), which would reduce our state's reliance on receipt paper.

Receipt paper is wasteful to produce and dispose of. The solid waste of old receipts produces 12 billion pounds of carbon dioxide every year in America alone. When receipts are printed on thermal paper, the bisphenol A or bisphenol S can cause significant health defects. BPA is an endocrine disruptor that can alter the functions of hormone receptors, affect fertility, and cause fetal defects when pregnant women are exposed to the chemical.

AB 161 would require all businesses to offer electronic receipts as a default, providing paper receipts only upon specific request. Businesses that do not comply would be issued nominal fines according to the California Retail Food Code. These small fines would lead to significant decreases in paper receipts, which will benefit human and environmental health across California.

Respectfully,
Berkeley City Council

CC: Senator Nancy Skinner
Assemblymember Buffy Wicks

ASSEMBLY BILL

No. 161

Introduced by Assembly Member Ting

January 7, 2019

An act to add Chapter 5.8 (commencing with Section 42359) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 161, as introduced, Ting. Solid waste: paper waste: electronic proofs of purchase.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities, as defined. Existing law defines “enforcement officer,” for purposes of enforcing these provisions, to mean certain appointees of the State Public Health Officer, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees.

Existing law prohibits certain stores from providing a single-use carryout bag to a customer at the point of sale and prohibits full-service restaurants from providing single-use plastic straws to consumers unless requested by the consumer.

This bill would require, on and after January 1, 2022, a proof of purchase for the retail sale of food, alcohol, or other tangible personal property, or for the provision of services, provided to a consumer, as defined, by a business to be provided only in electronic form, unless the consumer requests that the proof of purchase be provided in paper form. The bill would specify that the first and 2nd violations of these provisions would result in a notice of violation and any subsequent

violation would be an infraction punishable by a fine of \$25 for each day the business is in violation, but not to exceed an annual total of \$300. The provisions would be enforced by the same enforcement officers authorized to enforce the California Retail Food Code. By creating a new crime and imposing additional enforcement duties on local health agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The report titled “Skip the Slip: Environmental Costs &
- 4 Human Health Risks of Paper Receipts with Proposed Solutions”
- 5 from Green America found that 10 million trees and 21 billion
- 6 gallons of water in America are used to create proof of purchase
- 7 receipts.
- 8 (b) Receipts generate 686 million pounds of waste and 12 billion
- 9 pounds of carbon dioxide, the equivalent of one million cars on
- 10 the road, and most paper receipts contain chemicals that would
- 11 contaminate other recyclable paper materials.
- 12 (c) The Green America report also found that 93 percent of
- 13 paper receipts are coated with Bisphenol-A (BPA) or Bisphenol-S
- 14 (BPS) chemicals, which the United States Food and Drug
- 15 Administration has banned from baby bottles because those
- 16 chemicals are known to disrupt hormones, causing cancerous
- 17 tumors, birth defects, and other developmental issues.
- 18 (d) The BPA or BPS on receipts can enter people’s bodies
- 19 simply through touch, which poses a major risk to retail workers,

1 who have 30 percent more BPA or BPS found in their bodies than
2 others who do not have regular contact with receipts.

3 (e) Data from Square, a company that provides mobile payment
4 services, shows that their sellers send over 10 million digital
5 receipts each month.

6 (f) Prohibiting businesses from providing paper receipts except
7 upon request would have significant positive environmental and
8 public health effects.

9 SEC. 2. Chapter 5.8 (commencing with Section 42359) is added
10 to Part 3 of Division 30 of the Public Resources Code, to read:

11
12 CHAPTER 5.8. PROOF OF PURCHASE

13
14 42359. For purposes of this chapter, the following definitions
15 apply:

16 (a) “Consumer” means a person who purchases, and does not
17 offer for resale, food, alcohol, other tangible personal property, or
18 services.

19 (b) “Electronic form” includes, but is not limited to, a form sent
20 through email or text message.

21 (c) “Enforcement officer” has the same meaning as specified
22 in Section 113774 of the Health and Safety Code.

23 42359.1. (a) On and after January 1, 2022, a proof of purchase
24 for the retail sale of food, alcohol, or other tangible personal
25 property, or for the provision of services, provided to a consumer
26 by a business shall be provided only in electronic form, unless the
27 consumer requests that the proof of purchase be provided in paper
28 form.

29 (b) This section shall be enforced by an enforcement officer.
30 The first and second violations of subdivision (a) shall result in a
31 notice of violation, and any subsequent violation shall constitute
32 an infraction punishable by a fine of twenty-five dollars (\$25) for
33 each day the business is in violation, but not to exceed three
34 hundred dollars (\$300) annually.

35 SEC. 3. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution for certain
37 costs that may be incurred by a local agency or school district
38 because, in that regard, this act creates a new crime or infraction,
39 eliminates a crime or infraction, or changes the penalty for a crime
40 or infraction, within the meaning of Section 17556 of the

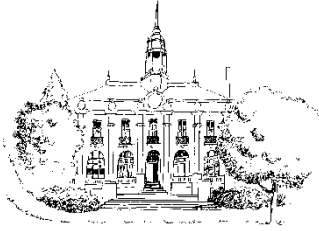
AB 161

— 4 —

1 Government Code, or changes the definition of a crime within the
2 meaning of Section 6 of Article XIII B of the California
3 Constitution.

4 However, if the Commission on State Mandates determines that
5 this act contains other costs mandated by the state, reimbursement
6 to local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

O



Ben Bartlett

Councilmember, City of Berkeley, District 3
 2180 Milvia Street, 5th Floor, Berkeley, CA 94704
 PHONE 510-981-7130,
 EMAIL bbartlett@cityofberkeley.info

ACTION CALENDAR

February 19, 2019

(Continued from January 22, 2019)

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett, Kriss Worthington & Cheryl Davila
 Subject: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program

RECOMMENDATION

That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.

BACKGROUND

At the City Council special meeting on October 9, 2018, the Planning and Development Department and the City Manager requested direction from the Council on six main issues: quotas, buffers, discretion, equity, retail nurseries, and residential collectives. There were clear recommendations for many of the options presented by staff that work to complete Berkeley's comprehensive cannabis ordinances for Council consideration.

However, at the special meeting, the City Council did not provide specific recommendations regarding the creation of the proposed Equity Program and the number of equity and non-equity applicants that are able to apply.

On March 15, 2018, the Cannabis Commission held a meeting and made recommendations for the implementation of the City's Equity Program for Cannabis retailers. Recommendation No.1 outlines a clear need for an "Equity-based selection process." This will "prioritize businesses that are at least 51% owned by equity candidates" and ensure that those negatively affected by past Cannabis prohibition have a chance to enter the Berkeley Cannabis business and reap the benefits of the growing industry. This selection process will provide access to a group of business owners that would otherwise face significant barriers.

On October 9, 2018, the Planning Department and City Manager recommended slight changes to the Cannabis Commission's considerations while defining equity candidates in the same way as in the Commission proposal:

“Staff recommends an equity program that would prioritize businesses that are at least 40% owned by equity candidates... These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered.”

Firstly, this item seeks to support the Planning Department and the City Manager’s recommendation on the issue of equity. Berkeley is well behind the curve on using a specific equity process in the selection of retailers. Other cities such as Oakland and San Francisco have already implemented policies that prioritize equity candidates in their selection processes, which seek to allow impacted and historically disenfranchised groups to enter the Cannabis industry with little to no barriers. To bridge the gap between our City and others, the Council should move forward with the Cannabis Commission’s proposal for an Equity Program as amended by the Planning Department and City Manager.

Secondly, this item also provides the Council with the opportunity to provide a more clear direction on how to proceed with the number of Cannabis retail establishments. The clear direction being that the Council allows four equity and two non-equity applicants to apply to become storefront Cannabis retailers and that the City processes these applicants within 2 years of their application.

FISCAL IMPACTS OF RECOMMENDATION:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

No significant impact.

CONTACT PERSON:

Councilmember Ben Bartlett
Malik Diaw

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ATTACHMENTS:

1. Equity Program Staff Report, Cannabis Commission Meeting 3-15-18
2. Options for Cannabis Regulations and Cannabis Business Selection Process Staff Report, City Council Special Meeting 10-09-18

Attachment 1

Cannabis Commission
March 15, 2018

1 of 8

TO: Berkeley Cannabis Commission

FROM: Commissioner Brewster

RE: Berkeley Equity Program

Task: We have been asked to make a recommendation to the City Council regarding the City's Equity Program including defining language and recommendations for implementation. Specifically, I was tasked with working on the language of our Equity criteria for presentation to the Commission.

Considerations: it has become apparent that Berkeley is well behind the curve on addressing Equity as related to Cannabis. Jurisdictions including Oakland, San Francisco, and Portland have comprehensive (although arguably flawed) policies on the books. Municipalities that do not, Seattle for example, are feeling the negative effects. As a progressive City that supports inclusion and progressive values, it is incumbent on us to put forth clear and comprehensive language that demonstrates our support for the promotion of diversity within the Cannabis industry.

It is also apparent after speaking with other local jurisdictions, that Berkeley must devote additional effort (man-power) into getting the City's Equity program off the ground in a timely fashion. Cannabis is a multi-million-dollar industry and the City of Berkeley needs an "Office of Cannabis," and/or a "Cannabis Director," (or some other titled) City Administrator to exclusively oversee these efforts. Such a position may be created and funded from the revenue created from the Recreational Cannabis tax revenue and it is my strong suggestion that the Cannabis Commission immediately recommend the City Council create and fund such a position as soon as possible.

In terms of the Equity Program, I have approached it from the top-down and have endeavored to define our goals on a large scale and then move into the specifics. I have also included "recommendations" and "notes on recommendations," so that the Commission may consider my reasoning.

Equity Statement

The City recognizes that certain communities have been disproportionately and generationally affected through law enforcement actions including: detentions, arrests, and convictions for cannabis, and cannabis *related* (see "*Related*" below) offenses. These communities also regularly and continually suffer economic disparities. The City intends to recognize and identify programmatic opportunities to address issues of equity by creating the NAME. The NAME will address these past disparities in the cannabis industry by:

- Identifying and minimizing barriers of entry into the emerging Cannabis industry for these affected individuals;
- *Recommendation No. 1 (ADD) and*
- *Dedicate a portion (1%?) of the recreational sales tax revenue towards investment into communities disproportionately impacted by Cannabis prohibition.*

To support this effort, the City will:

1. Develop an Equity based selection process to ensure that individuals who were directly, and generationally affected by previous Cannabis prohibition enforcement efforts, participate and are supported in the City's Cannabis industry. This process will identify applications in which 50% or more of owners can demonstrate that they, or their parent/guardian were directly impacted by the War on

Drugs. Applicants may demonstrate this personal impact when they meet criteria (A) or (B). Criteria (C) will be considered a preferential factor.

- A. Any conviction within the state of California, prior to January 2017, for a cannabis offense
 - **Recommendation No. 2 (ADD)** or a *cannabis related* offense including both non-violent felonies and misdemeanors; OR
 - B. Three (3) more citations or arrests within the State of California, prior to January 2017, for a cannabis, or *cannabis related* offense;
 - o *To qualify as a related offense pursuant to this section, the applicant must demonstrate to the satisfaction of the City that the citation, arrest, or conviction, was directly attributable to a cannabis offense. The applicant may demonstrate that the offense was Cannabis related by submitting a personal statement which shall be supported by admissible official documentation. Examples of related offenses could include: Health & Safety Code violations: 11350, 11351.5, 11352, 11364, or Penal Code Sections 148(a) or 69.*
 - o Driving Under the Influence (DUI) shall not be considered a related offense for purposes of this section.
 - C. The following documentation (or any combination thereof) may satisfy sections (A) & (B): Department of Justice Criminal History Summary, local agency police record, local agency police report, local agency citation, Municipal/Superior Court charging document, or any certified record of a court of competent jurisdiction;
 - **Recommendation No. 3** treat the *Low-Income Threshold* as a preferential, but not qualifying factor.
 - D. The applicants who demonstrate that they meet the Low-Income Threshold will be given additional preference in the application process when 50% or more of the principal applicants earned <80% AMI in the year immediately preceding the application.
 - o The following documentation (or any combination thereof) will satisfy this section: Tax Returns, CalFresh, Housing Vouchers
2. **Recommendation No. 4:** *Develop a Community Equity Fund (CEF) which will be funded by a portion of the recreational sales tax revenue (1%?) and by voluntary contributions from General Cannabis Stakeholders during the licensing and renewal process. This fund will be used to support Equity Cannabis Business owners through fee waivers, low-interest loans, training, as well as investment in community programs directly benefiting larger populations impacted by past Cannabis prohibition enforcement actions.*

Notes:

Recommendation No. 1: We must address the inequity created by the War on Drugs on more than one front. Solely implementing an Equity based selection process alone, may provide access in the most basic sense, but it fails to support ongoing efforts to attract and sustain businesses which are substantially owned by a diverse group. In light of the reality that the very definition of the equity applicant positively considers past challenges with criminal and social justice, we must acknowledge that these applicants will lack the resources necessary to successfully participate in an industry replete with well-funded stakeholders. Therefore, the City must do more than simply articulate an Equity policy. We must put our resources where our heart is. We must dedicate no less than 1% of our recreational tax revenue to supporting Equity based businesses. Some examples of where funding could be utilized include: licensing and permitting fees for equity applicants, community Cannabis business training programs, funding of expungement efforts, mentorship programs, etc.

4. How can Berkeley integrate equity considerations into its cannabis regulations?

Current situation: There was no specific equity process in the most recent selection process for retailers in Berkeley. Other cities (Oakland and San Francisco) have adopted equity programs in order to address the effect of disproportionate enforcement of drug laws in historically disenfranchised communities.

Considerations:

- Individuals who have been arrested or incarcerated for growing or selling cannabis often lack the financial, real estate and other resources necessary to participate in the now-legal industry.
- An equity program could assist equity candidates (who meet certain criteria) by reducing barriers to entry into the cannabis industry, giving priority in a selection process, or creating a fund to assist communities that have been affected by disproportionate enforcement of drug laws.
- A cannabis business selection process that costs applicants significant time or money will harm those that are not well capitalized.
- There are substantial costs to the City to develop and run an equity program, especially one with on-going responsibilities such as collecting and distributing funds (like the Soda Tax) or monitoring business activities (like an incubator program).

Other cities: Oakland and San Francisco both have equity programs. Both programs give equity candidates priority in cannabis permit selection processes. Both programs also have options which prioritize non-equity businesses that assist (incubate) an equity business through provision of tenant space and/or sharing of business and technical expertise. San Francisco also waives permit fees for equity candidates and has a fund to provide money to equity candidates for business consulting, capital improvements and legal services. Oakland will develop a fund for equity candidates from cannabis tax revenue. Existing cannabis retailers, regardless of equity status, must submit plans to the city to demonstrate how they will further the city's equity goals. See [Attachment 6](#) for the staff recommendation.

Commission recommendations: The Cannabis Commission recommended an equity program that would prioritize businesses that are at least 51% owned by equity candidates. Equity candidates would be defined as individuals who have been impacted either directly or generationally by the War on Drugs in one of two ways: incarcerated for cannabis crimes, or a history of arrests related to cannabis. The Cannabis Commission also suggested setting aside some of the taxes from cannabis businesses to establish a fund to support equity based businesses. See [Attachment 6](#) for the Cannabis Commission recommendation.

The Community Health Commission recommended that if additional retailers are permitted, they be limited to a small number (1 or 2) and be restricted to equity candidates. The Planning Commission is focused on the zoning elements of Berkeley's cannabis regulations and therefore was not asked to comment on an equity program.

Staff recommendation: Staff recommends an equity program that would prioritize businesses that are at least 40% owned by equity candidates. Equity candidates would be defined in the same way as in the Cannabis Commission proposal. Half of the retail and large cultivation businesses permitted by the city moving forward would be reserved for equity candidates. These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered.

Other options:

- Develop an Equity Fund, funded by all cannabis businesses, to be administered by the City to fund programs and services designed to advance equity in Berkeley. Medical cannabis retailers would be exempt from this requirement since they are already required to donate the equivalent of 2% of all product sold to low-income patients.



Commission on Labor

ACTION CALENDAR

February 19, 2019

(Continued from January 29, 2019)

To: Honorable Mayor and Members of the City Council

From: Commission on Labor

Submitted by: Libby Sayre, Chairperson, Commission on Labor

Subject: Council Referral-Proposed Amendments to Berkeley's Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27

RECOMMENDATION

Adopt first reading of an Ordinance proposing revisions to Berkeley's Living Wage Ordinance, BMC Chapter 13.27, revising Sections .020, .050, .070, .080 and .090 and adding Sections .045, .110, .120, .130, and .140 to make the application and administration of the LWO consistent with the MWO where appropriate, and modifying Sections .040 and .050 to 1) limit waivers of the LWO for a maximum of one year, and 2) clarifying when employees covered by the LWO are entitled to receive the cash value of the health care benefit.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its September 16, 2014 City Council meeting, the Council referred to the Commission on Labor policy changes to the city's Living Wage Ordinance. The referral specifically directed the Commission to consider:

1. Amending Section 13.27.050.A to allow an employee the right to opt out of an employer provided medical benefit plan and still receive the higher compensation amount (currently \$15.99 per hour) as cash in lieu if they provide proof of alternative coverage under a medical benefit plan; and
2. Amending the posting requirements, retaliation, complaint process, and enforcement sections to conform to the language in the recently adopted Minimum Wage Ordinance.

Throughout 2015 and 2016, the Commission's focus prioritized policy changes to the city's Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance (PSLO) and the Commission did not have any significant discussion or action on the Living Wage Ordinance referral.

After much discussion and consideration in 2017, the Commission approved two separate motions on two separate dates. On January 17, 2018 the Commission approved the following:

M/S/C (Wilkinson/Fillingim) to adopt revisions to the Living Wage Ordinance with all changes as discussed [and enumerated below] except for section 13.27.050A regarding compensation required to be paid on specified employees, which includes the employee health care opt-out provision. This will be discussed and decided at March meeting. (Ayes: J. Fillingim, S. Frankel, L. Sayre, W. Bloom, M. Wilkinson, N. McClintick, Noes: None. Absent: P. Castelli (departed @ 8:15pm). Recused: K. Schriener.

Summary of the Commission's Recommended LWO Revisions from January 2018:

- 1) Add a definition of "Service Charges" Section 13.27.020
- 2) Amend the language related to "Waivers" Section 13.27.040
- 3) Add a Section related to Notice, Posting and Payroll Records, adapted from the MWO, Section 13.27.045
- 4) Clean up the language in Section 13.27.050 to make the Ordinance consistent with the Minimum Wage Ordinance by:
 - a. deleting references in Section A to specific dollar amounts and replacing them with compliance with rates that are updated annually; and
 - b. adding language regarding rules for collection and distribution of Service Charges in Section E.
- 5) Remove an exemption for "on-call" workers, Section 13.27.070
- 6) Revise "Retaliation" language to be consistent with MWO, Section 13.27.080
- 7) Revise "Complaints to the City" language to be consistent with MWO, Section 13.27.090
- 8) Add "Relationship to other requirements" language, Section 13.27.110
- 9) Add "Application to Welfare-to-work programs", Section 13.27.120
- 10) Add "Fees" language, Section 13.27.130
- 11) Add "Severability" Language, Section 13.27.140

This action intended to make the provisions and application of the LWO more comprehensive and consistent with other labor standards programs, such as the MWO and the PSLO. This motion did not include any action on the Council referral to consider a policy recommendation related to an employee having the option to select the cash value of the medical benefit requirement. The motion did, however, include one significant policy proposal related to waivers of the LWO. The Commission recommended that the LWO be revised to allow only allow temporary waivers of the LWO requirement for up to one year.

At the March 21, 2018 and July 18, 2018 Commission meetings, the Commission discussed allowing employees to have the option to take the cash value of the medical benefit offered by an employer. At the July 18, 2018 meeting, the Commission opted not to recommend changes related to medical benefits due to concerns regarding potentially increasing the number of Employees that would seek the cash benefit and not maintain medical coverage and also due to the complexity of verification and enforcement of this provision. At their July 18, 2018 meeting, the Commission approved the following:

M/S/C (Fillingim/Castelli) to keep language related to the medical benefit as is and not change the Ordinance to allow Employees the option to take the cash value of the medical benefit. Ayes: Castelli, Frankel, Bloom, Fillingim, Schriener, Sayre. Noes: None Absent: McClintick. Leave of Absence: Jones, Wilkinson. Recused: K. Schriener.

As mentioned above, all of the proposed changes to the LWO, with exception of limiting the duration of an LWO waiver to one year, aim to make the language of the LWO more consistent with the provisions of the MWO so that staff can bring more efficiency and consistency to the guidelines and administration of the LWO as part of the labor standards and enforcement program.

BACKGROUND

The City of Berkeley's LWO was enacted June 21, 2000. The purpose of the ordinance is to ensure businesses in a contractual relationship with the City pay their employees a wage that can support a family at or above the poverty level. The Living Wage Ordinance requires that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. HHCS staff manage the LWO as part of the city's labor standards and enforcement programs.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The proposed changes will streamline investigations and enforcement and make administration more efficient and effective by bringing consistency with other city labor standards and ordinances.

ALTERNATIVE ACTIONS CONSIDERED

Make no changes to the LWO or adopt only some of the Commission's recommendations.

CITY MANAGER

See City Manager companion report.

CONTACT PERSON

Delfina Geiken, Commission Secretary, HHCS, 510-981-7551

Nathan Dahl, Community Development Project Coordinator, HHCS 510-981-5405

Attachments:

1: Ordinance – Track changes

2: Ordinance – Without track changes

3: September 16, 2014 City Council Referral to Commission on Labor

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27; PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

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

Section 1. That Berkeley Municipal Code Chapter 13.27 is amended to read as follows:

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- 13.27.010 Title and purpose.
- 13.27.020 Definitions.
- 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- 13.27.040 Waivers.
- 13.27.045 Notice, posting, and payroll records.
- 13.27.050 Compensation required to be paid to specified employees.
- 13.27.060 Required contract provision.
- 13.27.070 Exemptions.
- 13.27.080 Retaliation and discrimination prohibited.
- 13.27.090 Employee complaints to City.
- 13.27.100 Private rights of action.
- 13.27.110 Relationship to other requirements.
- 13.27.120 Application of Living Wage to Welfare-to-Work programs.
- 13.27.130 Fees.
- 13.27.140 Severability.

Section 13.27.010 Title and purpose.

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

Section 13.27.020 Definitions.

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

G.D. "Service Charge" means all separately-designated amounts collected by an Employer from customers that are described in such a way that customers might reasonably believe that the amounts are for Employees or services rendered by Employees, including but not limited to those charges designated on receipts under the term "service charge," "automatic gratuity charge," "delivery charge," or "portage charge."

Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients

described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.

Section 13.27.040 Waivers.

The City Council may temporarily waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. Such waivers may not cover a period longer than 365 days, and may not be renewed or reissued to the same party in order to cover additional time. All waivers previously issued by the City shall expire 365 days after this Chapter becomes effective.

13.27.045 Notice, posting, and payroll records.

A. By May 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted Living Wage rate, which shall take effect on July 1. In conjunction with this bulletin, the Department shall by May 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the work force in the City, a notice suitable for posting by Employers in the workplace informing Employees of the current Living Wage rate and of their rights under this Chapter.

B. Every Employer subject to the Living Wage Ordinance shall post in a conspicuous place at any workplace or job site in the City where any Employee works, the notice published each year by the Department informing Employees of the current Living Wage rate and of their rights under this Chapter, including healthcare and Paid Sick Leave. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Such records shall include the amount of hours worked, wages paid, and shall state, in unambiguous terms, the manner in which the Employer made their required healthcare expenditures for each Employee.

D. Every Employer shall post a notice in a conspicuous place at any workplace or job site in the City where any Employee works explaining how Service Charges are distributed among Employees. Employers shall report the amount of money collected as Service Charges to Employees no later than the end of the pay period when they were collected. In order to ensure that the distribution of Service Charges is lawful, Employers shall, upon request by an Employee, make available their records of sales and associated Service Charges in a given pay period.

Section 13.27.050 Compensation required to be paid to specified employees.

Except as provided in Section 13.27.060, an employer subject to this chapter pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

~~A. Wages. If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.~~

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan equal to or higher than the benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and health care expenditure rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on June 30 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

~~E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section 13.27.030, shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)~~

E. Distribution of Service Charges. Service Charges shall be used by the Employer to directly benefit the Employees. No part of these charges may be paid to the Employer. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been voluntarily paid or given to or left for an Employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer. No part of this chapter shall be construed to limit or prohibit the amount of any tip or gratuity left for an Employee. No Employer or agent

thereof shall deduct any amount from wages due to an Employee on account of a Service Charge or gratuity, or require an Employee to credit the amount, or any part thereof, of a Service Charge or gratuity against and as a part of the wages due to the Employee from the Employer or reduce required benefits of an Employee. Each Employer shall define the chain of service and associated job duties entitled to a portion of the distributed service charges and notify the Employees of the distribution formula as well as provide in writing to each employee its plan of distribution of service charges to employees. This Section shall not be applied to any events for which the employer already had a contract in place at the time the revised ordinance is adopted.

Section 13.27.060 Required contract provision.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

Section 13.27.070 Exemptions.

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

~~F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.~~

~~G.F.~~ An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

~~H.G.~~ An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

Section 13.27.080 Retaliation and discrimination prohibited.

~~A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee-~~

~~protected by the requirements of this chapter.~~

~~B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000) It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter or otherwise educate any person about this Chapter or to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.~~

Section 13.27.090 Employee complaints to City.

~~A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.~~

~~A. Guidelines. The Department shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. The Department shall seek out partnerships with community-based organizations and collaborate with the Labor Commission to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated by the Department shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.~~

~~B. Reporting Violations. An Employee or any other person may report to the Department any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. In order to further encourage reporting by~~

Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. Informal Resolution. The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.

Section 13.27.100 Private rights of action.

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.

2. Reinstatement, compensatory damages and punitive damages.

3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

13.27.110 Relationship to other requirements.

This Chapter provides for payment of a local Living Wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

13.27.120 Application of Living Wage to Welfare-to-Work programs.

The Living Wage established under this Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs within the City of Berkeley shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Living Wage.

13.27.130 Fees.

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all Employers to pay the cost of administering this Chapter.

13.27.140 Severability.

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

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

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27; PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

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

Section 1. That Berkeley Municipal Code Chapter 13.27 is amended to read as follows:
PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- 13.27.010 Title and purpose.
- 13.27.020 Definitions.
- 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- 13.27.040 Waivers.
- 13.27.045 Notice, posting, and payroll records.
- 13.27.050 Compensation required to be paid to specified employees.
- 13.27.060 Required contract provision.
- 13.27.070 Exemptions.
- 13.27.080 Retaliation and discrimination prohibited.
- 13.27.090 Employee complaints to City.
- 13.27.100 Private rights of action.
- 13.27.110 Relationship to other requirements.
- 13.27.120 Application of Living Wage to Welfare-to-Work programs.
- 13.27.130 Fees.
- 13.27.140 Severability.

Section 13.27.010 Title and purpose.

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

Section 13.27.020 Definitions.

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley,

Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

D. "Service Charge" means all separately-designated amounts collected by an Employer from customers that are described in such a way that customers might reasonably believe that the amounts are for Employees or services rendered by Employees, including but not limited to those charges designated on receipts under the term "service charge," "automatic gratuity charge," "delivery charge," or "portage charge."

Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee,

concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.

Section 13.27.040 Waivers.

The City Council may temporarily waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. Such waivers may not cover a period longer than 365 days, and may not be renewed or reissued to the same party in order to cover additional time. All waivers previously issued by the City shall expire 365 days after this Chapter becomes effective.

13.27.045 Notice, posting, and payroll records.

A. By May 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted Living Wage rate, which shall take effect on July 1. In conjunction with this bulletin, the Department shall by May 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the work force in the City, a notice suitable for posting by Employers in the workplace informing Employees of the current Living Wage rate and of their rights under this Chapter.

B. Every Employer subject to the Living Wage Ordinance shall post in a conspicuous place at any workplace or job site in the City where any Employee works, the notice published each year by the Department informing Employees of the current Living Wage rate and of their rights under this Chapter, including healthcare and Paid Sick Leave. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Such records shall include the amount of hours worked, wages paid, and shall state, in unambiguous terms, the manner in which the Employer made their required healthcare expenditures for each Employee.

D. Every Employer shall post a notice in a conspicuous place at any workplace or job site in the City where any Employee works explaining how Service Charges are distributed among Employees. Employers shall report the amount of money collected as Service Charges to Employees no later than the end of the pay period when they were collected. In order to ensure that the distribution of Service Charges is lawful, Employers shall, upon request by an Employee, make available their records of sales and associated Service Charges in a given pay period.

Section 13.27.050 Compensation required to be paid to specified employees.

Except as provided in Section 13.27.060, an employer subject to this chapter

pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan equal to or higher than the benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and health care expenditure rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on June 30 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Distribution of Service Charges. Service Charges shall be used by the Employer to directly benefit the Employees. No part of these charges may be paid to the Employer. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been voluntarily paid or given to or left for an Employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer. No part of this chapter shall be construed to limit or prohibit the amount of any tip or gratuity left for an Employee. No Employer or agent thereof shall deduct any amount from wages due to an Employee on account of a Service Charge or gratuity, or require an Employee to credit the amount, or any part thereof, of a Service Charge or gratuity against and as a part of the wages due to the Employee from the Employer or reduce required benefits of an Employee. Each Employer shall define the chain of service and associated job duties entitled to a portion of the distributed service charges and notify the Employees of the distribution formula as well as provide in writing to each employee its plan of distribution of service charges to employees. This Section shall not be applied to any events for which the employer already had a contract in place at the time the revised ordinance is adopted.

Section 13.27.060 Required contract provision.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements

of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

Section 13.27.070 Exemptions.

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

F. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

G. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

Section 13.27.080 Retaliation and discrimination prohibited.

It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter or otherwise educate any person about this Chapter or to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

Section 13.27.090 Employee complaints to City.

A. Guidelines. The Department shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. The Department shall seek out partnerships with community-based organizations and collaborate with the Labor Commission to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated

by the Department shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.

B. Reporting Violations. An Employee or any other person may report to the Department any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. In order to further encourage reporting by Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. Informal Resolution. The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.

Section 13.27.100 Private rights of action.

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause

of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

13.27.110 Relationship to other requirements.

This Chapter provides for payment of a local Living Wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

13.27.120 Application of Living Wage to Welfare-to-Work programs.

The Living Wage established under this Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs within the City of Berkeley shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Living Wage.

13.27.130 Fees.

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all Employers to pay the cost of administering this Chapter.

13.27.140 Severability.

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

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

CONSENT CALENDAR
September 16, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguin

Subject: Referral to Commission on Labor: Amendments to Living Wage Ordinance (Berkeley Municipal Code Chapter 13.27)

RECOMMENDATION:

Refer to the Commission on Labor the following suggested amendments to the Living Wage Ordinance, Berkeley Municipal Code Chapter 13.27:

1. Amend Section 13.27.050.A to allow an employee the right to opt out of an employer provided medical benefit plan and still receive the higher compensation amount (currently \$15.99 per hour) as cash in lieu if they provide proof of alternative coverage under a medical benefit plan.
2. Amend the posting requirements, retaliation, complaint process, and enforcement sections to conform to the language in the recently adopted Minimum Wage Ordinance.

BACKGROUND:

The Berkeley City Council adopted a Living Wage Law in 2000 to require for-profit and non-profit businesses (at a certain threshold), that are under a City contract, to pay their employees a living wage and provide health insurance and paid time off. The current Living Wage rate is **\$13.71 per hour plus a medical benefit equivalent to at least \$2.28 per hour**. If the employer does not provide the employee at least \$2.28 per hour toward an employee medical benefits plan, the employer shall pay an hourly wage of not less than **\$15.99**. If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate.

Two recent complaints filed by former and current employees of LAZ Parking, a city contractor who manages the City's public parking garages, have alleged that the employer failed to pay the full rate of compensation and denied breaks and paid days off.

The complaint made by Mr. Julio Castro alleging that LAZ Parking was required to provide Mr. Castro with the higher compensation amount because it did not provide actual medical coverage has raised issues regarding the loopholes in the current Living Wage Ordinance. Mr. Castro opted to not take the employer provided medical insurance plan, because he paid for another plan that was less costly. Nevertheless, despite the fact that the employer never directly provided health insurance coverage, they were able to pay Mr. Castro the lower wage, rather than include the differential for lack of

health coverage. Apparently, under city law all an employer has to do is offer health coverage but not directly provide it in order to pay the lower wage amount.

Nowhere in the current Living Wage Ordinance does it state that the employer would pay the whole amount of the medical insurance plan. The employee would still pay a premium which depending on the cost of the insurance may be significant, and as result decrease the amount of take home pay an employee would be entitled to. The current language of the law provides incentives for employers to offer more expensive insurance plans with higher employee premiums in order to avoid paying a higher wage.

The law was clearly written with the goal of extending benefits to employees, not taking them away. Similar to city employees, including City Councilmembers, contract employees subject to the Living Wage Ordinance, should be allowed to pay for alternative insurance and receive cash in lieu equivalent to the higher wage amount if they provide proof of insurance coverage. In addition, the City should explore changing the law to say that only if an employee is covered under an insurance plan can the employer pay the lower wage amount. These changes would close the existing loophole and ensure that contract employees are afforded the same rights as our city employees.

In addition, the recently adopted Minimum Wage Ordinance included stronger language on posting of notices, notification of rights, making complaints, retaliation and enforcement. Since the Living Wage Ordinance was adopted in 2000 before the Minimum Wage Law, and since it affectively accomplishes the same goals - fair wages for employees - the City should amend the Living Wage law to conform to the notice, complaint, retaliation and enforcement requirements of the new Minimum Wage Ordinance.

One of the issues alleged is the lack of proper notification of employees covered under the Living Wage Ordinance. The Minimum Wage Ordinance standards are stronger and require better notification and enforcement. Given that the City will be creating an enforcement position to implement both the Minimum Wage and Living Wage Ordinance, there should be consistency of the requirements for ease of enforcement.

Also the notification requirements must be strengthened. There is no requirement for annual notification, so employees may not necessarily know what the wage amount has increased due to inflation. There is also no requirement that the notice provided to workers and required to be posted, has to include information on how to file a complaint and contact information on where to make a complaint. Providing better information on the wages, benefits, complaint process, and protection against retaliation will ensure that workers know their rights and can help prevent potential violations in the future.

FINANCIAL IMPLICATIONS:

Staff time involved in presenting the City Council's referral to the Commission on Labor, analyzing the proposed changes, and proposing recommendations to the Commission and City Council.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

Attachments:

1. Current Living Wage Ordinance (B.M.C. Chapter 13.27) with sections highlighted to be changed
2. July 9, 2014 East Bay Express Article "Berkeley Sides with Living Wage Law Violators"

Chapter 13.27 PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- [13.27.010](#) Title and purpose.
- [13.27.020](#) Definitions.
- [13.27.030](#) Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- [13.27.040](#) Waivers.
- [13.27.050](#) Compensation required to be paid to specified employees.
- [13.27.060](#) Required contract provision.
- [13.27.070](#) Exemptions.
- [13.27.080](#) Retaliation and discrimination prohibited.
- [13.27.090](#) Employee complaints to City.
- [13.27.100](#) Private rights of action.

13.27.010 Title and purpose.

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. (Ord. 6548-NS § 2, 2000)

13.27.020 Definitions.

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina

Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code. (Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of

their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid. (Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

13.27.040 Waivers.

The City Council may waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. (Ord. 6548-NS § 2, 2000)

13.27.050 Compensation required to be paid to specified employees.

Except as provided in Section [13.27.060](#), an employer subject to this chapter pursuant to Section [13.27.030](#) shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. Wages. If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees.

Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section [13.27.030](#), shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

13.27.060 Required contract provision.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section [13.27.030](#) or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance. (Ord. 6548-NS § 2, 2000)

13.27.070 Exemptions.

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

- B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.
- C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.
- D. Volunteers.
- E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.
- F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.
- G. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.
- H. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement. (Ord. 6548-NS § 2, 2000)

13.27.080 Retaliation and discrimination prohibited.

- A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.
- B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000)

13.27.090 Employee complaints to City.

- A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. (Ord. 6548-NS § 2, 2000)

13.27.100 Private rights of action.

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City. (Ord. 6548-NS § 2, 2000)

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Berkeley Sides With Living Wage Violators

The city has brushed aside numerous labor complaints against a city contractor — and has now revised its policy in a way that benefits employers and shortchanges low-wage workers.

By Sam Levin @SamTLevin



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Since 2000, businesses that have contracts with the City of Berkeley have been subject to a living wage ordinance that establishes minimum standards of pay and employee health benefits for employees. The intent is simple: to ensure that city contractors pay their workers wages that can support a family at or above the poverty level. In 2012, for the first time since the living wage law was enacted, an employee of a city contractor filed a complaint with the city, alleging violations of the ordinance. The alleged offender was LAZ Parking, a private company that manages three city-owned garages, and the complaint, from former employee Julio Castro, only came to light earlier this year when the city council began discussions about expanding LAZ's contract.

According to Castro, the company had underpaid him and other employees in violation of the law, and despite his persistent complaints to the city, officials did little to help him. His struggle exposed Berkeley's lack of an effective living wage enforcement mechanism. When I first reported on Castro's story (see "The Failure of Berkeley's Living Wage Law," 4/23) city spokesperson Matthai Chakko declined to comment, saying a report would be sent to the city council, detailing an investigation into LAZ Parking. The city finally produced the report last month, and the document, according to a number of labor advocates, reveals just how deeply flawed the city's living wage policy and enforcement system really are. For starters, the city's report sides with LAZ Parking in Castro's dispute, despite significant evidence that the company underpaid him, and notwithstanding a state ruling last year in Castro's favor. What's more, the city has used its report as an opportunity to reinterpret a critical part of the living wage law in a manner that benefits contractors and hurts low-wage workers.

"The living wage ordinance was made to help employees," said Castro, a sixty-year-old Concord resident and former LAZ Parking cashier. "It's the city's job to make sure things are done right."

Castro's case — and the city's new interpretation of the living wage law —

center on the health care contribution requirements laid out in the ordinance. At current rates, employers must pay an hourly wage of \$13.71 plus a medical benefit equivalent to at least \$2.28 per hour. If an employer does not provide an employee with the medical benefit, then it must pay the additional \$2.28, meaning an hourly wage of \$15.99, according to the law.

LAZ Parking, as Castro outlined in formal allegations in 2012, paid him the lower rate, which was \$12.76 per hour when he started working for the company in July 2011. But LAZ did not pay for his health benefits. That's because the package LAZ offered, Castro said, would have been significantly more expensive for him than his insurance plan with Contra Costa County (the Contra Costa Health Plan). That meant that LAZ, according to his complaints, was obligated to pay him the higher rate — at that time, \$14.88 per hour. After discussions with his managers and multiple city officials got him nowhere, Castro filed a complaint with the state labor commissioner's office in 2012. And in 2013, the state issued a ruling in his favor, declaring that LAZ had violated Berkeley's living wage law and should have paid the higher rate, amounting to a total of \$2,245 in back wages. LAZ has since paid Castro this amount.

But in the city's recent report on LAZ, Berkeley City Manager Christine Daniel wrote that the state's decision in support of Castro was "incorrect" and contrary to the living wage ordinance. Because LAZ had *offered* Castro health care benefits, the company was allowed to pay him the lower \$12.76 rate, Daniel wrote. And to ensure that employees understand this in the future, the report continued, the city has revised its living wage website to include this statement: "If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate."

Because this is a new statement on the website — and one that is nowhere to be found in the actual ordinance — the revision has alarmed labor advocates who argue that the city is not only endorsing LAZ's decision to underpay employees, but is going a step further and establishing this practice as acceptable policy. "It essentially eviscerates the law," said Carole Vigne, director of the wage protection program of the Legal Aid Society-Employment Law Center. "This new interpretation ... feels like a tremendous loophole."

Vigne is one of several Employment Law Center attorneys who have represented Castro in the course of his multi-year fight against LAZ. The labor commissioner's office also ruled last year that the company also owed Castro \$939.24 for denying him rest breaks, a violation separate from the living wage concerns. Castro has further alleged retaliation, because LAZ terminated him in 2012 after he complained about the living wage violations; a decision in this separate retaliation case is pending, after labor hearings concluded last month.

In its 2013 ruling on Castro's living wage complaint, the California labor commissioner's office noted that when employers don't provide medical benefits, there is a "clear directive" in the Berkeley living wage ordinance that employers "shall" pay the higher rate: "There is nothing in the Ordinance that allows an employee entitled to its benefits to waive his right to those benefits," the state hearing officer wrote.

Vigne, too, argued that, regardless of the city's elaborations on its website, the enforceable language of the ordinance says employers must "provide" medical benefits or the higher wage: "Provide means to give, it doesn't just mean to offer," she said. Vigne also shared with me printouts of older versions of Berkeley's living wage web pages, pointing out that, even in the city's detailed FAQ section on the law, "there was no suggestion anywhere on their website that this is how the living wage ordinance was intended to be interpreted."

It's unclear why exactly the city is taking a position that shortchanges low-wage workers. In her report, Daniel cited a September 2000 city memo on the living wage ordinance that said employers could pay the lower hourly

rate when employees decline an offer of health coverage. But Vigne sent me a June 2000 memo from the Berkeley commission on labor that emphasized that one of the objectives of the living wage law was to help employees access "reasonable health insurance." And regardless of the debates around interpretation, living wage laws should not prevent low-wage workers from buying a health-care plan that is cheaper than the one offered by the employer, said Gina Gemello, an Employment Law Center project attorney who has also represented Castro. "If an employee can get insurance coverage for half of what the employer offers, then why would the city stand against them?" said Castro.

Berkeley City Councilmember Jesse Arreguín — who has been in contact with Castro for years and has repeatedly asked the city to address complaints against LAZ — said he also disagrees with the city's new interpretation of the law and plans to introduce legislation later this year that would revise the ordinance to make clear that contractors must provide health care or pay the higher wage. "If an employee is able to get health care at a much cheaper rate, the employer should help contribute to that," he said, adding, "I was very surprised when the city took a position trying to disprove the state. ... The law was intended to favor the worker, not management."

In response to Daniel's report, Arreguín issued a memo last week questioning why the city has been so slow to respond to complaints about LAZ and why its report ignores Castro's allegations of retaliation entirely. The living wage law explicitly prohibits retaliation and discrimination against a person who reports a violation, meaning the city's enforcement of the law and investigation into LAZ should have addressed concerns of retaliation. Arreguín's memo also questioned whether the city has followed up on a complaint from another former LAZ employee, Chauncy Taylor, who, like Castro, said she was paid the lower rate and did not receive health benefits.

Though Taylor outlined her situation in great detail to Arreguín's office — which forwarded the claims to the city manager more than a year ago — Taylor has not received any back wages and it's unclear if the city has done any investigation into her case. Taylor said in an interview that no city official other than Arreguín's office has ever contacted her about her claims. Further, Taylor said LAZ never even offered her health benefits in the first place because she was technically a part-time employee. That means that, even with the city's new interpretation of the law, she could have a strong case. And her situation is a clear illustration of the impacts of a flawed living wage law: When she worked for LAZ, she was uninsured.

"It would really help if they could come through," said Taylor, noting that her landlord just raised her rent and that she continues to struggle to make ends meet. "I am praying and hoping that they come around. At this point, I'd be okay if they just gave me half. Times are so hard."

Chakko declined to answer any questions about LAZ Parking or the living wage law, saying the city plans to issue a response to Arreguín's memo. LAZ representatives did not respond to multiple requests for comment.

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« A Battle for Profits The Fight to Develop West Oakl... »



Human Welfare and
Community Action Commission

ACTION CALENDAR
February 19, 2019

To: Honorable Mayor and Members of the City Council
 From: Human Welfare and Community Action Commission (HWCAC)
 Submitted by: Samuel Kohn, Temporary Chairperson, HWCAC
 Subject: Assessment of Vacant Properties

RECOMMENDATION

Direct the City Manager to develop a plan to locate the 3,754 “vacant housing units” noted in the “Employment, Economy, Housing “ data in the “City of Berkeley Fiscal years 2018 & 2019 ADOPTED BIENNIAL BUDGET” and to assess what would be required to bring as many of the properties to market as possible.

FISCAL IMPACTS OF RECOMMENDATION

Staff time required to locate and assess the condition of the properties. Alternatively, there would be costs associated with outsourcing the project to a third-party.

CURRENT SITUATION AND ITS EFFECTS

At the 11/28/19 HWCAC meeting, the commissioners discussed the submission of an item to City Council recommending that the City Manager work with Council to locate vacant housing units. The commission took action to submit this item to City Council [M/S/C (Sood/Omodele) (Vote: Ayes – Sood, Omodele, Dunner, Kohn; Noes – None; Abstain – None; Absent – Vrankovecki (Excused), Holman, Whitson)].

The City of Berkeley is currently experiencing a severe housing shortage. There are a variety of strategies being discussed to create new housing, which will be beneficial in the future, but, could take several years to come to market. There may be an opportunity to bring a number of units to market in the short term by working with landlords of currently vacant units to make them market ready. This could help increase the housing stock while longer term projects continue to develop. In addition, the information gathered on these units could be used to help manage vacancies on a regular basis.

BACKGROUND

According to the “City of Berkeley Fiscal years 2018 & 2019 ADOPTED BIENNIAL BUDGET” (page 31), there were 3,754 vacant housing units in the City of Berkeley out of a total number of 49,671 housing units. Information on the location and condition of these properties has been difficult to find, neither the Rent Stabilization Board nor the

City Manager's office could provide additional details. Potentially bringing these properties to market will require an initial investment in gathering data to help determine requirements.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Bringing vacant units to market could provide a short term boost to the housing stock while longer term projects continue to develop, but more information is needed to assess if it would be possible to make these properties available.

ALTERNATIVE ACTIONS CONSIDERED

Several alternative strategies for increasing housing have been discussed. The HWCAC felt the recommendation presented here provides a unique short term opportunity for the city.

CITY MANAGER

See companion report.

CONTACT PERSON

Mary-Claire Katz, Commission Secretary, HHCS (510) 981-5414

Attachments:

1: "Employment, Economy, Housing", City of Berkeley Fiscal Year 2018 & 2019 Adopted Biennial Budget.

Attachment 1: "Employment, Economy, Housing", City of Berkeley Fiscal Year 2018 & 2019 Adopted Biennial Budget.

Employment, Economy, Housing (ACS)

Employment

Median Household income:	\$66,237
Residents 16 and older:	104,594
In labor force	61.3%
Employed:	56.2%
Unemployed:	5.0%
Armed Forces	0.1%
Not in labor force: <small>(e.g. students not looking for work)</small>	38.7%

Occupation (ACS)

Management, business, science, and arts:	66%
Service:	11%
Sales & Office:	17%
Natural Resources, construction, and maintenance:	3%
Production:	4%

Largest Employers*

Alta Bates Medical Center	Lifelong Medical Care
Ansys, Inc.	Meyer Sound
Bayer Healthcare, LLC	MSCI Inc.
Berkeley Bowl Produce	Pacific Steel Casting Company, LLC
Berkeley Cement Inc.	Recreational Equipment Inc.
Berkeley City College	Siemens Corporation
Berkeley Marina Doubletree	Siteworks Landscape, Inc.
Berkeley Repertory Theatre	University of California, Berkeley
Berkeley Unified School District	US Postal Service
City of Berkeley	Weatherford Motors Inc.
Dynavax Technologies Corporation	Whole Foods Market California Inc.
Kaiser Permanete	YMCA of the Central Bay Area
Lawrence Berkeley Laboratory	

* Source: EDD, QCEW Data Q1 2016

Housing (ACS)

Average sale price of new & existing single-family homes:	\$1,181,285
Average sale price of new & existing condos:	\$710,871
Total housing units:	49,671
Vacant housing units:	3,754
Occupied housing units:	45,917
Owner-occupied:	19,583 (43%)
Renter-occupied:	26,334 (57%)
Median Rental Market Rates:*	
Studio	\$1,600
1 Bedroom	\$1,995
2 Bedroom	\$2,750
3 Bedroom	\$3,595

* 2016 data provided by the Berkeley Rent Stabilization Board



Peace and Justice
Commission

ACTION CALENDAR
FEBRUARY 19, 2019

To: Honorable Mayor and Members of the City Council
 From: Peace and Justice Commission
 Submitted by: George Lippman, Chairperson, Peace and Justice Commission
 Subject: Resolution declaring City of Berkeley will not invest City funds in any entity involved in the production or upgrading of weapons

RECOMMENDATION

Adopt Resolution submitted by the Peace and Justice Commission declaring the City of Berkeley will not invest City funds in any entity involved in the production or upgrading of weapons.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its regular meeting September 17, 2018, the Peace and Justice Commission unanimously adopted the following recommendation: declaring that City of Berkeley will not invest City funds in or contract with any entity involved in the production or upgrading of weapons.

M/S/C: Bohn/Kenin
 Ayes: Maran, Watson, Lippman, Bohn, Hariri, Kenin, Chen
 Noes: None
 Abstain: None
 Absent: Pancoast

At its regular meeting January 7, 2019, the Peace and Justice Commission unanimously adopted a revised version of the resolution it adopted in September 2018. The revised recommendation removed the ban on contracting with entities involved in the production or upgrading of weapons, confining its scope to the investment of City funds in such entities.

Reso declaring City of Berkeley will not invest city funds
In any entity involved in the production or upgrading of
Weapons

ACTION CALENDAR
FEBRUARY 19, 2019

M/S/C: Bohn/Meola

Ayes: al-Bazian, Bohn, Hariri, Han, Lippman, Maran, Meola, Morizawa,
Pancoast, Rodriguez

Noes: None

Abstain: None

Absent: Chen

Subsequent to the Commission's September 2018 action, City staff communicated feedback to the Commission secretary that the ban on contracting with weapons manufacturers could pose problems in procurement, notably BPD purchase of police weapons and munitions, and potentially other non-weapon supplies manufactured by companies that also produce weapons. The Commission considered these concerns in its January meeting and agreed to amend the item to exclude the ban on such contracting. The Commission determined that the original language of the item, which is circulating nationally among cities similar to Berkeley, focuses entirely on investment, and decided that reverting back to the language that other cities are adopting would provide benefits of alignment as well as addressing staff concerns.

Social responsibility concerns as they apply to contracting and procurement will be better addressed by a separate initiative.

BACKGROUND

The City of Berkeley investment policy currently bans investment in guns.

This resolution is endorsed by over 50 organizations that favor divestment from weapons manufacturers. The organizations include CODEPINK, American Friends Service Committee, Peace Action USA, United for Peace and Justice, and the Women's International League for Peace and Freedom.

This campaign has been spurred by the Trump Administration's belligerent posture that has brought the country to the brink of war, as well as the passionate national campaign, especially among young people, against gun violence domestically.

ENVIRONMENTAL SUSTAINABILITY

Reversing militarism is one of the key levers of promoting sustainability. Point 2 of the Environmentalists against War declaration in 2003 stated, "War destroys human settlements and native habitats. War destroys wildlife and contaminates the land, air and water. The damage can last for generations." ¹

¹ <http://www.envirosagainstar.org/sayno/tenreasons.html>

Reso declaring City of Berkeley will not invest city funds
In any entity involved in the production or upgrading of
Weapons

ACTION CALENDAR
FEBRUARY 19, 2019

RATIONALE FOR RECOMMENDATION

In passing this resolution the City of Berkeley joins with cities nationwide that oppose militarism and violence, and encourages other cities to follow Berkeley's lead.

ALTERNATIVE ACTIONS CONSIDERED

The Commission considered restrictions on contracting with any entities involved with the production or upgrading of weapons, with exemption for police purchases. The decision was taken to limit this action to investment only and to consider procurement in separate actions. This option will keep the current action in line with the national initiative.

CITY MANAGER

See companion report.

CONTACT PERSON

George Lippman, Chairperson, Peace and Justice Commission

Shallon Allen, Commission Secretary, (510) 981-7071

Attachments:

1. Resolution

Reso declaring City of Berkeley will not invest city funds
In any entity involved in the production or upgrading of
Weapons

ACTION CALENDAR
FEBRUARY 19, 2019

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

Resolution declaring the City of Berkeley will not invest City funds in any entity involved
in the production or upgrading of weapons.

WHEREAS, since 2001, the United States has spent over \$5.6 trillion on wars resulting
in over 1.17 million deaths and displacing more than 10.1 million people;ⁱ and

WHEREAS, the cost of U.S. domestic and foreign militarism, including veterans' affairs,
homeland security, and law enforcement, and incarceration, topped \$818 billion in
2017,ⁱⁱ; and accounted for 64% of federal discretionary spending in 2016, at a time when
federal funds are desperately needed in order to build affordable housing, improve
public transit, and develop sustainable energy sources;ⁱⁱⁱand

WHEREAS, the United States remains the most militarized nation in the world, with a
military budget greater than the next eight countries combined, an estimated 800
military bases and stations in over 70 countries around the world, and arms producers
that dominated 57.9% of the share of major global arms sales in 2016^{iv}; and

WHEREAS, nearly 15,000 nuclear weapons, most of an order of magnitude more
powerful than the U.S. atomic bombs that destroyed Hiroshima and Nagasaki, over 90%
held by the United States and Russia, continue to pose an intolerable threat to
humanity;^v and detonation of even a small fraction of these weapons would disrupt the
global climate and agricultural production so severely that the resulting famine could put
the lives of more than two billion people at risk;^{vi} and

WHEREAS, the United States is poised to spend \$1.7 trillion dollars over the next three
decades to maintain and modernize its nuclear bombs and warheads; the submarines,
missiles and bombers to deliver them; and the infrastructure to sustain the nuclear
enterprise indefinitely, which many experts believe actually increases the risk of nuclear
proliferation, nuclear terrorism, and nuclear war by accident, miscalculation or intent, at
a time when nuclear-armed countries are already on the brink of military confrontation;^{vii}
and

WHEREAS, investing in companies producing the nuclear and conventional weapons at
the roots of U.S. militarism implicitly supports this misdirection of our tax dollars; and

WHEREAS, many major arms producers depend on the federal government as their
primary consumer and are thus dependent upon perpetual warfare, political instability,
and the prioritization of militarism over diplomacy; and

Reso declaring City of Berkeley will not invest city funds
In any entity involved in the production or upgrading of
Weapons

ACTION CALENDAR
FEBRUARY 19, 2019

WHEREAS, U.S. weapons manufacturers continue to supply repressive regimes around the world, and U.S.-produced weapons are being used in attacks that the international community deems unlawful for their disproportionate and excessive harm to civilians; and

WHEREAS, billions of dollars worth of military-grade equipment has been transferred to local police departments in our communities, resulting in the disproportionate targeting of communities of color and perpetuating a culture of violence, hostility, and fear;^{viii} and

WHEREAS, the rate of mass shootings in America is the highest anywhere in the developed world, as civilian gun manufacturers continue to reap enormous profits from unnecessary bloodshed in our streets and homes;^{ix} and

WHEREAS, the average American taxpayer works 27 days a year to pay Pentagon contractors and pays 23.4 cents of each of their federal income tax dollars toward military spending, at a time when 43 million Americans live in poverty or qualify as low-income;^x and

WHEREAS, the U.S. Conference of Mayors unanimously “calls on the President and Congress to reverse federal spending priorities and to redirect funds currently allocated to nuclear weapons and unwarranted military spending to restore full funding for Community Development Block Grants and the Environmental Protection Agency, to create jobs by rebuilding our nation’s crumbling infrastructure, and to ensure basic human services for all, including education, environmental protection, food assistance, housing and health care;^{xi} and

WHEREAS, the City's investment practices must accord with the City's commitment to equality, peace, and justice;

NOW, THEREFORE, BE IT RESOLVED, that the City Council formally declares its opposition to investing City funds in any entities that are involved in the production or upgrading of weapons and weapons systems, whether conventional or nuclear, and including the manufacture of civilian arms, and decides that it shall be City policy to divest from such entities; and

BE IT FURTHER RESOLVED, that the City Council directs any and all persons acting on behalf of City investment activity to enforce the provisions of this Resolution; and

BE IT FURTHER RESOLVED that this Resolution shall be binding City policy and shall be in full force and effect after adoption by the City Council.

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- i “Costs of War, Brown University, Watson Institute of International and Public Affairs,” <https://watson.brown.edu/costsofwar/>
- ii “US Military Budget: Components, Challenges, Growth,” *The Balance*, <https://www.thebalance.com/u-s-military-budget-components-challenges-growth-3306320>
- iii “The Militarized Federal Budget,” National Priorities, <https://www.nationalpriorities.org/analysis/2017/militarized-budget-2017/>
- iv “Top 100 Arms-Producing and Military Service Companies, 2016,” Stockholm International Peace Research Institute, <https://www.sipri.org/publications/2017/sipri-fact-sheets/sipri-top-100-arms-producing-and-military-services-companies-2016>
- v “Nuclear Weapons: Who Has What at a Glance,” Arms Control Association, <https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat>
- vi “Nuclear Famine: Two Billion People at Risk?” International Physicians for the Prevention of Nuclear War, <https://www.psr.org/wp-content/uploads/2018/04/two-billion-at-risk.pdf>
- vii “U.S. Nuclear Modernization Program,” Arms Control Association, <https://www.armscontrol.org/factsheets/USNuclearModernization>
- viii “War Comes Home,” ACLU, <https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices/war-comes-home>
- ix “How US Gun culture compares with the world in 5 charts,” CNN, <https://www.cnn.com/2017/10/03/americas/us-gun-statistics/index.html>
- x “Tax Dollar Receipt,” National Priorities Project, <https://www.nationalpriorities.org/interactive-data/taxday/>
- xi “Calling on the Administration and Congress to Step Back From the Brink and Exercise Global Leadership in Preventing Nuclear War,” U.S. Conference of Mayors, June 11, 2018, <http://www.mayorsforpeace.org/english/ecbn/resolution/20180612.html>



Office of the Mayor

ACTION CALENDAR

February 19, 2019

To: Members of the City Council

From: Mayor Jesse Arreguin

Subject: Short-Term Referral: Develop Ordinance permitting Cannabis Events and designate Cesar Chavez Park as an Approved Venue

RECOMMENDATION

Short-Term Referral to the City Manager to develop ordinance amendments permitting cannabis events in the City of Berkeley and designating Cesar Chavez Park as an approved location for cannabis events, provided such events are organized and licensed as required by the State of California. The ordinance shall: 1) reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2) specify procedures for such events that replicate similar alcohol related event protocols.

BACKGROUND

The residents of Berkeley have long supported reform cannabis laws. In 1979, voters passed the Berkeley Marijuana Initiative, which recognized the negative impact of prosecuting marijuana users, called for city government to support all efforts towards the reform of marijuana laws, and directed the Berkeley Police Department to give the lowest priority to the enforcement of marijuana laws.

For over twenty years the City of Berkeley has also permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely deliver medicine to patients. Allowing these services has had an overwhelmingly positive impact on our community, creating new options in patient care. In recognition of this and to further its support, the City Council adopted Resolution No. 63,966-N.S. in 2008, declaring the City of Berkeley a sanctuary for medical cannabis patients and providers, and opposing attempts by the U.S. Drug Enforcement Administration (DEA) to close medical marijuana dispensaries.

Most recently, in 2016, 83% of Berkeley voters and 57% of Californians voted in favor of Proposition 64, a statewide ballot initiative to legalize adult recreational cannabis for persons over 21 years old. In June 2017, Governor Brown signed SB94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill is the foundation of the state's regulatory and enforcement framework for the burgeoning legal cannabis industry. Draft regulations were published in December of 2017, and final regulations are currently under review.

In anticipation of state regulations on adult use cannabis, and at City Council direction, staff have been developing ordinance modifications to allow Berkeley businesses to operate in accordance with state law, and a selection process for retailers and large cultivators. Draft documents were reviewed by the Cannabis Commission, Planning Commission and Community Health Commission in early 2018, and two Council Work Sessions have been held to present the proposed new regulatory framework. Once again, in support of safe access to cannabis and decriminalization, the City Council passed Resolution No. 68,326-N.S. on February 13, 2018, declaring that Berkeley will be a sanctuary for adult-use cannabis customers, businesses, providers, and landlords, specifying procedures regarding staff interaction with the Drug Enforcement Administration related to the enforcement of federal drug laws.

AB 2020 was passed by the California Legislature in 2018, which expanded locations where cannabis related events can occur beyond county fairgrounds. Such events can only be held by someone with a cannabis event organizer permit from the State of California. The event organizer must also acquire a temporary event permit from the State for each event, in addition to any local permits.

The City of Berkeley has been contacted by vendors that hold the required State of California cannabis event organizer permit requesting a venue for a cannabis and music event. These same vendors have held successful events, partnering with local jurisdictions all over the world, most recently in the cities of Sacramento and Santa Rosa.

During the October 2018 Work Session, Council requested that staff prioritize the adoption of adult use licenses for new cannabis businesses and also requested updates and a timeline on other cannabis matters. Consideration of special events specifically involving cannabis products - such as music festivals, judging events, and conventions - was included in that work plan (See Attachment 1). Upon the approval of developing an ordinance to designate Cesar Chavez Park as an approved venue for cannabis events, this task can be removed from the Planning Department's cannabis ordinance workplan that is due to return to the City Council in mid-2019.

Amending our Municipal Code to permit cannabis events, as authorized by state law, will provide a safe and regulated location for these types of events and provide significant economic benefits to the City of Berkeley. The City currently allows alcohol related events in City Parks. We are proposing that any ordinance undergo review by the appropriate City Departments: Planning, City Attorney, Environmental Health, Police, to ensure adequate safety protocols.

FINANCIAL IMPLICATIONS

According to reports of similar events held by state licensed operators, permitting such events at Cesar Chavez Park could contribute approximately \$200 per customer per day to the city's economy, adding up to \$10-12 million dollars.

ENVIRONMENTAL SUSTAINABILITY

Complies with City of Berkeley sustainability goals

CONTACT PERSON

Mayor Jesse Arreguín (510) 981-7100

ATTACHMENT:

1. Letter from City Manager dated November 9, 2018
2. Resolution No. 68,326-N.S.



Office of the City Manager

November 9, 2018

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: Cannabis: Next steps following October 9, 2018 work session

On October 9, 2018, the Council held a work session related to draft cannabis ordinances. The Council requested that staff prioritize adoption of adult use licenses for new cannabis businesses and create a path to approve conversion of existing nurseries into cannabis retail nurseries. This memo provides the status of the two prioritized items and the next steps for cannabis ordinances.

Adult use licenses for new cannabis businesses: On September 13, 2018, the Council approved changes that allow cannabis distributors and small cultivators to operate in Berkeley. These changes included new and revised definitions as considered by the Cannabis, Planning and Community Health Commissions. The new definitions removed references to 'medical cannabis' and replaced it with 'cannabis' in order to conform to State regulations. In effect, this change allowed all cannabis businesses, existing and new, to choose to operate as a medicinal business, an adult use business, or both. Therefore, as of October 31, 2018, when the distributors and small cultivator ordinances came into effect, all new and existing cannabis businesses that are currently allowed in Berkeley can apply for adult use business licenses.

Retail nurseries: Staff has developed draft ordinance language which would allow up to two of the eight existing nurseries in Berkeley to convert to a cannabis nursery with retail sales. This type of business would be called a Retail Nursery Microbusiness (RNM). This language will be considered by the Cannabis, Planning, and Community Health Commissions in late 2018 and will be folded into other cannabis ordinance language going to Council in early 2019 (see below).

Next steps for completing Berkeley's cannabis ordinances: Staff will bring forward draft cannabis ordinance language to Council in two separate meetings in 2019.

The first meeting is proposed for January 2019 and will focus on issues for which staff has already received direction from Council and previous commission review. The draft language presented by staff will also restructure the cannabis ordinance for clarity, removing obsolete language and applying general regulations to all cannabis businesses. The changes will include:

Page 2

November 9, 2018

Re: Cannabis next steps following October 9, 2018 work session

- Relocating and consolidating text within the ordinance for clarity and ease of use;
- Advertising and signage regulations for cannabis businesses;
- Language for Retail Nursery Microbusinesses;
- Recommendations for quotas for retail cannabis businesses; and
- Revised retail buffers requirements (include a 600' buffer around six youth centers and increase the buffer around middle and high schools from 600' to 1,000').

Additional issues requiring further commission consideration and/or staff analysis will be presented for Council consideration in spring 2019. These include:

- Regulations for delivery-only businesses;
- Options for integrating equity considerations into cannabis business selection processes;
- Consideration of cannabis lounges;
- Consideration of special events specifically involving cannabis products, such as music festivals, judging events, and conventions;
- Consideration of buffers for non-retail cannabis businesses;
- Consideration of expansion of cultivation use outside the Manufacturing (M) District;
- Further consideration of Community Health Commission recommendations designed to address public health concerns related to cannabis.

Per Council direction, staff looks forward to moving expeditiously to provide clear rules and regulations for cannabis businesses that also address community questions and concerns. Please contact Timothy Burroughs, Director of the Department of Planning & Development, if you have any questions.

cc: Paul Buddenhagen, Interim Deputy City Manager
Timothy Burroughs, Planning and Development Director
Kelly Wallace, Interim Health Housing and Community Services Director
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager
Ann-Marie Hogan, City Auditor

RESOLUTION NO. 68,326-N.S.

DECLARING THE CITY OF BERKELEY AS A SANCTUARY FOR RECREATIONAL CANNABIS AND OPPOSING ATTEMPTS BY THE U.S. DRUG ENFORCEMENT ADMINISTRATION TO CLOSE CANNABIS BUSINESSES

WHEREAS, since the adoption of the Berkeley Marijuana Initiative by voters in 1979, Berkeley has recognized the harmful impacts of prosecuting marijuana users, instructs the city government to support all efforts towards the reform of marijuana laws, and directs the Berkeley Police Department to give the lowest priority to the enforcement of marijuana laws; and

WHEREAS, the federal government continues to classify all forms of cannabis as Schedule I under the federal Controlled Substances Act, and therefore does not recognize medical or recreational marijuana; and

WHEREAS, Resolution No. 63,966-N.S. adopted in 2008, declares the City of Berkeley as a sanctuary for medicinal cannabis and opposes attempts by the U.S. Drug Enforcement Administration to Close Medical Marijuana Dispensaries; and

WHEREAS, legalizing marijuana is an important social justice issue; and

WHEREAS, millions of peaceful Americans have been fined, arrested, imprisoned, or otherwise needlessly criminalized and stigmatized, potentially for life, because of their use of marijuana; and

WHEREAS, over \$1 trillion dollars has been spent enforcing drug laws, including those pertaining to marijuana, since the War on Drugs was initiated by President Richard Nixon in the 1970s; and

WHEREAS, because of aggressive enforcement of drug laws, including marijuana laws, the United States has become a nation of mass incarceration – imprisoning 2 million American citizens which represents the highest imprisonment rate of any nation on Earth, representing 25% the world's prisoners; and

WHEREAS, the enforcement of marijuana and other drug laws has had a disproportionate impact on communities of color– evidenced by the fact comparable usage by whites and Blacks, a Black person is four times as likely to be arrested for marijuana possession than a white person; and

WHEREAS, an April 2, 2014, Pew Research Center poll found that 75% of Americans believe the use and sale of marijuana will eventually be legal in the United States nationwide; and

WHEREAS, in November 2016, 57% of California voters and 83% of Berkeley voters voted in favor of Prop 64 to legalize adult recreational cannabis for persons over 21 years old; and

WHEREAS, Prop 64 includes an important provision for anyone who has been or currently is imprisoned, on probation, or on parole to apply for resentencing or redesignation – a small but important step in reducing the unjust and unequal impact of decades of harmful and costly marijuana laws and prosecution; and

WHEREAS, in 2011, when national and statewide momentum for cannabis legalization was growing, the Department of Justice issued guidance for federal prosecutors widely known as the “Cole Memo” that outlined both the Department’s enforcement priorities and that state and local law enforcement and regulation should “remain the primary means of addressing marijuana-related activity” when there is a strong and effective regulatory and enforcement system in place; and

WHEREAS, for 20 years, the City of Berkeley has permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely delivered medicine to patients. These established businesses have not had a negative impact on the surrounding community or resulted in any increase in crime; and

WHEREAS, the City of Berkeley staff and local cannabis businesses have been working diligently since the passage of Proposition 64 to build upon the City’s robust regulatory and enforcement system for medicinal cannabis in preparation for statewide legal adult-use cannabis, a system that is designed to explicitly address the concerns in the Cole memo; and

WHEREAS, in June 2017 Governor Brown signed SB94 the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), wherein the State of California formally recognized adult-use cannabis cultivators, testing laboratories, distributors and retailers (dispensaries), as legally taxable entities; and

WHEREAS, as a result of Prop 64 and MAUCRSA the State of California could potentially generate \$1 Billion annually in tax revenue and \$100 million in savings; and

WHEREAS, the City of Berkeley will also generate significant tax revenue locally, with estimates of up to \$3 million dollars annually; and

WHEREAS, in January 2018, U.S. Attorney General Jeff Sessions presented a Memorandum on Marijuana Enforcement which rescinded previous guidelines, including those established by the Cole Memo, increasing confusion about the legal risk of cannabis-related activity in the State of California; and

WHEREAS, because marijuana is currently legal in some form in 28 states and the District of Columbia, this action represents an attack on cities where legal, safe, and highly

regulated recreational sale and use occurs, and the majority of states where the voters have made their voices heard; and

WHEREAS, prior activities of the Drug Enforcement Administration to shut down medical marijuana dispensaries and collectives by targeting their landlords and seizing their landlord's properties will have serious consequences if they are repeated and targeted at either the medical or adult-use cannabis industry; and

WHEREAS, increased federal enforcement may force established medical and adult-use cannabis-related businesses to close or move underground, impeding the development of a newly regulated market, and threatening public safety; and

WHEREAS, the economic impact to cities and the statewide economy would be significant with hundreds of existing workers statewide will lose well-paying jobs with benefits and the state and City of Berkeley will lose significant amounts of tax revenue; and

WHEREAS, it is fundamental that the City of Berkeley take a strong stance against threats by the Trump Administration to interfere with the right of the State of California to tax and regulate cannabis, and protect our patients and local economy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley is declared to be a sanctuary for recreational cannabis customers, providers, and landlords.

BE IT FURTHER RESOLVED that no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal drug laws related to cannabis landlords, property owners, cultivators, distributors, retailers, laboratory testers, or customers who are operating within California state law and local ordinances.

BE IT FURTHER RESOLVED that the City of Berkeley does not support cooperation with the Drug Enforcement Administration in its efforts to undermine state and local marijuana laws, and further calls upon the Berkeley Police Department, the District Attorney for the County of Alameda, the Alameda County Sheriff's Department, and the Attorney General of the State of California to uphold the laws of the State, and specifically to not assist in the harassment, arrest or prosecution of cannabis landlords, owners, cultivators, distributors, retailers, laboratory testers, or customers who are licensed and attempting to comply with MAUCRSA and local laws and regulations.

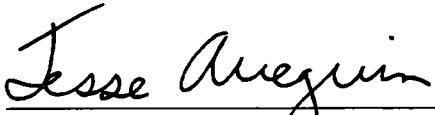
BE IT FURTHER RESOLVED that the City Attorney shall transmit copies of this Resolution to the California Attorney General, the Governor of California, and to Senators Dianne Feinstein and Kamala Harris and U.S. Representative Barbara Lee.

The foregoing Resolution was adopted by the Berkeley City Council on February 13, 2018 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk



Office of the Mayor

CONSENT CALENDAR

February 19, 2019

To: Honorable Members of the City Council
 From: Mayor Jesse Arreguín, Councilmembers Sophie Hahn, Cheryl Davila and Kate Harrison
 Subject: Declaring a California Homelessness State of Emergency

RECOMMENDATION

Adopt a Resolution requesting that Governor Newsom declare a California Homelessness State of Emergency, and direct more resources to State Departments (e.g. Caltrans). Send a copy of the Resolution to Governor Newsom, Congresswoman Barbara Lee, State Senator Nancy Skinner, State Assemblymember Buffy Wicks, State Superintendent of Public Education Tony Thurmond and Caltrans District Director Tony Tavares.

BACKGROUND

Like many cities in California, Berkeley is facing a crisis, with homelessness rising by 17% between 2015 and 2017. Currently, approximately 1000 individuals experience homelessness every day, with almost 70% (664) unsheltered.¹

While homelessness has long been a challenge, increases in the scope and duration of homelessness have provided a new sense of urgency. In 2016, Berkeley declared a Homeless Shelter Crisis (Resolution No. 67,357-N.S.), which allowed the City to explore a wide variety of response options to address the crisis, and to remove obstacles to their implementation. This declaration was extended to January 19, 2018, and again to January 19, 2020.² Since then, the City has taken steps to quickly strengthen existing programs, services and facilities, while developing new ones. Berkeley voters also passed ballot measures in 2018 that will provide \$135M for affordable housing and approximately \$6M in resources annually to support homeless resources.

Despite continued efforts to address this crisis, resources continue to fall short of needs. Even with the addition of resources allocated through Governor Newsom's 2019 Budget and from Alameda County, Berkeley is not able to shelter all who are living on our streets from night to night, or meet the complex and costly challenges of providing health and mental health services, job training, housing counselling and other services. As a result, encampments continue to proliferate and grow creating a health crisis for those residing there and for the community at large.

Homelessness is not unique to Berkeley; it is a regional and statewide crisis that knows few jurisdictional boundaries. Cities and counties across California are also struggling to meet the

¹ https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx

² https://www.cityofberkeley.info/Clerk/City_Council/2017/10_Oct/Documents/2017-10-31_Item_10_Extension_of_Housing_Crisis_-_Rev_2.aspx

housing and service needs of homeless individuals. In 2017, homelessness rose nearly 14% in California³ and by only 1% nationally.⁴ California also accounts for a disproportionate share of the nation's homeless, with 12% of the total US population and 22% of the homeless. Also, a much higher rate of California's homeless are unsheltered; 68% compared to a national average of 24%.⁵

A May 12, 2018 San Francisco Chronicle Opinion piece⁶ entitled, "The Bay Area's Housing Crisis Has Become an Emergency," clearly identifies our State's predicament as an *emergency*. It calls attention to California's crisis of homelessness, reporting that fewer and fewer low-income Californians are able to afford the basic cost of living, and asserting that efforts to provide housing for lower-income residents cannot succeed without state support.

California is facing an emergency unprecedented in scope and impact. Cities and counties cannot address this crisis without emergency resources and support from the State, in all of its departments. Section 8558 of Title 2, Division 1, Chapter 7 of the California Government Code, defines a State of Emergency as:

*"the duly proclaimed existence of conditions of ... extreme peril to the safety of persons and property within the state caused by ... conditions ... which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat"*⁷

The homeless crisis is creating a statewide health and safety crisis. Conditions have reached a magnitude such that they are beyond the control of the services, personnel, equipment and facilities available within our city and county governments and school districts. Our public right-of-ways, highway over and underpasses, railway lines and other lands are burgeoning with homeless. These encampment communities are outside of local control and must be serviced with sanitary facilities and waste removal.

For these reasons, we must call upon Governor Newsom to declare a Homelessness State of Emergency and to make additional State resources available to address the crisis of homelessness, especially in the encampments that occupy State controlled properties.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental opportunities or risks associated with this recommendation.

CONTACT PERSON

Mayor Jesse Arreguin, (510) 981-7100

ATTACHMENTS

1. Resolution

3 <https://www.sfchronicle.com/opinion/editorials/article/Editorial-The-Bay-Area-s-housing-crisis-has-12908782.php?t=b56c5082c0>

4 <http://www.vhcorp.org/wp-content/uploads/2017/06/2017-Homeless-Count-Results.pdf>

5 https://www.urban.org/sites/default/files/publication/96506/final_report_and_recommendations_on_homelessness_in_alameda_county_california_0.pdf

6 <https://www.sfchronicle.com/opinion/editorials/article/Editorial-The-Bay-Area-s-housing-crisis-has-12908782.php?t=b56c5082c0>

7 http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=8558

RESOLUTION NO. ##, ###-N.S.
CALLING ON GOVERNOR NEWSOM TO DECLARE A CALIFORNIA HOMELESSNESS STATE
OF EMERGENCY

WHEREAS, Berkeley is facing an emergency, with homelessness rising by 17% between 2015 and 2017; and

WHEREAS, approximately 1000 individuals experience homelessness every day in Berkeley, with almost 70% unsheltered, many living in encampments; and

WHEREAS, the 2019 Point In Time Homeless Count results are pending and the expectation is that the number of people homeless will increase; and

WHEREAS, increases in the scope and duration of homelessness in Berkeley, and throughout the State of California, have provided a new sense of urgency to address the crisis; and

WHEREAS, in 2016, Berkeley declared a Homeless Shelter Crisis (Res. No. 67,357-N.S.), which allowed the City to explore a wide variety of response options to address the crisis, and to remove obstacles to their implementation, recently extending the crisis until January 19th, 2020 (Res. No. 68,206-N.S.); and

WHEREAS, the State of California required jurisdictions to declare a Homeless Shelter Crisis in order to access HEAP funding; and

WHEREAS, even with the addition of new State of California and Alameda County resources, Berkeley is unable to shelter all of its homeless residents, or to meet the complex and costly challenges of providing affordable housing, health and mental health services, job training, housing counselling and other desperately needed services to those in need; and

WHEREAS, homelessness is a regional and statewide crisis that not one city, county, or school district is able to solve on its own, and jurisdictions across the State are struggling to meet the housing and service needs of the homeless; and

WHEREAS, encampment communities are proliferating in our public right-of-ways, highway over and underpasses, railway lines and other lands homelessness; and

WHEREAS, cities and counties cannot address the homeless crisis without emergency funding and support from the State and all of its departments (e.g. Caltrans) in order to mitigate the rising health and safety issues that arise from people living on our streets and in encampments.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley does hereby call upon Governor Gavin Newsom to exercise his executive power to declare a California Homelessness State of Emergency, and to direct resources and State Departments to support the State's overwhelmed cities and counties.

BE IT FURTHER RESOLVED that the City Clerk shall transmit copies of this resolution to Governor Gavin Newsom, Congresswoman Barbara Lee, State Senator Nancy Skinner, State Assemblymember Buffy Wicks, State Superintendent of Public Education Tony Thurmond, and Caltrans District Director Tony Tavares.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
February 19th, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison and Rigel Robinson

Subject: Update BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation

RECOMMENDATION

Adopt first reading of an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner occupied projects by modifying property lines so that no lot is large enough to construct five or more units. Adopt an updated resolution pursuant to BMC 22.20.065 (Affordable Housing Mitigation Fee) addressing the same issue for rental projects.

BACKGROUND

A key strategy in Berkeley's effort to develop affordable housing requires that new housing construction include a portion of below market rate units. This requirement can be found in BMC Chapter 23C.12 (Inclusionary Housing Requirements) and BMC Section 22.20.065 (the Affordable Housing Mitigation Fee, or AHMF, Ordinance). The Inclusionary Housing Requirements section covers owner-occupied housing, while the AHMF Ordinance covers rented housing. The AHMF Ordinance for rental housing also provides for the Council to enact an enabling resolution to set the level of the fee and "additional limitations" on the application of the fee.

The Inclusionary Housing Requirements section mandates inclusionary affordable housing in owner-occupied projects if they either 1) result in the construction of five or more new dwelling units, 2) result in the construction of fewer than five new units if they are added to an existing one- to four-unit property developed after August 14, 1986, and increase the total number of units to more than five, or 3) are built on lots whose size and zoning designation would allow construction of five or more dwelling units. Developers have exploited the ability to modify lot lines on contiguous properties they own so that no lot is big enough to include five or more units, thus avoiding any affordability requirement under condition 3.

The AHMF Enabling Resolution, meanwhile, covers only those projects that result in the construction of 5 or more new units of rental housing, regardless of whether the lot could fit more units or if the project is adding units to an existing building.

This item:

- Amends the Inclusionary Housing Requirements section to cover owner-occupied projects built on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units, regardless of how the property is divided.
- Amends the AHMF Enabling Resolution for rental housing to mirror the provisions of the Inclusionary Housing Requirements section regarding projects that add units to existing projects or are on property that could accommodate more than five units, including the amended language discussed above.

FISCAL IMPACTS OF RECOMMENDATION

May increase revenues to the Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

Increasing the supply of affordable housing in Berkeley may limit commute times and thus greenhouse gas emissions, in line with Berkeley's environmental goals.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

Attachments:

- 1: Ordinance
- 2: Resolution
- 3: Track Changes from Resolution No. 68,074-N.S

ORDINANCE NO. -N.S.

CLOSING MODIFIED PROPERTY LINE LOOPHOLE IN INCLUSIONARY HOUSING REQUIREMENTS

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

Section 1. That Berkeley Municipal Code Section 23C.12.020 is amended to read as follows:

23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter.

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

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

CHANGING THE AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 22.20.065; AND RESCINDING RESOLUTION NO. 68,074-N.S.

WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code Section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 authorizes the City Council to specify by resolution additional limitations not inconsistent-with section 22.20.065; and

WHEREAS, on June 27, 2017 the City adopted Resolution NO. 68,074, establishing the fee at \$37,000 per new unit of rental housing; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 and the Affordable Housing Mitigation fee both aim to address the need for below market rate housing and therefore should have parity in applicability;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
 - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units in such a property are subject to the requirements of this resolution;

- b) Residential housing projects proposed on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more units, regardless of how said property may be divided.
5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
7. No fee shall be assessed under the following circumstances.
 - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
 - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.

BE IT FURTHER RESOLVED that Resolution No. 68,074-N.S. is hereby rescinded.

Track Changes from Resolution No. 68,074-N.S

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
 - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units in such a property are subject to the requirements of this resolution;
 - b) Residential housing projects proposed on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more units, regardless of how said property may be divided.
- 4.5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
- 5.6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
- 6.7. No fee shall be assessed under the following circumstances.
 - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
 - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
- 7.8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
- 8.9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.



Lori Droste
Berkeley City Councilmember, District 8

CONSENT CALENDAR

February 19, 2019

To: Members of the City Council

From: Councilmember Lori Droste, Councilmember Ben Bartlett,
Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

Subject: Missing Middle Initiative

RECOMMENDATION

Refer to the City Manager an analysis and report of *potential* revisions to the zoning code to foster a broader range of housing types across Berkeley, particularly missing middle housing types (duplexes, triplex/fourplex, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.

Analysis should include, but is not limited to:

- Current zoning structure to identify where missing middle housing is optimal/should be permitted, excluding ES-R zones and other high-risk fire zones.
- Consideration of form-based zoning as a potential strategy¹
- Creation of incentives for building more than one unit on larger than average lots
- All sites under rezoning consideration should be subject to tenant protections, demolition controls, and no net loss provisions.

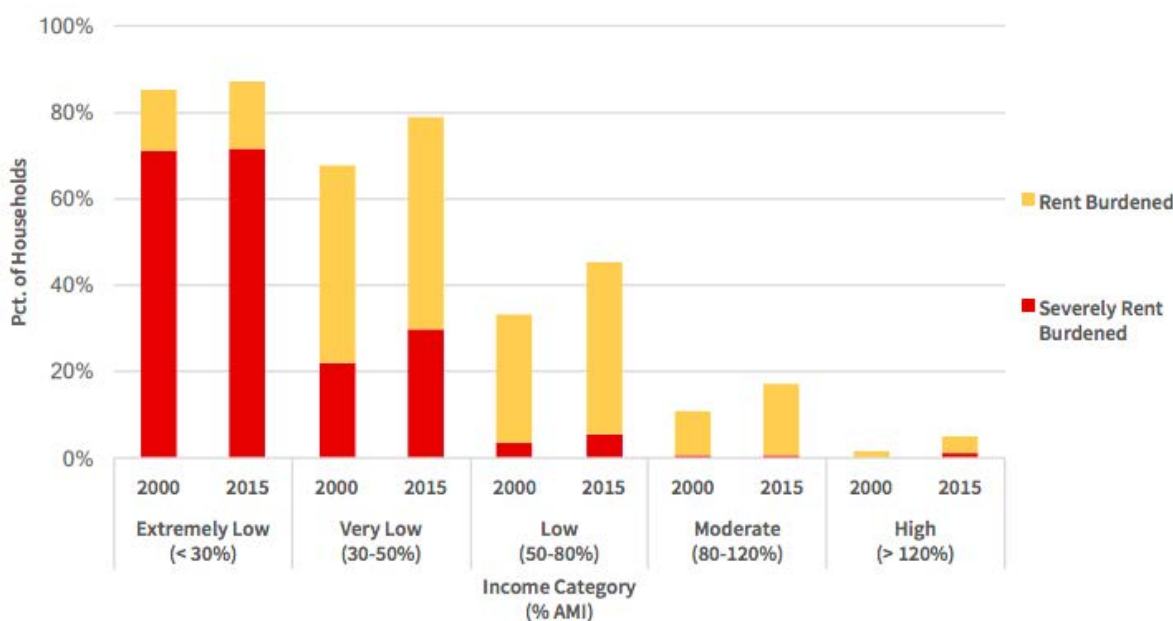
¹ <https://formbasedcodes.org/definition/>

CURRENT PROBLEM AND ITS EFFECTS

Berkeley is facing an enormous affordability and homelessness crisis.

Housing costs in the Bay Area exceed most places in the United States. The median home price in Berkeley is \$1.2 million while the average rent is over \$3,000/month.² The median home price in the United States is approximately \$223,900³ while the median rent is \$1,000.⁴ High housing costs are particularly challenging for lower income individuals, as they may have to spend a larger proportion of their income on housing, endure longer commutes, and live in crowded conditions.

Figure 3. Rising Rent Burdens by Household Income Category (2000-2015)



Source: IPUMS-USA, University of Minnesota, 2015

RISING HOUSING COSTS AND RE-SEGREGATION | ALAMEDA COUNTY

Recently, low-income households in Alameda County experienced the greatest increases in rent as a portion of their monthly income. According to the Urban Displacement Project, households are considered to have “rent burden” when their rent makes up more than a third of their income. In Alameda County, “Although rent burden increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far

² <https://www.zillow.com/berkeley-ca/home-values/>

³ <https://www.zillow.com/home-values/>

⁴ <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>

the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent.”⁵

High housing costs also lead to California having among the highest rates of poverty (~19%) in the nation.⁶ Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least sheltered homeless populations in North America. The proliferation of homeless encampments from select urban neighborhoods to locations across the region is the most visible manifestation of the Bay Area’s extreme housing affordability crisis. According to the most recent point-in-time count, Berkeley currently has approximately 972 individuals experiencing homelessness on any given single night. In order to help homeless individuals, the City needs to create more homes. Tighter housing markets are positively associated with higher rates of homelessness.⁷

BACKGROUND

Missing Middle

What is missing middle housing?

Missing middle housing is a term used interchangeably to describe homes that are:

1. a range of clustered or multi-unit housing types compatible in scale with single family homes⁸ or
2. accessible to those earning between 80-120% of the area median income

While this legislation aims to address the former, it conveniently addresses the need for less expensive housing that is accessible to those earning median, middle, or low-incomes as well since more homes will be available to those who cannot afford a single family home. Currently, the median price of a single family home in Berkeley is 1.2 million dollars, which is out of reach for many people.

Currently, approximately half of Berkeley’s housing stock consists of single family units.⁹

⁵ http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf

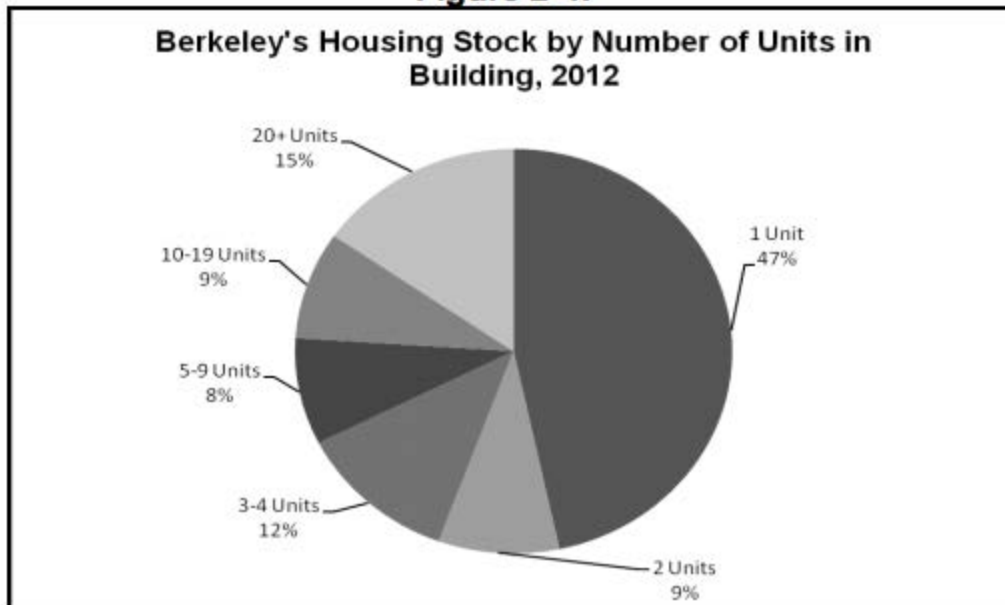
⁶ The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

⁷ https://urbanpolicy.berkeley.edu/pdf/grs_restat01pb.pdf

⁸ <http://missingmiddlehousing.com/>

⁹ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf

Figure 2-4:



Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024

Missing middle housing includes duplexes, triplexes, courtyard apartments, bungalow courts, and multiplexes that often house people with a variety of incomes. These housing types generally have small- to medium-sized footprints (up to 36' tall) so they can blend into the existing neighborhood while encouraging a mix of socioeconomic households.

Previous research on missing middle housing identifies potential challenges that can inform this legislation and analysis. One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources (including the competitive funding) required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the bulk per-unit development rate.”¹⁰ Additionally, the study found that other factors that may prevent the creation of missing middle housing include onerous lot coverage ratios and excessive setback and parking requirements.¹¹ Further analysis is necessary to determine possible barriers to building missing middle housing in Berkeley.

¹⁰ http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf

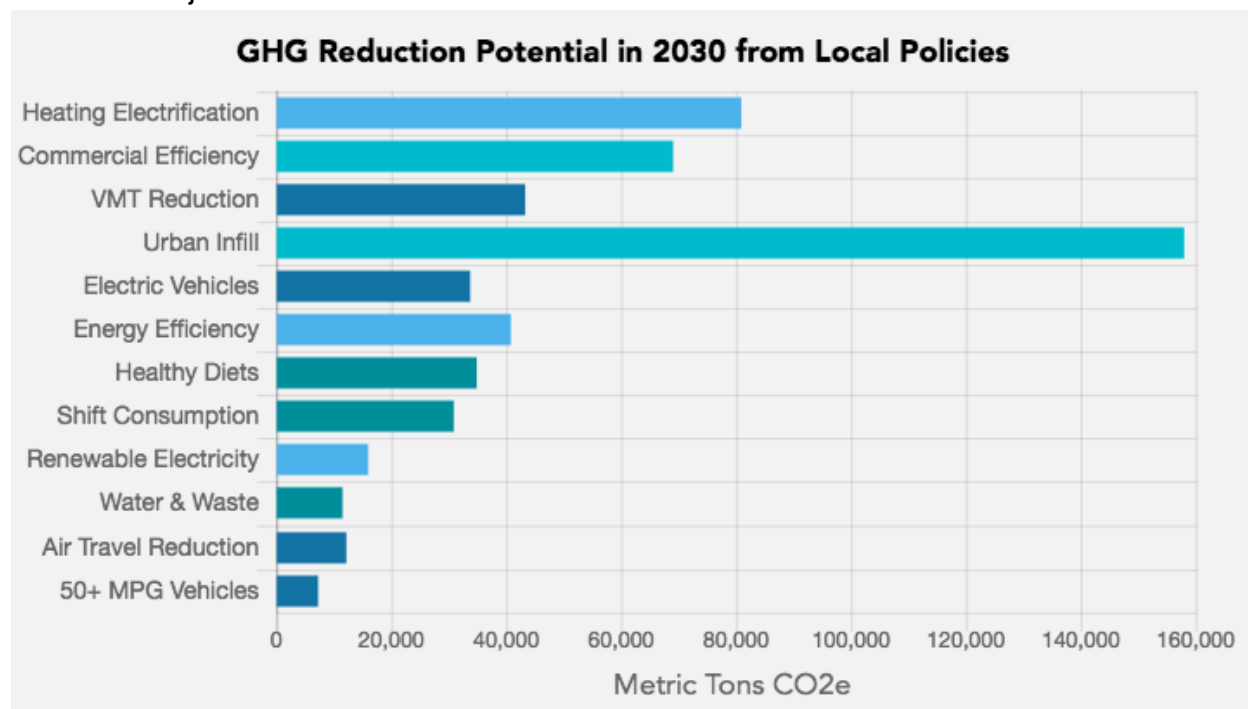
¹¹ http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf

FINANCIAL IMPLICATIONS

Staffing costs to oversee analysis and produce the report.

ENVIRONMENTAL SUSTAINABILITY

Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”¹² The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



CONTACT PERSON:

Lori Droste, 510-981-7180

ATTACHMENTS

Minneapolis Plan:

¹² <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

<https://minneapolis2040.com/policies/>

Seattle Plan:

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>



Mental Health Commission

INFORMATION CALENDAR

February 19, 2019

To: Honorable Mayor and Members of the City Council
 From: Mental Health Commission
 Submitted by: boona cheema, Chairperson, Mental Health Commission
 Subject: Mental Health Commission 2018/2019 Work Plan

INTRODUCTION

The Mental Health Commission is submitting the 2018/2019 Work Plan which was adopted by the Commission on April 26th 2018.

CURRENT SITUATION AND ITS EFFECTS

In 2016 the City Council created a requirement for the submission of annual work plans. The commission created its first work plan which was adopted on April 26th, 2018.

M/S/C (Fine, Ortiz) Adopt the 2018 Work Plan: Ayes: Castro, cheema, Kealoha-Blake, Ludke, Marasovic, Ortiz, Posey: Noes: None Absent: Davila, Heda.

Berkeley Mental Health is well funded and when fully staffed has the ability to serve its mandated consumers. The partnership with the commission will assure that the services provided continue to improve and reach more underserved populations in the city.

BACKGROUND

This is the first time that this commission has developed a work plan, the process itself brought out the best in the commission's talents and skills. We then created the following working committees: Accountability, Diversity, Site Visit, and By-Laws.

The committees are meeting on a monthly basis and moving forward with making recommendations to BMH on a regular basis. If and when needed we will submit recommendations to the City Council for action. All the committees are working hard towards accomplishing the goals set forth in the plan.

ENVIRONMENTAL SUSTAINABILITY

We do not expect any action related to this section.

POSSIBLE FUTURE ACTION

When appropriate we will send recommendations to the City Council for action. We will also submit our annual report in early 2019 which will include the progress on we are making in meeting our goals.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

We do not expect that there will be a financial impact upon the city to accomplish our goals, however we might recommend changes within the existing allocations in the budget of the Berkeley Mental Health Division.

CONTACT PERSON

Karen Klatt, Commission Secretary, HHCS, (510) 981-7644

Attachments:

1: Mental Health Commission 2018/2019 Work Plan

Attachment 1: Mental Health Commission for the Cities of Berkeley and Albany

WORK PLAN 2018—May 1, 2018 to May 31 2019

MISSION and VISION:

1. We aim to address the mental health crisis in our community where a large number of unsheltered people are unserved, underserved and/or inappropriately served by public government systems.
2. We aim to ensure that a diversity of people—including people of color, children, families, youth, the LGBTQ community, and seniors—receive mental health interventions and services that are respectful and tailored to their mental health needs.
3. Through our work, we aim to strengthen the core values/guiding principles of 1) wellness, recovery and resilience-oriented models; 2) community collaboration; 3) systems development and integration among BMH, CBOs and other entities; 4) cultural competency; and 5) consumer and family-driven services.

Action Steps	Timeline	Expected Outcome	Person Responsible	Progress Notes
<p>Memorialize</p> <ul style="list-style-type: none"> • A great deal of knowledge exists in the system, amongst stakeholders, providers, consumers, volunteers, and the larger community about the public mental health system for the Cities of Berkeley and Albany. <p>Data Collection</p> <ul style="list-style-type: none"> • The Mental Health Commission will approach BMH, CBOs, stakeholders, consumers, including unsheltered people in encampments and other 		<p>Make recommendations to Berkeley Mental Health and the Berkeley City Council regarding the public mental health system for the Cities of Berkeley and Albany regarding the status of unsheltered people with mental illness and recommendations regarding the resources needed to improve the quality of their lives.</p>	<p>boona cheema Shirley Posey Carole Marasovic Paul Kealoha-Blake</p>	

<p>locations who live with mental illness to gather information.</p> <ul style="list-style-type: none"> • Through conversations, meetings and written materials, the Mental Health Commission will collect and review this information. The Mental Health Commission will also request additional information to make recommendations to BMH and the BCC. • The Mental Health Commission will create reports memorializing conversations with people with mental illness and others to contribute their information to meet this goal. 				
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<p>GOAL TWO:</p> <ul style="list-style-type: none"> • Ensure a diversity of people, including people of color, youth, LGBTQ and seniors, have access to culturally competent (respectful and tailored) mental health interventions and services from the public mental health care system for the Cities of Berkeley and Albany. • Ensure BMH and CBOS bring awareness and visibility about mental health to a diversity of groups and the larger community to reduce stigma and discrimination. 				
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Action Steps	Timeline	Expected Outcome	Persons responsible	Progress
<p>General Diversity Assessment</p> <ul style="list-style-type: none"> • Request documentation, reports and any evaluations which show that this goal is being met. 		<p>Increased knowledge of BMH and CBO capacity and identify gaps.</p>	<p>Erlida Castro Margaret Fine Ben Ludsky</p>	

<ul style="list-style-type: none"> • Meet with the current Diversity and Multicultural Program staff and participate on the BMH Committee related to it. • Review materials being used in trainings and workshops. • Assess the efforts BMH and contracted CBO's efforts in reducing discrimination and stigma. 		<p>To write a written report with recommendations.</p>		
<p>Diversity Strategy</p> <ul style="list-style-type: none"> • Work with BMH and CBOs to strengthen and deepen serving a diversity of people according to best practices for the delivery of mental health interventions and services (process oriented strategies by CalMHSA) • Ask CalMHSA about effectively, empathetically using materials in client context. • Ensure that materials are available in medical and mental health waiting rooms and in visible locations at CBOs and other important entities serving a diversity of people and the larger community. <p>CalMHSA – Technology INN:</p> <ul style="list-style-type: none"> • Participate in developing the BMH INN plan for \$400,000 expenditures in joint 		<p>To ensure that a diversity of groups feel welcome and have a sense of belonging when interacting with BMH and CBOs both within and outside the organizations.</p>		

<p>agreement with CalMHSA to provide effective, empathetic technology innovations to BMH. Ensure these innovations are culturally competent (respectful and tailored) to meet the needs of a diversity of groups using them.</p> <ul style="list-style-type: none"> • Seek technology to provide a range of mental health resources available on an app for a diversity of persons to have expedient access to information about resources. 				
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GOAL THREE: Build a Strong Partnership with BMH, the CBOs, the Community and Consumers, local government, and other stakeholders.

<ul style="list-style-type: none"> • Appoint an individual Commissioner to each of the internal BMH Committees • Each Commissioner attends regular meetings and makes status reports to the MHC. • Invite BMH staff to Commission meetings • Invite CBO's to present to commission 		<p>Ensuring a diversity of groups are represented on internal BMH committees and report to MHC about the status of the committees.</p> <p>Build deeper understanding of current programs, quality and depth of service so we make recommendations which are fully informed.</p>	<p>Vylma Ortiz boona cheema</p>	
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GOAL FOUR: Assess financial accountability of Berkeley Mental Health and related CBOs.

Action Steps	Timeline	Expected Outcome	Persons responsible	Progress
<ul style="list-style-type: none"> • Identify all existing BMH documents pertaining to financial accountability. • Request these documents from BMH. • Review and analyze the documentation. • Gather relevant research regarding financial evaluation, particularly regarding MHSA and related programs 		<p>To provide analysis/oversight to the Berkeley City Council about the use of government and other funding for the public mental health system for the Cities of Berkeley and Albany.</p>	<p>Margaret Fine Cheryl Davilla boona cheema</p>	

GOAL FIVE: Review and assess program needs, services, facilities, including challenges and any problems and make recommendations.

Action Steps	Timeline	Expected Outcome	Persons responsible	Progress
<ul style="list-style-type: none"> • Obtain documentation needed from BMH and CBOs to review and assess programs 		<p>To provide analysis/oversight to the Berkeley City Council about the use of government program resources for the public mental health system for the Cities of Berkeley and Albany. Synthesize information and write report re: information collected for Berkeley City Council.</p> <p>Make recommendations that include identified strategies & resources needed to improve the</p>	<p>Same as above</p>	

		public mental health system for the Cities of Berkeley and Albany.		
<ul style="list-style-type: none"> • Further obtain outcomes data to assess programs. 		See above.		
<ul style="list-style-type: none"> • Confirm BMH and CBOs have implemented performance evaluation to measure program effectiveness. • Gather relevant research regarding program evaluation, particularly regarding MHSA and related programs 		See above.		
<ul style="list-style-type: none"> • Write MHC Report with Recommendations for Berkeley City Council. 				

GOAL Six: Make site visits to Berkeley Mental Health programs, as well as to CBO programs which provide mental health services in Berkeley and Albany with, to become more informed and familiar with the continuum of interventions and services. Meet with staff and consumers of these services

Action Steps	Timeline	Expected Outcome	Persons responsible	Progress
<ul style="list-style-type: none"> • Create clear purpose and develop protocols for site visits. 		An integrated approach to service delivery. Streamline the provision of a continuum of services.	Erlinda Paul Carole Shirly	
<ul style="list-style-type: none"> • Identify documentation needed and review that before the site visits, including contracts. 				

<ul style="list-style-type: none"> Undertake site visits. 					
<p>GOAL SEVEN: Submit Annual Report 2018 to the Berkeley City Council.</p>					
Key Action Steps	Timeline	Expected Outcome		Person Responsible	Comments
<ul style="list-style-type: none"> Write Annual Report 2018 Submit Annual Report to Mental Health Commission Obtain Approval by Mental Health Commission to Submit to the Berkeley City Council Submit to the Berkeley City Council 		<p>To inform the BCC on the continuous work of the BAMHC</p>			
<p>GOAL EIGHT: Stay current and disseminate information on evidence-based best practices used and related developments regarding public mental health systems for inventions and services.</p>					
Key Action Steps	Timeline	Expected Outcome		Person Responsible	Comments
<ul style="list-style-type: none"> Research WHO and related mental health organizations that set domestic and/or universal evidence-based best practices for the delivery of public mental health systems. 		<p>Learn from and apply appropriate strategies.</p>			
<p>GOAL NINE: Increase Public Education on Mental Health and Wellness, particularly to reduce stigma and discrimination.</p>					
Key Action Steps	Timeline	Expected Outcome		Person Responsible	Comments
<ul style="list-style-type: none"> Hold Signature Event 	<p>May 2019 in May is Mental Health Month</p>	<p>Public Education</p>		<p>Full Commission and all Stakeholders</p>	

Upcoming Workshops – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
Feb 5	<ol style="list-style-type: none"> 1. Pedestrian Master Plan Update 2. OED Update 3. Wildfire Risk Reduction and Planning
March 19	<ol style="list-style-type: none"> 1. FY 2020 – FY 2021 Budget Update 2. Crime Report 3. Qualified Opportunity Zones
May 7	<ol style="list-style-type: none"> 1. Proposed FY 2020 – FY 2021 Budget 2. Zero Waste Rate Review 3. Bond Disclosure Training
June 18	<ol style="list-style-type: none"> 1. Transfer Station Feasibility Study 2. TBD
July 30 (tentative)	<ol style="list-style-type: none"> 1. TBD 2. TBD
Sept. 17	<ol style="list-style-type: none"> 1. Vision Zero Action Plan 2. TBD

Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. UC Berkeley Student Housing Plan 3. Green Stormwater Infrastructure

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> 1. Digital Strategic Plan/erma/Website Update (Information Report) 2. Measure T1 Project Prioritization (Action Calendar) 3. Parks, Recreation, and Waterfront CIP Update (Budget Presentation) 4. Public Works CIP Update (Budget Presentation) 5. AC Mosquito Abatement District (presentation by the District, March 12 - tentative)

	City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling
1.	<p>61a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley <i>(Referred from the July 24, 2018 agenda)</i> From: Housing Advisory Commission Recommendation: That the City Council not use U1 funds to backfill the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue, and 1925 Ninth Street, City of Berkeley. Financial Implications: See report Contact: Amy Davidson, Commission Secretary, 981-5400</p> <p>61b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley <i>(Referred from the July 24, 2018 agenda)</i> From: City Manager Recommendation: Accept staff's recommendation to use \$4,730,815 of Measure U1 revenue over a 5 year period (\$946,163 annually) to repay the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley. Financial Implications: See report Contact: Dee Williams-Ridley, City Manager, 981-7000</p>
2.	<p>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city's short-term rental ordinance <i>(Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.)</i> From: Councilmember Worthington Recommendation: Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties. Financial Implications: Minimal Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>
3.	<p>4. Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street <i>(Referred from the September 25, 2018 agenda)</i> From: City Manager Recommendation: 1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City's Housing Trust Fund (HTF). 2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale. Financial Implications: See report Contact: Kelly Wallace, Housing and Community Services, 981-5400</p>

CITY CLERK DEPARTMENT				
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL				
Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
2418 Acton St (new single-family residence)	ZAB	2/12/2019		
2009 Addison St (modification of Use Permit - Berkeley Rep)	ZAB	2/12/2019		
1444 Fifth St (construct four single-family dwellings)	ZAB	2/12/2019		
2016 Shattuck Ave (Lucia's Pizzeria)	ZAB	2/12/2019		
2628 Shattuck Ave (construct mixed-use building)	ZAB	2/12/2019		
Public Hearings Scheduled				
2190 Shattuck Ave (Shattuck Terrace Green Apartments)	ZAB			1/31/2019
2701 Shattuck Ave (construct 5-story mixed-use building)	ZAB			3/12/2019
1722 Walnut St (permit a ninth dwelling unit)	ZAB			3/26/2019
Remanded to ZAB or LPC				
1155-73 Hearst Ave (develop two parcels)	ZAB			
Notes				

Last Updated: 1/30/2019



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR
January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila and Ben Bartlett

Subject: Adopt a resolution to denounce and oppose white nationalist and neo-Nazi groups including their actions.

RECOMMENDATION

Adopt a resolution denouncing and opposing, in words and actions, white nationalist and neo-Nazi groups including their actions in the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

No general fund impact.

ENVIRONMENTAL SUSTAINABILITY

No ecological impact. Supports an environment in which all people's dignity, rights and civil liberties are protected and defended regardless of race, ethnicity, national origin, religious affiliation, kinship, belief, or practice, gender, sexuality or ability and where people most targeted by prejudice can be free from hate speech that questions their humanity and status as equal human beings.

BACKGROUND

According to the Southern Poverty Law Center, "white nationalist groups espouse white supremacist or white separatist ideologies, often focusing on the alleged inferiority of nonwhites. Groups listed in a variety of other categories - Ku Klux Klan, neo-Confederate, neo-Nazi, racist skinhead, and Christian Identity - could also be fairly described as white nationalist."¹

As documented in the November 3, 2018 cover article of the New York Times Magazine, since 9/11, U.S. counter-terrorism policy has focused almost entirely on

¹ Southern Poverty Law Center: <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist>.

combating American and foreign-born “jihadists,” failing to recognize the growing threat of far-right extremism. This has contributed to widespread vigilante attacks on, government surveillance and repression of, and sweeping policies that discriminate against Muslim, Arab and South Asian communities. Meanwhile, it has failed to address the growing threat and presence of white nationalists and neo-Nazis across the U.S.²

As Janet Reitman’s article documents, according to the data, far-right extremists have killed more people since 9/11 than any other category of domestic terrorism. According to the Anti-Defamation League, “71% of extremist-related deaths between 2008 and 2017 were committed by members of a far-right movement, while Islamic extremists were responsible for 26%.” Meanwhile, “between 2002 and 2017, the U.S. spent \$2.8 trillion on counterterrorism. In that time frame, terrorist attacks by Muslim extremists killed 100 people in the U.S. Between 2008 and 2017, meanwhile, domestic extremists killed 387 people.”³

Researchers at the University of Maryland published a report in 2017 showing an increase in attacks by right-wing extremists, from 6% in the 2000s to 35% in the 2010s. Quartz further confirmed that the trend persisted in 2017, when most attacks in the U.S. were committed by right-wing extremists. Out of 65 incidents last year, 37 were explicitly motivated by racist, anti-Muslim, homo/transphobic, anti-Semitic, fascist, anti-government, or xenophobic ideology.⁴

Reitman concludes, “These statistics belie the strident rhetoric around ‘foreign-born’ terrorists that the Trump administration has used to drive its anti-immigration agenda.” Similar conclusions were reached by The Brennan Center for Justice at NYU School of Law. Their report, *Wrong Priorities on Fighting Terrorism*, warns, “Some in the Justice Department are calling for new laws to fight domestic terrorism. But existing laws provide plenty of authority to prevent, investigate, and prosecute attacks. And passing new ones could worsen existing racial and religious disparities in who the government targets. Instead, we need a smarter approach that ensures resources are directed toward the deadliest terrorist threats. And we need to evaluate those threats based on objective evaluations of potential harm, not political considerations that prioritize some communities over others.”⁵

² Reitman, Janet. U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don’t Know How to Stop It. *New York Times Magazine*. November 3, 2018. <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.

³ Ibid

⁴ Romero, Luiz. US terror attacks are increasingly motivated by right-wing views. *Quartz*. October 24, 2018. <https://qz.com/1435885/data-shows-more-us-terror-attacks-by-right-wing-and-religious-extremists/>.

⁵ German, Michael and Sara Robinson. *Wrong Priorities on Fighting Terrorism*. *The Brennan Center for Justice*. October 31, 2018. <https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism>.

The report documents the ways in which while right-wing acts of mass violence are on the rise, the government is focused on an ideological war against Muslims and failing to address the rise of white nationalism and neo-Nazi threats despite the documented acts of violence they inspire and hateful goals of their activities. In addition, the report documents the decision of the Trump administration to not add white nationalist and neo-Nazi groups, both domestic and international, to the list of foreign or domestic terrorist organizations.⁶ Furthermore, it demonstrates that instead the federal government has consistently targeted social and environmental justice organizations over right-wing groups threatening and enacting mass violence.

As their report shows, in 2010, even the Justice Department criticized the FBI Joint Terrorism Task Force for a number of investigations of animal rights, peace, and social justice advocates for treating trespassing, nonviolent civil disobedience, and vandalism as “acts of terrorism.” Similarly, the report goes on to say, “in the weeks before the deadly Charlottesville, Virginia, “Unite the Right” rally, the FBI’s Domestic Terrorism Analysis Unit warned law enforcement that “Black Identity Extremists” posed a deadly threat, despite the fact that no such movement exists.”

Meanwhile, the Justice Department failed to bring federal charges after a series of violent far right riots around the country, in Sacramento, Anaheim, and Seattle – all before Charlottesville, left anti-racist counter-protesters stabbed, beaten, and shot.⁷ In contrast, under Trump, “federal prosecutors aggressively pursued more than 200 felony conspiracy cases against activists and journalists who attended a January 20, 2017, anti-Trump protest, where some in the crowd broke store windows and set a limousine on fire. After two trials of the first dozen activists ended with acquittals and the judge ruled prosecutors illegally withheld evidence from defense attorneys, the Justice Department dropped the remaining cases.”⁸

The report concludes that “there is reason to fear that new laws expanding the Justice Department’s counter-terrorism powers will not make Americans safer from terrorist violence. Instead, they may further entrench existing disparities in communities the government targets with its most aggressive tactics, with serious implications for Americans’ free speech, association, and equal protection rights. Treating civil disobedience and property crimes as “terrorism” diverts resources from more serious and deadly crimes and chills political activism.”⁹

⁶ Ibid, page 4.

⁷ Ibid, page 2.

⁸ Ibid, page 3.

⁹ Ibid, page 3.

We have seen this very dynamic play out in Berkeley. White nationalists and neo-Nazis in collaboration with a broader spectrum of extreme right-wing groups and individuals have been allowed to use public university spaces and gather with police protection while anti-racist activists faced arrests and public exposure. In keeping with our resolution of non-participation with the so-called “Muslim-ban” and threatened registry and support for Berkeley communities, residents, families, students and workers being targeted by both, as well as our commitment to ending the use of exposing those arrested at protests on social media and thereby exposing them to targeting by white nationalists, we need to denounce white nationalist and neo-Nazi groups and actions.

Increasingly, civil liberty organizations, law schools and anti-hate groups are recognizing that while free speech protects the rights of white nationalists and neo-Nazis to say some things, it does not protect their right to say anything nor to gather with the intent of inciting violence or hurling hate speech at individuals.¹⁰ Furthermore, organizations from the ACLU to the Center for Constitutional Rights to the National Lawyers Guild are engaging in questions about the valuing of “free speech” at the expense of other basic constitutional rights, particularly those most targeted by racist, xenophobic, sexist, homo/transphobic violence.¹¹

CONTACT PERSON

Cheryl Davila, Councilmember District 2 510.981.7120

ATTACHMENTS:

- 1: [U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don't Know How to Stop It.](#) New York Times Magazine, November 3, 2018.
- 2: [US terror attacks are increasingly motivated by right-wing views.](#) Quartz, October 24, 2018.
- 3: [Wrong Priorities on Fighting Terrorism.](#) The Brennan Center for Justice. October 31, 2018.
- 4: [The White Nationalists Are Winning: Fox News anchors and high-profile politicians are now openly pushing the racism of the alt-right. The fringe movement's messages have permeated the mainstream Republican Party.](#) The Atlantic. August 10, 2018.
- 5: [Democrats ask Trump administration for answers on rise of white nationalism in US.](#) CNN Politics. November 27, 2018.
- 6: Southern Poverty Law Center page on white nationalist hate groups:
<https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist>

¹⁰ Campbell, Alexia Fernandex. [The limits of free speech for white supremacists marching at Unite the Right 2, explained: The First Amendment doesn't protect targeted racial slurs that could spark violence.](#) Vox. Aug 12, 2018.

¹¹ Blasdel, Alex. [How the resurgence of white supremacy in the US sparked a war over free speech.](#) The Guardian. May 31, 2018.

7: [The limits of free speech for white supremacists marching at Unite the Right 2, explained: The First Amendment doesn't protect targeted racial slurs that could spark violence.](#) Vox. Aug 12, 2018.

8: [How the resurgence of white supremacy in the US sparked a war over free speech.](#) The Guardian. May 31, 2018.

9: [Powerful photo essay on the rise of white nationalism - Documenting the Rise of White Nationalism.](#) The New York Times. October 17, 2018.

10: Georgetown Institute for Constitutional Advocacy & Protection: Prohibiting Private Armies at Public Rallies: <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/04/Prohibiting-Private-Armies-at-Public-Rallies.pdf>.

RESOLUTION

CITY OF BERKELEY DENOUNCES AND OPPOSES WHITE NATIONALIST AND
NEO-NAZI GROUPS AND ACTIONS.

WHEREAS, throughout the course of U.S. history, white nationalism has promoted intimidation and violent repression of individuals solely on the basis of their race, ethnicity, religion and immigration status; and

WHEREAS, today, white nationalism has attempted to reinvent itself, self-identifying as the “Alt-Right,” yet their present day rhetoric and terrorism conjure painful memories of our nation’s past; and

WHEREAS, white nationalism and neo-Nazism seek to intensify racial animosities and inequities, further divide people in their shared interests in freedom, justice and humanity and foment hatred, classism, racism, xenophobia, anti-Muslim prejudice, antisemitism and ethnic eradication; and

WHEREAS, across the country there has been a rise in public expressions and violence by self-proclaimed white nationalists and neo-Nazis;¹² and

WHEREAS, 71% of extremist-related deaths between 2008 and 2017 were committed by members of a far-right movement and there has been an increase in attacks by right-wing extremists, from 6% in the 2000s to 35% in the 2010s;¹³ and

WHEREAS, out of 65 incidents in 2017, 37 were explicitly motivated by racist, anti-Muslim, homo/transphobic, anti-Semitic, fascist, or xenophobic ideology; ¹⁴ and

WHEREAS, while free speech and assembly are bedrock civil liberties, while nationalists and neo-Nazi groups promote agendas that are in irreconcilable conflict with other fundamental rights including liberty and justice for all; and

WHEREAS, the white nationalist and neo-Nazi messages of racial and social intolerance have led to senseless acts of violence that continue to terrorize members of ethnic, racial and religious communities; and

¹² Southern Poverty Law Center: <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist>.

¹³ Reitman, Janet. U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don’t Know How to Stop It. *New York Times Magazine*. November 3, 2018. <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.

¹⁴ Romero, Luiz. US terror attacks are increasingly motivated by right-wing views. *Quartz*. October 24, 2018. <https://qz.com/1435885/data-shows-more-us-terror-attacks-by-right-wing-and-religious-extremists/>.

WHEREAS, the federal government has failed to address the rising violence of white nationalists and instead focused its effort on a broad, sweeping attack against what is perceived as a foreign terrorist threat abroad and at home, despite the numbers showing double the attacks by the former over attacks by the later;^{15,16, 17} and

WHEREAS, recent tragic and terrorizing events in Berkeley, Charlottesville, Sacramento, Anaheim, Portland and Seattle have proven that white nationalists and neo-Nazis remain a very real threat to safety, humanity and racial justice.

NOW, THEREFORE BE IT RESOLVED that the City of Berkeley strongly denounces and opposes the fascistⁱ impulses, violent actions, xenophobic biases, and bigoted ideologies that are promoted by white nationalists and neo-Nazis; and

BE IT FURTHER RESOLVED that the City of Berkeley will not tolerate discrimination or hate in any form or manifestation and that we stand united with resolve to promote and continue to secure equality for all people.

ⁱ “The common elements of fascism — extreme nationalism, social Darwinism, the leadership principle, elitism, anti-liberalism, anti-egalitarianism, anti-democracy, intolerance, glorification of war, the supremacy of the state and anti-intellectualism — together form a rather loose doctrine.” Ian Adams, [Political Ideology Today](#).

¹⁵ Reitman, Janet. U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don't Know How to Stop It. *New York Times Magazine*. November 3, 2018. <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.

¹⁶ German, Michael and Sara Robinson. Wrong Priorities on Fighting Terrorism. *The Brennan Center for Justice*. October 31, 2018. <https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism>.

¹⁷ [Democrats ask Trump administration for answers on rise of white nationalism in US](#). CNN Politics. November 27, 2018.

APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda Committee to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
 - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
 - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
 - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
 - d. Fiscal impacts of the recommendation;
 - e. A description of the current situation and its effects;
 - f. Background information as needed;
 - g. Rationale for recommendation;
 - h. Alternative actions considered;
 - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
 - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

1. **Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

2. **Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

3. **Recommendation**

Clear, succinct statement of action(s). Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action
- Refer to a Council policy committee

4. Summary Statement/ “Current situation and its effects”

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):
Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.

5. Background

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

6. Review of Existing Plans, Programs, Policies and Laws

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
 - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
 - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?
- If an ordinance is to be adopted the City Attorney should be consulted as to form and legality.

9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented, but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

10. Implementation, Administration and Enforcement

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

11. Environmental Sustainability

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

12. Fiscal Impacts

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs and potential sources of funding.

13. Outcomes and Evaluation

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

14. Contact Information

15. Attachments/Supporting Materials

