



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

**MONDAY, NOVEMBER 25, 2019  
2:30 P.M.**

2180 Milvia Street, 6<sup>th</sup> Floor, Berkeley, CA – 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: November 18, 2019**
2. **Review and Approve Draft Agendas:**
  - a. 12/10/19 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory**

**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. Discussion of Potential Revisions to the City Council Rules of Procedure and Order

### Items for Future Agendas

- Discussion of items to be added to future agendas

### Adjournment – Next Meeting Monday, January 6, 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.*

*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. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 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 (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

\* \* \*

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 the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 21, 2019.



Mark Numainville, City Clerk

## **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.*



## BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

**MONDAY, NOVEMBER 18, 2019**

**2:30 P.M.**

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

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

**Roll Call:** 2:32 p.m. All present.

**Public Comment** – 2 speakers

### Review of Agendas

**1. Approval of Minutes: November 4, 2019**

**Action:** M/S/C (Wengraf/Harrison) to approve the 11/4/19 Minutes.

**Vote:** All Ayes.

**2. Review and Approve Draft Agendas:**

a. 12/3/19 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Wengraf/Arreguin) to request that the author of Item 26 amend the item to be a standard referral to the City Manager.

**Vote:** All Ayes.

**Action:** M/S/C (Wengraf/Arreguin) to request that the author of Item 27 amend the item to be a standard referral to the City Manager.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Wengraf) to request that the author of Item 28 amend the item to remove recommendation #2.

**Vote:** All Ayes.

**Action:** M/S/C (Wengraf/Harrison) to approve the agenda for the 12/3/19 meeting with the changes noted below.

- *Ceremonial Items – BHS Girls Tennis, NAACP Youth, Starry Plough*
- *Item Added – Surveillance Ordinance Report*
- *Item 7 Doubletree Lease (City Manager) – Scheduled to 12/10/19*
- *Item 8 200 Seawall Lease (City Manager) – Scheduled to 1/21/19*
- *Item 14 ANWR Resolution (Arreguin) – Councilmembers Wengraf and Davila added as co-sponsors*
- *Item 16 Library Foundation (Hahn) Mayor Arreguin and Councilmembers Wengraf and Davila added as co-sponsors*

- *Item 20 Standby Officers (City Manager) – Moved to Consent Calendar*
- *Item 25 Mosquito District Appointment (Arreguin) – Moved to Consent Calendar*
- *Item 26 Climate Emergency Department (Davila) – Revision requested; Referred to Facilities Committee*
- *Item 27 Vehicle Sales (Davila) – Revision requested; Referred to Facilities Committee*
- *Item 28 Coal and Petcoke (Davila) – Revision requested; Councilmember Harrison added as a co-sponsor; Moved to Consent Calendar*
- *Item 29 CPUC (Robinson) – Moved to Consent Calendar*

**Vote:** All Ayes.

Order of Action Calendar Items

- Item 17 Fire Code
- Item 18 Building Code
- Item 19 Milvia Bikeway
- Surveillance Report
- Item 21 Safe Passages
- Item 22a/b Taxi Scripts
- Item 23a/b Paving Plan
- Item 24 Street Paving

- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**  
- No item selected
- 4. Adjournments In Memory - None**

**Scheduling**

- 5. Council Worksessions Schedule**  
**Action:** Scheduled Vision 2050 for January 14, 2020
- 6. Council Referrals to Agenda Committee for Scheduling**  
**Action:** M/S/C (Arreguin/Harrison) to take no action on Item 1 regarding U1 Funds.  
**Vote:** All Ayes.
- 7. Land Use Calendar – received and filed**

**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. Discussion of Potential Revisions to the City Council Rules of Procedure and Order**

**Action:** No action taken.

## **9. Discussion of the Number of Members Appointed to Each Policy Committee**

**Action:** M/S/C (Wengraf/Harrison) to recommend to the City Council that the Rules of Procedure be amended to provide that the Mayor shall be a member of three policy committees: the Agenda & Rules Committee (3 members), the Budget & Finance Committee (4 members), and one other Committee (3 members); and that the Budget & Finance Committee shall not have an alternate committee member.

**Vote:** All Ayes.

## **Items for Future Agendas**

- **Discussion of items to be added to future agendas - None**

## **Adjournment – Next Meeting Monday, November 25, 2019**

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

**Vote:** All Ayes.

Adjourned at 3:23 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on November 18, 2019.

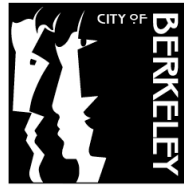
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Mark Numainville  
City Clerk





## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, December 10, 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, (510) 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. Minutes for Approval

**From: City Manager**

**Recommendation:** Approve the minutes for the Council meetings of November 5, 2019 (special), November 12, 2019 (special and regular), and November 19, 2019 (special closed and regular).

**Financial Implications:** None

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

### 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 10, 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 - \$2,913,252

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

## Consent Calendar

- 3. Contract: First Alarm Security & Patrol, Inc. for Citywide Security Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with First Alarm Security & Patrol, Inc. dba First Security Services to provide unarmed security guard staffing services at various City locations and facilities in an amount not to exceed \$2,100,000 for 36-months commencing on or about March 1, 2020 through to February 28, 2023 and including the option to extend for two additional 1-year periods for a total of 5 years at a total not-to-exceed amount of \$3,550,000, subject to the City's annual budget appropriation process.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 4. Revenue Contract: Community Services Block Grant for Calendar Year 2020**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 20F-3001, estimated to be \$266,863 to provide services for low-income people for the period January 1, 2020 to December 31, 2020.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 5. Memorandum of Understanding for a Winter Relief Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a memorandum of understanding (MOU) between Alameda County and the City of Berkeley for a Winter Relief Program which will provide homeless people on the streets of Berkeley housing respite through May 31, 2020.  
**Financial Implications:** \$75,000 (revenue)  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 6. Jointly Apply for Infill Infrastructure Grant Funding for Projects Seeking City Funding through the 2019 Housing Trust Fund Request for Proposals**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions that enable affordable housing development projects that applied for City funding through the 2019 Housing Trust Fund Request for Proposals to access State of California Infill Infrastructure Grant (IIG) funds by:  
1. Authorizing the City Manager to prepare and submit a joint application with each developer proposing to use IIG funds; and  
2. Authorizing the City Manager to take actions needed for the City's participation in the IIG program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

## Consent Calendar

7. **Jointly Apply for No Place Like Home Funding for Maudelle Miller Shirek Community at 2001 Ashby Avenue**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions that enable the proposed Maudelle Miller Shirek Community project to access State of California No Place Like Home program funds by:
1. Authorizing the City Manager to prepare and submit a joint application for Maudelle Miller Shirek Community at 2001 Ashby.
  2. Authorizing the City Manager to take actions needed for the City's participation in the No Place Like Home program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents, and providing mental health services for tenants of the resulting housing.
- Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
8. **2020 Health Plan Changes**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions:
1. Approving rates for the Kaiser Health Maintenance Organization (HMO) health plans as follows: (a) 2.58% increase for Kaiser S1 Group #60 (Active Group); (b) 2.07% increase for the HSA-Qualified Deductible HMO Plan (Active Group); (c) 6.01% increase for Pre-Medicare Eligible Retirees (Retiree Group); and (d) -0.004% decrease for Post-65 Senior Advantage (Retiree Group)
  2. Approving rates for the Sutter Health Plus health plans as follows: (a) 5.37% increase for the Active HMO ML30 group; and (b) 5.41% increase for the Pre-Medicare retiree group.
- The health plan premium rates will be effective for the period of January 1, 2020 through December 31, 2020.
- Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
9. **Contract: Basic Pacific, Third-Party Administrator for COBRA Administration and Retiree Health Premium Assistance Plan Administration**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending contract No. 31900092 with BASIC Pacific (BASIC) for COBRA Plan administration and administration of the Retiree Health Premium Assistance Plan for non-sworn retirees and other retiree medical programs for sworn Fire and Police, for the period covering October 1, 2018, through December 31, 2022; for a total cost not to exceed \$405,000.
- Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800

## Consent Calendar

- 10. Contract No. 10542 Amendment: ServiceNow, Inc. for Information Technology Service Management, Project Management, and Government Risk and Compliance Software Licenses**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10542 with ServiceNow, Inc., for the extension of software licenses of the IT Service Management, Business Management, and Governance Risk and Compliance (GRC) modules, for an additional amount not-to-exceed \$266,076 and a total not-to-exceed amount of \$527,832 from February 14, 2017 to June 30, 2022.  
**Financial Implications:** See report  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 11. Waiver of City Ordinance No. 7,650-N.S. for Berkeley Tuolumne Camp Reconstruction Contracts**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing a waiver of City Ordinance No. 7,650-N.S. (Sanctuary City Contracting) for Berkeley Tuolumne Camp Reconstruction Project contracts.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 12. Contract No. 32000082 Amendment: Mar Con Builders, Inc. for Live Oak Community Center Seismic Upgrade Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000082 with Mar Con Builders, Inc. for the Live Oak Community Center Seismic Upgrade Project, increasing the contract amount by \$241,451 plus a 20% contingency in the amount of \$48,290 for a total amount not to exceed of \$5,705,668.  
**Financial Implications:** Measure T1 Fund - \$289,741  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 13. Contract No. 10793 Amendment: Siegel & Strain Architects for Construction Administration for the Berkeley Tuolumne Camp Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10793 with Siegel & Strain Architects for Construction Support Services for the Berkeley Tuolumne Camp Project, increasing the contract by \$2,900,000 for a total amount not to exceed \$7,200,000, and extending the term of the contract to July 1, 2022.  
**Financial Implications:** Camps Fund - \$2,900,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 14. Lease Agreement with 200 Marina Blvd, LLC for the Doubletree Hotel**  
**From: City Manager**  
**Recommendation:** Adopt:  
1. First reading of an Ordinance authorizing the City Manager to execute the attached Ground Lease with 200 Marina Blvd, LLC, the owner of the Doubletree Hotel located at the Berkeley Marina for a 61-year term effective from January 10, 2020 through December 31, 2080; and  
2. A Resolution approving a related Capital Improvement Agreement that 200 Marina Blvd, LLC contribute \$3 million to Marina street improvements.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 15. Modification of Measure T1 Phase 1 Project Phase and List**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the following modifications to the Measure T1 Phase 1 project list: 1. Removal of the following projects: -Transfer Station Conceptual Master Plan; -West Berkeley Service Center conceptual design; 2. Change of phase from construction to planning for the following projects: - Berkeley Health Clinic; -Public Safety Building; -Hopkins Street – San Pablo to the Alameda; -Bancroft Way – Milvia to Shattuck; 3. Change of phase from design to planning for the following projects: -Berkeley Municipal Pier; -Tom Bates (Gilman) Fields North Field House / Restroom; 4. Addition of the following projects and funding to supplement existing T1 projects at the same site: -San Pablo Park – Additional Play Structure Replacement (ages 2-5); -Strawberry Creek Park – Play Structure Replacement; -Codornices Creek at Kains Avenue.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700; Phillip Harrington, Public Works, (510) 981-6300
- 16. Referral Response: Telegraph Avenue Loading Zone and Customer Parking Pilot Project Evaluation and Next Steps**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution marking the successful completion of the Telegraph Avenue Loading Zone and Customer Parking pilot project, making the pilot parking changes permanent, and authorizing the City Traffic Engineer to establish similar loading zone and/or customer parking regulations in all parking meter districts citywide, based on staff parking demand analysis, at the request of adjacent merchants, and/or in consultation with local business associations.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300

## Consent Calendar

**17. Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations**

**From: City Manager**

**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for nine (9) Ford Super Duty F-Series Pickup Trucks with varying service body configurations with National Auto Fleet Group in an amount not to exceed \$492,284, and a subsequent purchase order for the conversion of the nine (9) Ford Super Duty F-Series Pickup Trucks to plug in hybrid vehicles in an amount not to exceed \$245,000 using XL Fleet technology when it becomes commercially available.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

**18. Contract Nos. 31900080 and 31900205 Amendment: Edgeworth Integration, LLC for Server Storage**

**From: City Manager**

**Recommendation:** Adopt two Resolutions authorizing the City Manager to execute:  
1. Amendment to Contract No. 31900080 with Edgeworth Integration, LLC for server storage, increasing the current contract by \$36,588 for a total not to exceed amount of \$71,588.

2. Amendment to Contract No. 31900205 with Edgeworth Integration, LLC for server storage, increasing the current contract by \$17,972 for a total not to exceed amount of \$35,028.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

**19. Contract No. 9893B Amendment: ABM Industries for Expanding Electric Vehicle Charging Station Operations and Extended Maintenance Program**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9893B with ABM Industries to extend the term by three years, purchase additional Electric Vehicle (EV) charging stations, and provide network operations and maintenance, including extended warranty services, in the amount of \$131,556 for a total Contract not to exceed \$557,552 through June 30, 2026.

**Financial Implications:** Various Funds - \$131,556

Contact: Phillip Harrington, Public Works, (510) 981-6300

## Consent Calendar

**20. Contract: Pacific Trenchless, 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 Dwight Way, Fourth Street, Camelia Street, Seventh Street, Heinz Avenue, University Avenue, Dana Street, Ward Street, Dover Street, Haskell Street, and Seawall Drive; accepting the bid of the lowest responsive and responsible bidder, Pacific Trenchless, 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 \$3,821,569 which includes a 10% contingency of \$347,415.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

**21. Contract: Precision Engineering 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 San Pablo Avenue at University Avenue, Parker Street, Carleton Street, Derby Street, and from Grayson Street to South City Limit; accepting the bid of the lowest responsive and responsible bidder, Precision Engineering 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 \$2,246,219, which includes a 10% contingency of \$204,202.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300



## Consent Calendar

**22. Contract: Cratus, 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 Neilson Street Backline, Thousand Oaks Boulevard Backline, Portland Avenue Backline, Peralta Avenue, San Lorenzo Avenue/Washington Avenue, Capistrano Avenue, Miramar Avenue Backline, The Alameda Backline, Arlington Avenue Backline, Michigan Avenue Backline, Alamo Avenue Backline, San Diego Road and Backline, Santa Barbara Road and Backline, San Luis Road Backline, Henry Street Backline, Berryman Street and Backline, Grizzly Peak Boulevard and Backline, Cypress Street/Buena Avenue, Rose Street, Grant Street, Edith Street, and Milvia Street Backline; accepting the bid of the lowest responsive and responsible bidder, Cratus, 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 \$3,654,358, which includes a 10% contingency of \$332,214.

**Financial Implications:** Sanitary Sewer Fund - \$3,654,358

Contact: Phillip Harrington, Public Works, (510) 981-6300

**23. Contract No. 10396A Amendment: Du-All Safety, LLC for Safety Consulting and Training Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10396 with Du-All Safety, LLC for continued safety training and consulting services up to \$100,000 for a total contract amount not to exceed \$300,000, and to extend the contract term through December 31, 2022.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

**24. Contract No. 31900124 Amendment: B Bros Construction Inc. for Adult Mental Health Services Center Renovations Project at 2640 Martin Luther King Jr Way**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 31900124 with B Bros Construction, Inc. to complete renovation and seismic upgrade work at the Adult Mental Health Services Center (Center), increasing the current contract amount of \$4,886,293 by \$500,000 for a total amount not-to-exceed (NTE) of \$ 5,386,293.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

## Consent Calendar

### 25. 2019 Housing Trust Fund Request for Proposals Funding Reservations

**From: Measure O Bond Oversight Committee**

**Recommendation:** Adopt a Resolution to:

1. Reserve Measure O bond revenues and other available funds for the following proposals at the following levels, for a total reservation of \$36,002,640: a. Satellite Affordable Housing Associates' Blake Apartments development (2527 San Pablo) at \$11,500,000; and b. BRIDGE Housing Corporation's 1740 San Pablo Avenue development at \$7,500,000; and c. Northern California Land Trust's (NCLT) Anti-Displacement Project (2321-2323 10th Street) at \$1,570,640; and d. Resources for Community Development's (RCD) Maudelle Miller Shirek Community (2001 Ashby) at \$15,432,000.
2. Fund the projects in the priority order listed above. If the available funds are insufficient to support all four proposals in full, forward commit funds from the next planned issuance of Measure O funds.
3. Consider funding 2321-2323 10th Street/Anti-Displacement Project (NCLT) using general funds such as those received pursuant to Measure U1.
4. For the NCLT Project at 2321-2323 10th Street: a. Waive the HTF Guidelines requirements listed below to allow funding for this project: i. Threshold for developer experience; and ii. City subsidy limit equal to 40% of total development costs. b. Condition this new funding on NCLT's demonstrated compliance with the Council-mandated requirements of its 2017 development loan agreement. c. Apply Small Sites Program development and operating budget standards to NCLT's project.
5. Authorize the City Manager to execute all original or amended documents or agreements to effectuate this action.

**Financial Implications:** See report

Contact: Amy Davidson, Commission Secretary, (510) 981-5400

### 26. Support for Non-Violent Activists and Protections of Animals in Commercial Operations

**From: Peace and Justice Commission**

**Recommendation:** Adopt a resolution supporting non-violent activists and protecting animals in commercial operations.

**Financial Implications:** Minimal

Contact: Erin Steffen, Commission Secretary, (510) 981-7000

## Council Consent Items

**27. February 2020 Berkeley Black History Month organized by Berkeley Juneteenth Association: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds**

**From: Councilmembers Bartlett and Davila**

**Recommendation:** Adopt a Resolution approving the expenditure of funds, including \$500 from Councilmember Bartlett, for Black History Month and the Berkeley Juneteenth Festival (organized by Berkeley Juneteenth Association, Inc. 501(c)(3). The funds should be relinquished to the City's general fund for this purpose from the discretionary council office budget of Councilmember Bartlett and any other Councilmembers who would like to contribute.

**Financial Implications:** Staff time

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

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

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

**28. 2019 Local Hazard Mitigation Plan**

**From: City Manager**

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

1. Adopt a Resolution adopting the 2019 Local Hazard Mitigation Plan (LHMP); and
2. Adopt a Resolution amending the General Plan to incorporate the LHMP.

**Financial Implications:** See report

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

## Action Calendar – Public Hearings

**29. Implement Residential Preferential Parking (RPP) Program on the 1500 Block of Lincoln Street**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25N by adding a subsection to implement Residential Preferential Parking (RPP) on the 1500 block of Lincoln Street in RPP Area N.

**Financial Implications:** General Fund - \$2,000

Contact: Phillip Harrington, Public Works, (510) 981-6300

## Action Calendar – New Business

**30. Urgency Ordinance Amending Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development**

**From: City Manager**

**Recommendation:** Adopt an Urgency Ordinance amending Berkeley Municipal Code Chapter 23C.24 (Accessory Dwelling Units) to comply with new State law and establish interim limits on ADU development pending further analysis, deliberation and adoption of local regulations, in order to help ensure public safety.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

## Action Calendar – Policy Committee Track Items

**31. Approval of a Memorandum of Understanding between the City of Berkeley and BART on Implementation of State Law AB 2923 at the Ashby and North Berkeley BART Stations and Establishment of a Community Advisory Group From: Mayor Arreguin, and Councilmembers Bartlett and Kesarwani**

**Recommendation:**

1. Approve a Memorandum of Understanding (MOU) between the City of Berkeley and the Bay Area Rapid Transit District (BART) to establish a process for cooperatively pursuing the implementation of Assembly Bill 2923 (AB 2923, Stats. 2018, Chp. 1000) at the Ashby and North Berkeley BART Stations. This action is pursuant to unanimous City Council direction on May 9, 2019, to direct the City Manager to “engage with BART to develop an MOU that outlines the project planning process including feasibility analysis, project goals, and roles and responsibilities; and direct that the MOU return to Council for adoption.”

2. Establish a Community Advisory Group (CAG) for the purposes of providing input:  
-To the City Planning Commission as it considers zoning standards that will be consistent with the City’s obligations under AB 2923 for the Ashby and North Berkeley BART station areas; and -To the City and BART as the parties establish a joint vision and priorities document that will be incorporated in eventual Requests for Proposal/Requests for Qualifications for potential developers of the BART Properties.

**Financial Implications:** See report

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

**32. Updating Berkeley Telecom Ordinances and BMC codes**

**From: Councilmember Davila**

**Recommendation:** Direct the City Manager to adopt a resolution to include the attached sample language and contained hyperlinked references to update the City’s Telecom Ordinances and BMC codes.

**Financial Implications:** None

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

## Action Calendar – Policy Committee Track Items

**33. Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings**

**From: Councilmember Davila**

**Recommendation:**

Adopt a Resolution Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and

Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration.

In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be prohibited during all City Council meetings. The use of digital technologies outside of the provided City tablets, upon which Agenda Items and notes can be stored, is distracting, disrespectful, and jeopardizing to democratic process.

The Council Rules of Procedure and Order should be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.

**Financial Implications:** None

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

**34. Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate Plastic Bags at Retail and Food Service Establishments**

**From: Councilmember Harrison**

**Recommendation:** Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate plastic bags at retail and food service establishments.

**Financial Implications:** See report

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

**35. Adopt a Resolution Establishing a Default Greenhouse Gas Emissions-Free Electricity Plan for Residential and Commercial Customers and Renewable Plan for Municipal Accounts**

**From: Councilmember Harrison**

**Recommendation:** Adopt a Resolution: a. enrolling all eligible Berkeley residential and commercial East Bay Community Energy accounts to the Brilliant 100 (100% greenhouse gas-free ) electricity service plan, effective [ ]. Customers will not lose the option of changing their plan or opting out of EBCE entirely; b. enrolling municipal East Bay Community Energy accounts to Renewable 100 (100% renewable and 100% greenhouse gas-free) electricity service, effective [ ] and refer the estimated increased cost of \$100,040 to the June 2020 budget process; and, c. providing for yearly Council review of the City's default residential, commercial and municipal plans.

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

### 36. **Bright Streets Initiative**

**From: Councilmember Hahn**

**Recommendation:**

1. Refer to the City Manager to paint all crosswalks, midlines, bike lanes, and other street markings, clarify and/or improve traffic signage, and paint curbs along collector and arterial streets throughout the City of Berkeley, and within a three-block radius of all Berkeley public schools, to improve safety and support Vision Zero goals. Streets, signage, and curbs that have been redone in the past three years and remain in very good condition need not be repainted and/or replaced.

2. Such work to be completed prior to commencement of the 2020-21 Berkeley Public School Year.

**Financial Implications:** See report

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

### 37. **Referral: Compulsory Composting and Edible Food Recovery**

**From: Councilmembers Robinson and Hahn**

**Recommendation:** Refer to the Zero Waste Commission to develop a plan, in consultation with the public and key stakeholders, to achieve timely compliance with Senate Bill 1383 (Lara, 2016) including: 1. An ordinance making composting compulsory for all businesses and residences in the City of Berkeley. The Commission should also consider the inclusion of compulsory recycling. 2. An edible food recovery program for all Tier 1 and 2 commercial edible food generators.

**Financial Implications:** See report

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

## Information Reports

### 38. **City Council Short Term Referral Process – Monthly Update**

**From: City Manager**

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

### 39. **Examination of Department Directors Transition Procedures Follow-Up Audit - Status Report**

**From: City Manager**

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

### 40. **Recommendation Status Reports: Credit Card Audit, Cash Handling, Business License Tax, and Contracts Review Audits**

**From: City Manager**

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

### 41. **Public Health Division Strategic Plan Update**

**From: City Manager**

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

## Information Reports

- 42. **Public Health Division's Recommendations on Cannabis**  
**From: City Manager**  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 43. **Report on Workers' Compensation Annual Program Review FY18-19**  
**From: City Manager**  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 44. **goBerkeley Parking Management Program - Recommended Adjustments for February 1, 2020**  
**From: City Manager**  
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 45. **Recommendation Follow Up Report, December 2019**  
**From: Auditor**  
Contact: Jenny Wong, Auditor, (510) 981-6750

## 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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Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.



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City Clerk Department  
2180 Milvia Street  
Tel: 510-981-6900  
TDD: 510-981-6903  
Fax: 510-981-6901  
Email: [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info)

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

**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location.

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

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



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

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Measure O Bond Oversight Committee

CONSENT CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council  
 From: Measure O Bond Oversight Committee  
 Submitted by: Joshua Daniels, Chairperson, Measure O Bond Oversight Committee  
 Subject: 2019 Housing Trust Fund Request for Proposals Funding Reservations

### RECOMMENDATION

Adopt a Resolution to:

1. Reserve Measure O bond revenues and other available funds for the following proposals at the following levels, for a total reservation of \$36,002,640:
  - a. Satellite Affordable Housing Associates' Blake Apartments development (2527 San Pablo) at \$11,500,000; and
  - b. BRIDGE Housing Corporation's 1740 San Pablo Avenue development at \$7,500,000; and
  - c. Northern California Land Trust's (NCLT) Anti-Displacement Project (2321-2323 10th Street) at \$1,570,640; and
  - d. Resources for Community Development's (RCD) Maudelle Miller Shirek Community (2001 Ashby) at \$15,432,000.
2. Fund the projects in the priority order listed above. If the available funds are insufficient to support all four proposals in full, forward commit funds from the next planned issuance of Measure O funds.
3. Consider funding 2321-2323 10<sup>th</sup> Street/Anti-Displacement Project (NCLT) using general funds such as those received pursuant to Measure U1.
4. For the NCLT Project at 2321-2323 10<sup>th</sup> Street:
  - a. Waive the HTF Guidelines requirements listed below to allow funding for this project:
    - i. Threshold for developer experience; and
    - ii. City subsidy limit equal to 40% of total development costs.
  - b. Condition this new funding on NCLT's demonstrated compliance with the Council-mandated requirements of its 2017 development loan agreement.
  - c. Apply Small Sites Program development and operating budget standards to NCLT's project.
5. Authorize the City Manager to execute all original or amended documents or agreements to effectuate this action.

SUMMARY

Council authorized a Request for Proposals (RFP) on June 11, 2019 to solicit applications for affordable housing projects to be funded through the City's Housing Trust Fund (HTF) program with the first tranche of Measure O bond funds. The RFP was intended to allocate Measure O bond funds remaining after existing City funding reservations to the Berkeley Way and 1601 Oxford affordable housing developments are fulfilled.

The City received four applications. On October 21, 2019, the Measure O Bond Oversight Committee (MOBOC) considered a report from Health, Housing, and Community Services staff and the MOBOC's RFP Subcommittee evaluating the projects based on criteria identified in the RFP: developer capacity, feasibility, local needs and priorities, and readiness. The recommended actions in the attached resolution will effectuate the MOBOC's recommendations.

FISCAL IMPACTS OF RECOMMENDATION

Applicants requested a total of \$38,120,640 through this RFP. Three of the four applicants previously sought predevelopment funding from the City and have since been awarded predevelopment funds for the projects represented.

- On April 23, 2019, the City reserved \$368,000 for 2001 Ashby (Resolution 68,824-N.S.).
- On October 29, 2019 Council recommended predevelopment funding for the following projects (Resolution 69,163-N.S.):
  - 2527 San Pablo (\$500,000); and
  - 2321-2323 10<sup>th</sup> Street (\$50,000); and
  - 2001 Ashby (an additional \$1,200,000).

All predevelopment funding will be general funds generated pursuant to Measure U1. Less the previously reserved predevelopment funds, the funding requested through this RFP for all four projects totals \$36,002,640.

Staff estimated that approximately \$15-\$20 million could be allocated through this RFP, after available funding was used to fulfill existing obligations to Berkeley Way and 1601 Oxford. The MOBOC's recommendation would reserve all available Measure O funding, allocate some general funds generated pursuant to Measure U1 to the NCLT project, and forward commit the remaining reservation to be paid through the second issuance of Measure O bond funds.

CURRENT SITUATION AND ITS EFFECTS

The City issued an RFP on July 18, 2019, which included a Council priority for projects demonstrating readiness to start construction, as well as HTF Guidelines priorities for projects providing units for the formerly homeless and households with incomes at or below 30% of the area median income (AMI). The City received four applications by the August 14, 2019 due date.

The MOBOC hosted a public hearing for projects seeking funding at their September 16, 2019 meeting. Members of the public spoke out in broad support of all four projects. At their October 21, 2019 meeting, the MOBOC recommended funding all four proposals, including a forward commitment of Measure O bond funds as needed.

Reserving funds for affordable housing projects is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

### BACKGROUND

Staff and the MOBOC's RFP Subcommittee evaluated the applications according to the following criteria identified in the RFP:

- Developer Capacity,
- Project Feasibility,
- Local Needs and Priorities, and
- Readiness to Proceed.

At its October 21, 2019 meeting, the MOBOC took the following actions:

Action: M/S/C (Lewis/Lustig) to recommend that Council:

1. Fund the following proposals at the following levels, less any predevelopment funds awarded by the City through separate processes:
  - a. Satellite Affordable Housing Associates' Blake Apartments development (2527 San Pablo) at \$12M
  - b. BRIDGE Housing Corporation's 1740 San Pablo Avenue development at \$7.5M
  - c. Northern California Land Trust's (NCLT) Anti-Displacement Project (2321-2323 10<sup>th</sup> Street) at \$1,620,640
2. Fund the projects in the priority order listed above, if the available funds are insufficient to support all three proposals in full.
3. Consider funding 2321-2323 10<sup>th</sup> Street/Anti-Displacement Project (Northern California Land Trust) using general funds such as those received pursuant to Measure U1.
4. For the NCLT project at 2321 10<sup>th</sup> Street:
  - a. Waive the HTF Guidelines requirements listed below to allow funding for this project:
    - i. Threshold for developer experience; and
    - ii. City subsidy limit equal to 40% of total development costs.
  - b. Condition this new funding on NCLT's demonstrated compliance with the Council-mandated requirements of its 2017 development loan agreement
  - c. Apply Small Sites Program development and operating budget standards to NCLT's project.

Vote: Ayes: Calavita, Carr, Daniels, Lewis, Lustig, Marthinsen, Sharenko, Smith, and Tregub. Noes: None. Abstain: None. Absent: Cutler (approved).

Action: M/S/C (Lewis/Calavita) to recommend that Council forward commit funds from the next planned issuance of Measure O funds to 2001 Ashby and to note the Committee's qualms about forward committing funds. However, if funds aren't available to fully fund 2527 San Pablo, 1740 San Pablo, and 2321-2323 10<sup>th</sup> Street, Council should fund those projects in the priority order listed in the prior action before funding 2001 Ashby.

Vote: Ayes: Calavita, Carr, Lewis, Lustig, Marthinsen, Sharenko, Smith, and Tregub. Noes: Daniels. Abstain: None. Absent: Cutler (approved).

### **Satellite Affordable Housing Associates (SAHA)**

SAHA requested \$12M for the development of Blake Apartments, located at 2527 San Pablo Avenue.

SAHA purchased the fully entitled property in May 2019. SAHA plans to demolish the existing, vacant structure and develop 63 units of housing affordable at 30% to 60% AMI. This includes units set aside for formerly homeless residents and residents with intellectual or developmental disabilities (I/DD). The units would be a mix of studios, one-bedrooms, and two-bedrooms. The project includes ground floor commercial space that will not be supported with City funds. The space would not be legally separated from the residential space, but commercial costs will be accounted for separately.

SAHA's proposed financing includes a bank loan, Federal Home Loan Bank (FHLB) Affordable Housing Program funds, California Housing and Community Development (HCD) Multifamily Housing Program funds, California HCD Infill Infrastructure Grant funds, and 4% tax credits.

### **BRIDGE Housing Corporation (BRIDGE)**

BRIDGE requested \$7.5M for the development of 1740 San Pablo Avenue.

1740 San Pablo is a fully entitled property. BRIDGE entered into a purchase and sale agreement in May 2019, and intends to demolish the existing, vacant structures, and develop the 51-unit project for households with incomes ranging from under 30% AMI to 90% AMI. The project would include three live-work units for lower income artists. The remaining units would be a mix of studios, one-bedrooms, and two-bedrooms.

BRIDGE's proposed financing includes a bank loan, 4% tax credits, funding through CalHFA's new Mixed-Income Program, and project-based Section 8 vouchers from the Berkeley Housing Authority.

**Northern California Land Trust (NCLT)**

NCLT proposes to acquire and renovate 2321-2323 10<sup>th</sup> Street, an occupied property with eight residential units. In its initial application, NCLT requested \$975,629, but subsequently increased its request to \$1,620,640 based on a capital needs assessment completed by a third party. NCLT submitted its RFP application the day after the organization entered into a purchase and sale agreement to acquire the property.

The property has two, two-story buildings with four units each. Both buildings are suffering from deferred maintenance, and the renovation scope would prioritize health and safety issues and energy upgrades.

Seven of the eight units are occupied, and NCLT estimates the resident incomes at 30%-80% AMI. NCLT is in the process of income-certifying all residents. Four current residents hold Section 8 vouchers from the Berkeley Housing Authority, and are presumed to have incomes at or below 50% AMI. The units are a mix of one-bedrooms and two-bedrooms. NCLT will explore whether the residents are interested in forming a cooperative.

NCLT's proposed financing includes a bank loan, a short-term seller loan, a City of Berkeley Seismic Retrofit Grant, and Affordable Multifamily Energy Efficiency Financing Program funding through the state.

NCLT does not meet the HTF Guidelines threshold for developer experience, and would require a Council waiver of that requirement. Staff believe the scope of the project is similar to a recently completed NCLT project, and the MOBOC supports the waiver in order to fund this project. The project also requires a higher subsidy than is permitted by the HTF Guidelines, which caps the City's contribution at 40% of the project's total cost. There are limited sources of financing available to smaller, non-tax credit projects.

The MOBOC supports staff's recommendation to condition an award to NCLT on the organization's compliance with Council-mandated conditions of the 2017 Development Loan Agreement for the Scattered Sites Rehab. There are no compliance issues in terms of NCLT's management of the properties, but Council required that NCLT hire a consultant to work with residents at 1340-1348 Blake Street and 2425 California Street to assess the feasibility of converting the properties to cooperatives, and Council required NCLT to update its governing documents to reflect a tripartite structure consistent with community land trust standards. Staff continue to work with NCLT on complying with those requirements.

The MOBOC also agrees with staff's recommendation that the City apply its Small Sites Program standards to NCLT's project, in terms of development and operating budget requirements. The Small Sites Program supports the acquisition and renovation of small, multifamily properties, and includes conditions specifically designed to support the ongoing operations of projects with limited cash flow, including averaging incomes

at 80% AMI (Low-Income, a variance from the HTF requirements) as well as funding reserves at certain levels. Council provided \$1 million in City general funds associated with Measure U1 to fund the first Small Sites project, but there are currently no funds allocated to the program.

### **Resources for Community Development (RCD)**

RCD requested \$17M for the development of the Maudelle Miller Shirek Community located at 2001 Ashby Avenue.

RCD was selected by the current site owner, Cooperative Center Federal Credit Union (CCFCU), to develop the property as affordable housing. RCD and CCFCU entered into an MOU and a purchase and sale agreement for RCD's acquisition of the site which is expected in November 2019. RCD is pursuing expedited entitlement under SB35.

RCD is proposing to develop 86 units of housing affordable to households earning between 20% and 80% AMI plus one manager's unit. The units are a mix of studios, one-bedrooms, two-bedrooms, and three-bedrooms. Approximately half are two- or three-bedroom units, making the project well suited for families. Twelve units would be set aside for formerly homeless and disabled residents, consistent with the State's No Place Like Home program.

The project will also include commercial space for the nonprofit Healthy Black Families, which would help keep their services in this historically African American neighborhood and alleviate concerns of the organization's displacement due to rising costs.

RCD's proposed financing includes a bank loan, California HCD Multifamily Housing Program funds, California HCD No Place Like Home funds, California HCD Infill Infrastructure Grant funds, FHLB Affordable Housing Program funds, and 4% tax credits.

The schedule for Maudelle Miller Shirek Community estimates construction start and financing in June 2021, which aligns with the projected second issuance of Measure O bond funds.

### ENVIRONMENTAL SUSTAINABILITY

All four projects addressed environmental sustainability in their project design and scope. The three new construction projects would be built to third-party green building standards and seek certification (either LEED Gold or GreenPoint Gold). NCLT's Anti-Displacement Project would address years of deferred maintenance to preserve an existing building and increase the energy efficiency of the buildings.

### RATIONALE FOR RECOMMENDATION

All four projects meet local needs and priorities by adding 198 new affordable housing units to the City's inventory and preventing displacement of eight lower income



households. Blake Apartments will provide units for the formerly homeless and for individuals with intellectual or developmental disabilities. 1740 San Pablo will offer three live-work units for lower-income artists, and provide moderate income units (up to 90% AMI). The Anti-Displacement Project will protect vulnerable tenants, address significant deferred maintenance, and add long-term affordability restrictions. Maudelle Miller Shirek Community will provide units for the formerly homeless, and will provide commercial space for the nonprofit Healthy Black Families.

#### ALTERNATIVE ACTIONS CONSIDERED

The Committee considered making a recommendation that did not include a forward commitment of Measure O Bond funds to 2001 Ashby. Commissioners were concerned about limiting funding and therefore options for the second tranche of bond funds. However, Commissioners also recognized the benefits of reserving funds for 2001 Ashby now, allowing the applicant to pursue other funding commitments and moving the project forward. Without a reservation of City funds, the project would not be as competitive for state funding and would likely be delayed up to two years.

#### CITY MANAGER

The City Manager concurs with this recommendation. All four proposals have technical strengths and will help achieve the City's affordable housing goals. Together Blake Apartments, 1740 San Pablo, and Maudelle Miller Shirek Community will create nearly 200 units of new affordable housing. The projects will also set aside units for vulnerable, special needs populations such as the apartments for people with intellectual or developmental disabilities at Blake Apartments. The 1740 San Pablo project proposes an innovative model with a new funding source which will result in some moderate income and live-work apartments. The Anti-Displacement Project will protect lower-income tenants at risk of displacement and improve long-neglected buildings, as well as build the City's portfolio of Small Sites program-type projects.

Consistent with Council's direction, staff rated all projects on readiness to proceed. If funded, the new construction projects estimate construction starts ranging from late 2020 to mid-2021. The renovation project could start in early to mid-2020. The proposed forward commitment of funds to 2001 Ashby will allow that project to start competing for state funds right away so that it can be ready to proceed when City funds are available. The project was highly rated on its technical merits and only slightly less ready to proceed than others; RCD has applied for land use entitlements under the expedited SB35 process and the City is currently in its 90 day review window. Reserving the funds now will help deliver these homes on a faster timeline and lower cost (due to continuing cost escalation).

Projects could be funded with a combination of Measure O bond funds and general funds generated pursuant to Measure U1. Council previously reserved funding for two affordable housing developments: \$23,500,000 for Berkeley Way (June 26, 2018 with Resolution 68,494-N.S. and December 4, 2018 with Resolution 68,693-N.S.) and

\$6,000,000 for 1601 Oxford (October 16, 2018). Measure O, general funds generated pursuant to Measure U1, the City's current balance of HOME funds, and fee revenue in the Housing Trust Fund will first be used to fund Berkeley Way and 1601 Oxford. With a first issuance of \$37,000,000 in early 2020 it will be possible to fund all of the projects currently in the pipeline.

The following table shows a draft plan for funding the projects currently in the pipeline. The City Manager may modify this plan based on the availability of funds, federal requirements, project needs, and the timing of projects.

	Units	Previously committed funds	Measure O: 1st issuance	Measure O: 2nd issuance	HOME	HTF	Measure U1	Total
BRIDGE & BFHP/ 2012 Berkeley Way*	186	3,967,548	13,820,909			3,655,726	6,023,365	27,467,548
SAHA/ 1601 Oxford	35	25,000	4,179,091		1,795,909			6,000,000
SAHA/ Blake Apts./ 2527 San Pablo Ave.	63	500,000	11,500,000					12,000,000
BRIDGE/ 1740 San Pablo Ave.	51	-	7,500,000					7,500,000
NCLT/ 10th Street	8	50,000					1,570,640	1,620,640
RCD/Maudelle Shirek /2001 Ashby	87	1,568,000		15,432,000				17,000,000
	<b>430</b>	<b>10,103,096</b>	<b>37,000,000</b>	<b>15,432,000</b>	<b>1,795,909</b>	<b>3,655,726</b>	<b>7,496,165</b>	<b>71,490,348</b>

\*Berkeley Way unit count includes 89 affordable apartments, 53 permanent supportive housing units, 12 transitional beds, and 32 shelter beds.

A forward commitment of \$15.4 million in Measure O bond funds for 2001 Ashby will result in less money available in the second issuance, currently estimated at \$30-\$40,000,000 in 2021.

#### CONTACT PERSON

Jenny Wyant, Community Development Project Manager, HHCS, 510-981-5228

Attachments:  
1: Resolution

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

APPROVAL OF THE 2019 HOUSING TRUST FUND REQUEST FOR PROPOSALS  
RESERVATIONS

WHEREAS, the City Council established a Housing Trust Fund (HTF) program to assist in the development and expansion of housing affordable to low and moderate income persons who either work or reside within the City of Berkeley, and authorized the City Manager to implement the HTF program; and

WHEREAS, there is a great need for affordable and special needs housing in the City of Berkeley as stated in the General Plan Housing Element and the City of Berkeley's Consolidated Plan; and

WHEREAS, the City Council identified the BRIDGE Housing Corporation's Berkeley Way project as the funding priority for Housing Trust Funds, and with Resolutions 68,494-N.S. (dated June 26, 2018) and 68,693-N.S. (dated December 4, 2018) reserved a total of \$23.5 million for the project; and

WHEREAS, on October 16, 2018, the City Council reserved \$6 million for Satellite Affordable Housing Associates' 1601 Oxford project; and

WHEREAS, on November 6, 2018, Berkeley voters passed Measure O, a \$135 million bond measure to support the development and preservation of affordable housing; and

WHEREAS, on June 11, 2019 the City Council approved issuing a Request for Proposals (RFP) through the HTF program to allocate the first issuance of Measure O bond funds; and

WHEREAS, the City issued an RFP on July 18, 2019 and announced acceptance of applications for funding from the Housing Trust Fund until August 14, 2019, and subsequently received four responses; and

WHEREAS, the Measure O Bond Oversight Committee held a meeting on October 21, 2019 and considered a report from Health, Housing and Community Services staff and the RFP Subcommittee regarding funding; and

WHEREAS, on October 21, 2019 the Measure O Bond Oversight Committee approved motions recommending funding reservations for Satellite Affordable Housing's Blake Apartments (2527 San Pablo Avenue), BRIDGE Housing Corporation's 1740 San Pablo Avenue, Northern California Land Trust's Anti-Displacement Project (2321-2323 10<sup>th</sup> Street), and Resources for Community Development's Maudelle Miller Shirek Community (2001 Ashby Avenue); and

WHEREAS, the Measure O Bond Oversight Committee's motions included recommendations to waive certain sections of the Housing Trust Fund Guidelines in order to fund Northern California Land Trust's Anti-Displacement Project; and

WHEREAS, the Measure O Bond Oversight Committee's motions included a recommendation to apply the City's Small Sites Program standards to Northern California Land Trust's Anti-Displacement Project, since that program includes development budget and operating budget requirements designed to support the long-term feasibility of smaller multifamily projects with limited cash flow.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the following funding reservations:

- Satellite Affordable Housing Associates' Blake Apartments (2527 San Pablo Ave) for \$11,500,000; and
- BRIDGE Housing Corporation's 1740 San Pablo for \$7,500,000; and
- Northern California Land Trust's Anti-Displacement Project (2321-2323 10<sup>th</sup> Street) for \$1,570,640; and
- Resources for Community Development's Maudelle Miller Shirek Community (2001 Ashby Ave) for \$15,432,000.

BE IT FURTHER RESOLVED that if funds are not available to fully fund Blake Apartments (2527 San Pablo), 1740 San Pablo, the Anti-Displacement Project (2321-2323 10<sup>th</sup> Street), and Maudelle Miller Shirek Community (2001 Ashby), the City will fund them in that priority order.

BE IT FURTHER RESOLVED that Council approves the forward commitment of funds from the second issuance of Measure O bond funds, if the four projects cannot be funded with available Measure O bond funds from the first issuance and general funds generated pursuant to Measure U1 not otherwise allocated to Berkeley Way and 1601 Oxford.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley waives the requirements of Section III.A.1 of the Housing Trust Fund Guidelines and approves Northern California Land Trust as an eligible developer with demonstrated capacity to complete the Anti-Displacement Project, though it has not completed the number of projects required by the developer eligibility criteria.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley waives the requirements of Section V.B.7 of the Housing Trust Fund Guidelines and approves HTF funds in excess of 40% for Northern California Land Trust's Anti-Displacement Project due to the nature of the development and the unavailability of alternative financing.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley conditions its funding reservation for Northern California Land Trust's Anti-Displacement Project on the organization demonstrating compliance with the Council-mandated conditions of the 2017

Development Loan Agreement for the Scattered Site Rehab project, including hiring a consultant to assess the feasibility of converting 1340-1348 Blake Street and 2425 California Street to cooperatives, and updating organizing documents to reflect a tripartite structure consistent with community land trust standards.

BE IT FURTHER RESOLVED that Small Sites Program operating and development budget standards will be applied to Northern California Land Trust's Anti-Displacement Project.

BE IT FURTHER RESOLVED that loan funds shall be reserved for 2527 San Pablo Avenue, 1740 San Pablo Avenue, and 2321-2323 10<sup>th</sup> Street a period of no more than 24 months from the date of this Resolution, contingent on the developer's obtaining all required land use approvals and securing commitments for full project funding that the City Manager or her designee deems sufficient within the reservation period.

BE IT FURTHER RESOLVED that loan funds shall be reserved for 2001 Ashby a period of no more than 36 months from the date of this Resolution, contingent on the developer's obtaining all required land use approvals and securing commitments for full project funding that the City Manager or her designee deems sufficient within the reservation period.

BE IT FURTHER RESOLVED that all funding reservations are conditioned upon the completion of the environmental review process, except as authorized by 24 CFR, Part 58, and that should HOME and/or CDBG funds constitute a portion of the funding for any project, a final commitment of HOME and/or CDBG funds shall occur only upon the satisfactory completion of the appropriate level of environmental review and also upon the receipt of approval of the request for release of funds and related certification from the U.S. Department of Housing and Urban Development, when applicable. The funding reservation for any of the HOME and/or CDBG funded projects is conditioned upon the City of Berkeley's determination to proceed with, modify, or cancel the project based on the results of subsequent environmental review under the National Environmental Policy Act.

BE IT FURTHER RESOLVED that the making of each loan shall be contingent on and subject to such other appropriate terms and conditions as the City Manager or her designee may establish.

BE IT FURTHER RESOLVED that the City Manager may incorporate each project's predevelopment loan into a permanent loan resulting from this resolution.

BE IT FURTHER RESOLVED the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements and any amendments will be kept on file in the Office of City Clerk.





Peace and Justice Commission

CONSENT CALENDAR

December 10, 2019

To: Honorable Mayor and Members of the City Council  
 From: Peace and Justice Commission  
 Submitted by: Igor Tregub, Chairperson, Peace and Justice Commission  
 Subject: Support for Non-Violent Activists and Protections of Animals in Commercial Operations

RECOMMENDATION

Adopt a resolution supporting non-violent activists and protecting animals in commercial operations.

SUMMARY

Berkeley residents currently face felony charges for conducting non-violent investigations and animal rescues involving factory farms in Sonoma County. We urge the Berkeley City Council to adopt a resolution supporting those activists diverting resources to protecting animals in commercial operations.

FISCAL IMPACTS OF RECOMMENDATION

Minimal to negligible.

CURRENT SITUATION AND ITS EFFECTS

At its September 9, 2019 meeting, the Peace and Justice Commission approved the attached resolution with an amendment including, as a footnote, the text of California Penal Code Section 597e. The action taken was as follows:

**M/S/C:** Meola, Tregub

**Ayes:** al-Bazian, Bohn, Lippman, Maran, Meola, Morizawa, Pancoast, Pierce, Rodriguez, Tregub

**Noes:** None

**Abstain:** Gussman, Han

**Absent:** Askary

**Excused:** None

Five Berkeley residents – Almira Tanner, Cassie King, Wayne Hsiung, Priya Sawhney, and Jon Frohnmayr – and an Oakland resident – Rachel Ziegler – all of whom are members of the international grassroots activist network Direct Action Everywhere (DxE), presently face seven or eight felonies each in Sonoma County in connection with three

demonstrations by DxE in that county. The defendants have strong legal defenses, and the case draws attention to the significant animal cruelty in commercial operations; however, the case also poses significant risks to the defendants' freedom and professional futures. The Peace and Justice Commission requests of the Berkeley City Council to pass a resolution disavowing the prosecution, urging the Sonoma County District Attorney and other authorities to address the underlying issues of animal cruelty motivating the activists' actions, and affirming Berkeley's commitment to addressing the suffering of innocent animals everywhere.

## BACKGROUND

### **A. California has strict animal cruelty laws that protect animals in commercial operations.**

California has one of the strongest animal cruelty laws in the United States. Penal Code (PC) Section 597 makes it a crime to intentionally and maliciously maim, mutilate, torture, wound, or kill an animal. Examples of punishable conduct are overworking, torturing, depriving of necessary food, water or shelter, and subjecting an animal to needless suffering. PC Section 599b clarifies that such cruelty includes "every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted." Unlike similar statutes in other states, PC Section 597 does not contain an animal husbandry exemption; therefore, the statute protects animals raised in commercial operations.

Furthermore, PC Section 597e makes it a crime to hold a domestic animal in confinement without providing the animal with sufficient food and water. This same section provides a legal defense against the claim of trespass to anyone who enters the area where the domestic animal is confined for the purpose of providing food and water.

### **B. DxE investigated commercial operations and reported animal cruelty law violations, and officials took no action.**

Prior to any of the actions leading to the present prosecution, DxE extensively investigated commercial operations in California. DxE drafted a letter (see Attachment 1) that documents animal cruelty at fourteen different facilities in California. For example, the letter links to a video taken at Sunrise Farms (an egg farm in Sonoma County, California, that shows chickens caught in wire cages, chickens with large untreated sores, and chickens whose dead bodies were left rotting among the living chickens.<sup>1</sup> There is a strong argument that these conditions violate PC Section 597, insofar as allowing animals to endure pain and suffering from injuries and disease to the point of death, without sufficient (or, apparently, any) veterinary intervention, constitutes an omission wherein "unnecessary or unjustifiable physical pain or suffering is caused or permitted."

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<sup>1</sup> <https://www.dropbox.com/s/royue4eqdxvfa6z/B-Roll.mov?dl=0>



DxE circulated that letter to the California Department of Public Health, the California Department of Food and Agriculture (CDFA), the California Attorney General, the Sonoma County Sheriff, Petaluma Animal Control, Sonoma County Animal Services, the Petaluma Police Department, and the District Attorney in eight counties, among others, and followed up with each agency on numerous occasions. None responded to DxE's requests to meet or otherwise took any action to address the cruelty DxE documented.

In addition, agencies appear confused regarding which is responsible for reporting and investigating animal cruelty in commercial operations. To wit, the Sonoma Sheriff stated that it relies on the CDFA to report such animal cruelty; however, DxE submitted requests for any reports by the CDFA of animal cruelty shared with law enforcement for the last five years, and no such records exist. It is antithetic that, while California law strongly protects animals in commercial operations, no clear enforcement command for that law appears to exist. A letter DxE sent to the California Attorney General (see Attachment 2) provides additional color.

**C. On the advice of counsel, DxE activists took action to address animal cruelty and rescued animals from dire circumstances.**

In early May 2018, Hadar Aviram, a Professor of Criminal Law at UC Hastings College of Law, provided DxE a legal opinion asserting that, pursuant to the doctrine of legal necessity and PC Section 597e, a person could remove sick or injured animals in immediate need of medical care from a commercial facility. Bonnie Klapper, a former Assistant United States Attorney, provided a concurring opinion in May 2019. (See Attachment 3.) Based on those opinions, DxE conducted three mass actions.

On May 29, 2018, approximately 500 activists traveled to Sunrise Farms in Sonoma County. (Prior whistleblower footage from that facility is linked to in Section B above and in this footnote.)<sup>2</sup> While most remained on public property, others entered sheds and removed thirty-seven (37) birds and gave them veterinary care. The Sonoma County Sheriff arrived and removed the activists. Afterward, DxE, the Sheriff, and the owners of the farm attempted to negotiate a walk-through with all parties wherein the parties would identify and remove additional sick and injured birds. However, the farm owner refused to allow any cameras or media to be present. As a result, DxE decided against the walkthrough, and another forty (40) activists attempted to cross the Sheriff line. All were arrested. Videos of the entire action are included in these footnotes.<sup>3,4</sup>

On September 29, 2018, approximately 120 activists traveled to McCoy's Poultry Services in Sonoma County, which supplies Perdue Foods and Amazon. (Prior

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<sup>2</sup> <https://www.dropbox.com/s/royue4eqdxfv6z/B-Roll.mov?dl=0>

<sup>3</sup> <https://www.facebook.com/directactioneverywhere/videos/1954095344620805/>

<sup>4</sup> <https://www.facebook.com/directactioneverywhere/videos/1954369307926742/>

whistleblower footage from that facility is in this footnote).<sup>5</sup> Fifty-eight (58) activists walked onto the property, approximately half of whom entered sheds, while the other half remained outside. The activists identified ten (10) birds who needed immediate medical attention and attempted to remove them, but the Sonoma Sheriff detained the activists. During the ensuing negotiation, a Sheriff lieutenant asked which bird was the sickest. The activists identified one, and the Sheriff allowed that bird and the activist carrying her to leave the property. The officers then arrested all fifty eight (58) other activists and confiscated the other nine (9) birds, ultimately delivering them to Sonoma County Animal Services.

The subsequent case report from Animal Services concluded that all nine (9) of the chickens were in poor health and unable to stand on their own. It noted numerous injuries, including one chicken with exposed muscle tissue and bone and listed the owner of the farm as a suspect in violation of California's animal cruelty statute.<sup>6</sup> The full report is available as Attachment 4, and videos of the entire action are contained in the following footnotes.<sup>7,8</sup>

On June 3, 2019, approximately 600 activists traveled to Reichardt Duck Farm in Sonoma County, California. (Prior whistleblower footage from that facility is in this footnote).<sup>9</sup> A number of activists chained themselves to the front gate to temporarily halt slaughter operations, while others entered the facility and removed thirty-two (32) ducks they identified as injured. Eighty (80) activists were arrested. A video of the entire action is in this footnote.<sup>10</sup>

As a result of the above three actions, the Sonoma County District Attorney filed felony charges against six activists, ostensibly because it identified them as leaders of DxE, and misdemeanor charges against a number of other activists. The felony complaints for Ms. Ziegler and Mr. Frohnmayr are available as Attachment 5. (The complaint for the other four defendants is substantially similar.)

## ENVIRONMENTAL SUSTAINABILITY

There are no direct identifiable opportunities for environmental sustainability associated with this item. However, the factory farming industry has been identified as one of the highest contributors of carbon emissions in the nation. The opportunity for consumers to be informed about the sourcing of their food may contribute to their ability to make

<sup>5</sup> <https://www.dropbox.com/s/xg8albxnuacmghk/PP B-Roll v1.mp4?dl=0>

<sup>6</sup> <https://www.dropbox.com/s/v3l307tviu6vptv/Condition of bird.png?dl=0>

<sup>7</sup> <https://www.facebook.com/directactioneverywhere/videos/2198428473767005/>

<sup>8</sup> <https://www.facebook.com/directactioneverywhere/videos/310795646317833/>

<sup>9</sup> <https://www.dropbox.com/s/paflmw1n8hy0ur0/RDF VE 1.mp4?dl=0>

<sup>10</sup> <https://facebook.com/directactioneverywhere/videos/308313510101155/>

consumer decisions that steer away from more carbon-intensive to more sustainable sources of food.<sup>11</sup>

### RATIONALE FOR RECOMMENDATION

The Peace and Justice Commission recommends adopting the resolution for a number of reasons.

The activists' actions raise fundamental questions regarding both the care of animals in commercial facilities and the enforcement (or lack thereof) of the state's animal cruelty laws, the consideration of which such questions are clearly in the public's interest. The actions received significant positive coverage among journalists; see, for example, Pulitzer-Prize winning journalist Glenn Greenwald discussing the Sunrise Farm Action on *Democracy Now!* in this footnote<sup>12</sup> and an interview by that outlet with two activists following the Reichardt action in this footnote.<sup>13</sup> Beyond animal cruelty, furthermore, the actions raise other questions relevant for the public, such as the fact that, as noted in the above-mentioned Animal Services report, some of the deceased birds from DxE's second action were infected with reovirus. (For information on public health issues related to commercial animal operations generally, see Attachment 6.) The activists' actions were entirely nonviolent and caused relatively nominal economic damage. The activists have strong defenses outlined in the above-mentioned legal opinions, and they should not have to face felony charges and the possibility of significant harm to their futures to assert those defenses in court. The animal agriculture industry is a powerful interest group, and political considerations undoubtedly influenced the District Attorney's prosecutorial decisions.

For those reasons, the Peace and Justice Commission urges the Berkeley City Council to support the activists by adopting this resolution.

### ALTERNATIVE ACTIONS CONSIDERED

A slightly different version of the resolution was previously sent to the Berkeley City Council. The resolution was modified following discussion with the Mayor and some members of the City Council.

### CITY MANAGER

The City Manager takes no position.

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<sup>11</sup> <https://insideclimateneews.org/news/22052017/factory-farms-cafos-threaten-climate-change-world-health-organization>

<sup>12</sup> <https://facebook.com/directactioneverywhere/videos/308313510101155/>

<sup>13</sup> <https://facebook.com/directactioneverywhere/videos/308313510101155/>

CONTACT PERSON

Erin Steffen, Secretary, Peace and Justice Commission, (510) 981-7000

Attachments:

1. Resolution
2. 2018.03.18 DxE Letter to Authorities
3. 2019.07.09 DxE Letter to Attorney General
4. 2019.09.29 Animal Services Report
5. 2019.08.04 *NYT* Tainted Pork Article

Resolution in Relation to the Attempted Prosecution of Non-Violent Activists Who Attempt to Expose the Conditions of Animals in Factory Farms

- Whereas, it is a well-established scientific fact, as supported by 2,500 studies exploring animal cognition, that nonhuman animals have emotions, personalities, and the ability to feel pain, fear, and stress<sup>1</sup>; and

- Whereas, an international group of prominent neurological scientists issued the Cambridge Declaration of Consciousness in 2012, stating that nonhuman animals are conscious beings capable of feeling emotional states such as pain, stating:

“The weight of evidence indicates that humans are not unique in possessing the neurological substrates that generate consciousness. Nonhuman animals, including all mammals and birds, and many other creatures, including octopuses, also possess these neurological substrates<sup>2</sup>; and

- Whereas, the public in California cares deeply about nonhuman animals raised in commercial operations, as evidenced by, among other things, the overwhelming passage of Proposition 12 in 2018, which established new standards for confinement of farm animals and banned noncomplying products; and

- Whereas, California’s animal cruelty statute, California Penal Code Section 597 et seq., does not contain an animal husbandry exemption and thus covers cruelty inflicted on nonhuman animals raised in commercial operations (“factory farms”); and

- Whereas, California Penal Code Section 597e makes it a crime to hold a domestic animal in confinement without providing the animal with sufficient food and water, and also provides a legal defense against the claim of trespass to anyone who enters the area where the domestic animal is confined for the purpose of providing food and water<sup>3</sup>; and

- Whereas, factory farms routinely violate California’s animal cruelty statute in numerous ways, including forcing nonhuman animals to live their whole lives in dirty,

<sup>1</sup> <https://www.livescience.com/39481-time-to-declare-animal-sentience.html>

<sup>2</sup> <http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>

<sup>3</sup> “Any person who impounds, or causes to be impounded in any pound, any domestic animal, shall supply it during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof, is guilty of a misdemeanor.”  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=597e](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=597e)

overcrowded sheds, and allowing them to die of thirst or hunger when they are too sick or injured to reach food or water; and

- Whereas, factory farms pose a significant threat to human health, including by cultivating antibiotic-resistant bacteria that contaminate the food supply; and
- Whereas, factory farms pose a significant threat to the environment, including by emitting significant quantities of greenhouse gases and producing large amounts of manure that seep into waterways and threaten ecosystems; and
- Whereas, consumers care deeply about nonhuman animals and are often willing to pay a significant premium to purchase animal products from suppliers they believe have treated animals humanely; and
- Whereas, companies that supply animal products routinely portray their treatment of nonhuman animals in a substantially more favorable light than the reality; and
- Whereas, little or no enforcement of California's animal cruelty statute occurs with respect to nonhuman animals raised in commercial operations; and
- Whereas, peaceful activists have attempted to bring violations by factory farms of California's animal cruelty statute to the attention of the public as well as law and regulatory enforcement agencies, including video and photographic evidence of animals caught in wire cages and left with large, untreated sores; and
- Whereas, those activists have been arrested while trying to document the conditions of factory farms and rescue nonhuman animals therein from disease, thirst, and starvation; and
- Whereas, six activists, including five Berkeley residents, presently face felony charges in Sonoma County in connection with those investigations and rescues; and
- Whereas, investigating the conditions of factory farms and exposing abuses to the public and to law enforcement, and rescuing nonhuman animals who are diseased, starving, and thirsty, raises consciousness regarding the plight of nonhuman animals as well as the impact of factory farms on human health and the environment;

*Now, therefore, be it resolved, that the Berkeley City Council*

- (1) holds that the six individuals being prosecuted in Sonoma County are non-violent activists who were investigating and attempting to expose the abuses of nonhuman animals in factory farms;
- (2) encourages the Sonoma County District Attorney to dismiss such prosecution or exercise leniency, and to devote the resources that could be saved from these actions to instead investigate and prosecute animal cruelty in commercial animal operations in Sonoma County;
- (3) encourages law and regulatory enforcement agencies in California, including the California Attorney General and the California Department of Food and Agriculture, to investigate and prosecute animal cruelty in commercial animal operations that supply stores throughout California;
- (4) urges the California State Legislature to pass laws expanding the protection of nonhuman animals raised in commercial operations from abuse; and
- (5) affirms the commitment of the Berkeley City Council to the protection from all suffering and harm of all animals both within Berkeley and around the world.

March 19, 2018

Re. Violations of CPC Section 597 and Division 20, Chapter 13.8

To Whom it May Concern:

I am writing to you as a concerned resident of California representing hundreds of others who feel similarly. We have documented a pattern of criminal animal abuse at concentrated animal feeding operations (CAFO) across the state of California. Veterinary experts have reviewed our documentation and concluded that our findings do, in fact, constitute a violation of law, including California Penal Code Section 597 and Division 20, Chapter 13.8 of the state Health and Safety Code.

The following are some of the findings that substantiate our concerns:

- Animals routinely denied necessary sustenance, drink, or shelter
  - [An investigation into Zonneveld dairy farm](#), a Land O'Lakes supplier in Fresno County, revealed that calves were routinely left isolated in small hutches without protection from the elements
  - Hens found starving and unable to reach food at a [cage-free egg farm](#) in Stanislaus County
  - Animals held inside small cages without food or water at an [Alameda County slaughterhouse](#)
  - Animals collapsed on the ground in transports cages at [Petaluma Poultry in Sonoma County](#)
- Animals cruelly beaten, mutilated, killed, and subjected to other practices causing needless suffering
  - [Debeaking of birds](#) as well as [birds who are never given outdoor access](#) at many farms, including at Pitman Family Farms ("Mary's Chicken") in Fresno County, Kings County, Tulare County and Madera County despite false-claims of "free-range environments".
  - Untreated injuries and disease, intensive confinement and tail docking at [Hormel's Farmer John](#) pig farm in Kings County
  - Calves left untreated while suffering from pneumonia and [covered in feces and maggots](#) in Fresno County
  - [Improper stunning and inhumane handling](#) of pigs at Clougherty Packing LLC in Los Angeles County
- Egg farms from numerous counties confining animals in manners that prevent them from lying down, standing up, fully extending their limbs, and turning around freely.
  - Single barns housing over [34,000 birds](#) at [Rainbow Farms](#) in Stanislaus County
  - Hens [caught in wire cages](#) at [Sunrise Farms](#) in Sonoma County
  - Birds trampled to death at [Pleasant Valley Farms](#) in San Joaquin County
  - Continued use of intensely confining cages at [JS West](#) in Stanislaus County
  - Hens piled on top of each other at [Petaluma Farms](#) in Sonoma County



- While many of these facilities are nominally cage-free, if animals are not able to spread their wings for the majority of each day, the facility is in violation of California law.
- These findings have been covered by mainstream media including [The Wall Street Journal](#), [The New York Times](#), and [ABC News](#).

This is only a sampling of the criminal animal cruelty we have documented and we are able to provide more evidence upon request. Based on the frequency of these incidents, it is reasonable to believe many more violations go unnoticed and unreported. The vast majority of Californians do not want to harm animals. Consumers are being misled into purchasing products that do not reflect their values. Our aim is to give citizens of California right to know what is currently happening in the animal agriculture industry to make informed decisions for ourselves and our families.

We respectfully request action to end these documented violations of law and a commitment to greater transparency in both the enforcement of these provisions and in the cruelty that occurs in CAFOs across the state. Please let us know if you can meet to discuss our findings.

Sincerely,

Almira Tanner, on behalf of  
Compassionate Bay  
[www.compassionatebay.org](http://www.compassionatebay.org)

July 9, 2019



Jonathan D. Frohnmayer  
Organizer and Counsel  
Direct Action Everywhere  
P.O. Box 4782  
Berkeley, California, 94704

*Via Electronic Transmission and In-Person Delivery*

The Honorable Xavier Becerra  
Attorney General, State of California  
1300 I Street  
Sacramento, CA 95814

*With a Copy to:*

The Honorable Gavin Newsom  
Governor, State of California  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

**Re: Systemic Non-Enforcement of Violations of California Penal Code Section 597**

Dear Attorney General Becerra:

California's animal cruelty laws broadly protect animals raised in commercial operations. However, Direct Action Everywhere (DxE), a non-profit organization dedicated to advancing the interests of all animals, as well as its affiliated entities and individuals, including Compassionate Bay, have documented longstanding and systemic criminal animal cruelty. We have attempted for over a year to engage law and regulation enforcement agencies to address it, and those agencies responsible have failed to take any action against the abusers. We implore the California Attorney General to effectuate the will of the people to protect animals from cruelty.

This letter summarizes (A) California's animal cruelty statute; (B) our findings of animal cruelty and unsuccessful efforts to bring those findings to the attention of appropriate law and regulatory enforcement agencies; (C) an instance where, as a result of actions by DxE, a county veterinarian documented animal cruelty by a commercial animal operation in a report that was forwarded to the District Attorney, who then began prosecuting DxE activists rather than the commercial animal operation; (D) correspondence with government officials, as well as the results of public records requests, that demonstrate a lack of internal clarity or procedures among agencies on how animal cruelty in commercial operations is investigated or enforced; and (E) our

recommendations to the Attorney General to begin addressing the foregoing issues, which we hope to discuss in person.

We do not intend for this letter to shame or embarrass the agencies and individuals discussed herein. We recognize that systemic issues involving the under-enforcement of animal cruelty laws have existed for a significant length of time and cannot be reasonably attributed to the level of competence or character of any agency or individual. Rather, we intend to illustrate those issues with the sincere hope that California's executive branch can deliver accountability as well as equal protection and enforcement of the law, perhaps with assistance from animal advocates.

**A. California law broadly prohibits animal cruelty.**

California Penal Code Section 597 addresses various forms of animal cruelty. It makes criminal conduct on the part of a person who intentionally and maliciously maims, mutilates, tortures, wounds, or kills an animal. Examples of punishable conduct are overdriving, overloading, overworking, torturing, depriving of necessary food, water or shelter, and subjecting an animal to needless suffering or inflicting unnecessary cruelty upon an animal. PC Section 599b clarifies that “the words ‘torment,’ ‘torture,’ and ‘cruelty’ include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.”

Further, California Health and Safety Code Section 25990, added after California voters approved Proposition 2, criminalizes conduct in which a person tethers or confines a farm animal for all or the majority of any day in any manner that prevents the animal from lying down, standing up, fully extending his or her limbs and turning around freely.

Finally, California Penal Code Section 597e makes it a crime to engage in conduct on the part of a person who holds a domestic animal in confinement without providing the animal with sufficient food and water. This same section provides a legal defense against the claim of trespass to anyone who enters the area where the domestic animal is confined for the purpose of providing food and water. In essence, PC Section 597e provides a justification defense to a charge of trespass if the reason for the trespass is to provide care in the way of food and water to animals who need it.

Unlike in other states, California's animal cruelty statute does not contain an animal husbandry exemption. While California Penal Code Section 599c states that PC Section 597 should not be construed “to interfere with the right to kill all animals used for food,” PC 599c does not affect the general prohibition of unnecessary cruelty to animals. California's animal cruelty statute therefore differs substantially from the animal cruelty statutes of many other states that do so for farmed animals. By contrast, see, for example, Utah Criminal Code Section 76-9-301(1)(b)(ii)(C), which states, “‘Animal’ [as used in the section of the Utah Criminal Code dealing with cruelty to animals] does not include livestock, if the conduct toward the creature, and the care provided to the creature, is in accordance with accepted animal husbandry practices or customary farming practices.”

**B. DxE has delivered evidence of violations of California’s animal cruelty statute by commercial animal operations to enforcement agencies that have taken no action in response.**

Since 2013, DxE has investigated commercial animal operations throughout California (and elsewhere) and documented instances of conduct that violate PC Section 597. We drafted a letter (see [Attachment 1 - AC Letter](#)) that documents animal cruelty at fourteen different commercial facilities in California, noting that those were only a sample of the instances of cruelty we documented. For example, the letter links to a video taken at Sunrise Farms (available [here](#)), an egg farm in Sonoma County, California, that shows chickens caught in wire cages, chickens with large untreated sores, and chickens whose dead bodies were left rotting among the living chickens. There is a strong argument that these conditions violate PC 597, insofar as allowing animals to endure pain and suffering from injuries and disease to the point of death, without sufficient (or, apparently, any) veterinary intervention, constitutes an omission wherein “unnecessary or unjustifiable physical pain or suffering is caused or permitted.”

On or closely following March 19, 2018, we delivered that letter to, among others, the following agencies:

- The California Department of Public Health - Food and Drug Division,
- The district attorney in eight counties, including Sonoma County,
- The California Attorney General,
- The Sonoma County Sheriff,
- Petaluma Animal Control,
- Sonoma County Animal Services, and
- The Petaluma Police Department.

We then followed up with those agencies on a number of occasions but never received any commitment to investigate animal cruelty. For example:

- We wrote to the **Sonoma County Sheriff** on April 10, 2018 and April 23, 2018. On September 6, 2018, we met with representatives of the Sonoma County Agricultural Commissioner, the Sonoma County Counsel, Sonoma County Animal Services, the Agricultural Crimes Unit, and the Sonoma County Sheriff to discuss our findings. The representatives of those agencies stated that it was their understanding that local commercial animal operations were regulated and followed industry standards. We responded, however, that industry standards were not dispositive on the question of legality. We requested that the county inspect commercial animal operations and allow a representative from DxE familiar with animal care to accompany them to ensure compliance with California’s animal cruelty laws. However, the representatives stated that while they appreciated our perspective, they would not be able to take any action. See [Attachment 2 - DxE and Sheriff](#).

Subsequent interactions with the Sonoma County Sheriff are described in **Section D** below.

- We wrote to the **Sonoma County District Attorney** on March 19, 2018, April 6, 2018, July 26, 2018, and October 17, 2018, in each case without receiving a commitment to address our concerns. On January 31, 2019, Doug Moeller, a long-time Sonoma County resident, wrote to the DA to request a meeting to discuss animal cruelty matters. He did not receive a response, and he resent his request on February 4, 2019. He also visited the DA's office but was turned away. Having still not received a response, Mr. Moeller wrote again on February 8, 2019, expressing dissatisfaction, and again visited the DA's Office. Later that day, the DA wrote back, stating, "I have reviewed your emails, and requests for a meeting. I don't discuss pending cases with anyone other than the attorneys representing those who are charged. I am aware of your concerns regarding animal abuse and can assure you that we are looking at all aspects of this matter." Mr. Moeller responded on February 11, 2019 clarifying that he was not asking about any ongoing criminal cases, but rather about animal cruelty in Sonoma County and collusion between government and local agribusiness. He did not receive a response. DxE reached out further on April 10, 2019, and May 4, 2019, noting that we had obtained additional evidence about animal cruelty, again without receiving a reply. See [Attachment 3 - DxE and DA](#).
- We wrote to the **California Department of Food and Agriculture** on March 19, 2018. On March 29, 2018, the CDFA responded, "the Shell Egg Food Safety program reviewed its records and found that all five of the organizations you referenced are inspected annually and have been in compliance with California Code of Regulations since 2015." The CDFA also noted, "the [Health and Safety Code] requirements are enforced by local enforcement agencies." (But see discussion in **Section D** below, which summarizes a conversation where the Sonoma County Sheriff states that they "need to rely on the CDFA to report anything they see" to investigate animal cruelty.) Furthermore, while DxE's letter explicitly stated that it concerned violations of both the California Penal Code and the Health and Safety Code, the CDFA's response letter mentioned only the latter and did not address our concerns regarding violations of PC 597. See [Attachment 4 - DxE and CDFA](#).
- We wrote to **Petaluma Animal Shelter** on April 11, 2018 and April 23, 2018 without receiving a response. On May 8, two members of DxE visited Petaluma Animal Shelter in person and hand-delivered the March 19, 2018 letter referred to above to a senior staff member there. Petaluma Animal Shelter later redirected us to North Bay Animal Services, which we contacted on July 26, 2018. On August 10th, 2018, we contacted Kevin Davis, an officer of **Sonoma County Animal Services**, directly. On August 15, 2018, we sent video evidence to Mr. Davis in response to his request for the same and did not receive a response. On May 25, 2019, we again contacted Mr. Davis and again did not receive a response. See [Attachment 5 - DxE and SCAS](#).
- We wrote to the **Petaluma Police Department** on April 10, 2018. The department responded that it had no records of animal cruelty reports in commercial operations: "[I]n the City of Petaluma, Animal Control is not organizationally within the Petaluma Police Department. The Petaluma Animal Services Foundation employs the Animal Control

Officers, who are responsible for inspecting properties where livestock are maintained and issuing permits to those businesses. I've searched our police reports for the past five years and found no 597PC reports involving livestock." See [Attachment 6 - DxE and Police](#).

**C. As a result of DxE actions pursuant to PC 597e, a veterinarian from Sonoma County Animal Services documented cruelty at a commercial animal operation, and no government action was taken in response.**

On September 29, 2018, DxE activists attempted to provide care to nine sick and injured hens at McCoy's Poultry Services in Sonoma County, California, which included removing hens who did not have the ability to stand to reach food and water on their own. Sonoma County authorities arrested 58 individuals. All of the birds were ripped from activists' arms with one exception, as police gave explicit permission for activists to take out "the worst one." This one hen was carried out by an activist who was not arrested. DxE's actions were supported by a legal opinion by Hadar Aviram, a Professor of Criminal Law at UC Hastings College of Law; earlier this year, Bonnie Klapper, a former Assistant United States Attorney, offered another opinion concurring with Professor Aviram's opinion. See [Attachment 7 - Legal Opinions](#).

The case report from Sonoma County Animal Services concluded that all nine of the chickens who were taken from activists were in poor health and unable to stand on their own. It [noted](#) numerous injuries, including one chicken with exposed muscle tissue and bone and another with a severely deformed leg. For six chickens, the report stated, "Bird vocalizes in distress with manipulation of hocks and stifles." The case report [listed](#) Robert Shawn McCoy as a suspect in violation of PC 597(b) ("Person having charge or custody of any animal, either as owner or otherwise, and subjects such animal to needless suffering and fails to provide proper care and attention.") See [Attachment 8 - Report](#).

Sherstin Rosenberg, a licensed veterinarian in California and founder of Happy Hen Animal Rescue in California, where she has provided individualized care to hundreds of chickens, reviewed the case report and explained the significance of its findings, in particular that the birds' empty crops and low gait scores suggest these birds did not have access to food or water in the barn. See [Attachment 9 - Exam of Report](#).

Despite the fact that the report was forwarded to the Sonoma County District Attorney, no action has been taken to investigate the farm, to the best of our knowledge.

**D. Public records and inter-agency discussions demonstrate lack of clarity among state officials concerning animal cruelty law enforcement.**

We have also inquired whether and how government agencies investigate animal cruelty in commercial operations. Those efforts have demonstrated that (1) confusion exists among law enforcement and regulatory authorities regarding where responsibility for reporting and investigating animal cruelty lies; and (2) to the extent any policy exists, it has apparently not yielded a single investigation of animal cruelty in commercial operations.

Mr. Moeller, the Sonoma County resident mentioned in **Section B** above, met with the Sonoma County Sheriff on March 14, 2019 to discuss reporting procedures. Mr. Moeller was told that the CDFA was the appropriate agency to which animal cruelty should be reported and was the agency charged with enforcing animal cruelty laws, not the Sheriff. The Sheriff promised to follow up to provide a reporting procedure. However, Mr. Moeller subsequently contacted the CDFA, which told him that they had no jurisdiction over animal welfare and would not commit to reporting animal abuse if they themselves saw it.

On April 11, 2019, Assistant Sheriff Jim Naugle emailed Mr. Moeller following his conversation with the CDFA. Assistant Sheriff Naugle noted that confusion existed regarding which agency is responsible for investigating animal cruelty reports on farms, saying, “In regards to the investigation itself, it is clear the state believes Animal Control is the proper authority, which is our position as well. However, I know there has been some conflicting information in this regard, so I have set a meeting with them in early May.”

On May 13, 2019, Assistant Sheriff Naugle again emailed Mr. Moeller following his conversation with Animal Control. He clarified that the reporting procedure is as follows: “If the CDFA Animal Welfare inspectors find evidence of animal cruelty, they will report it to the local Animal Control Office. Our Animal Control officers will then reach out to us to assist them with the investigation. . . . Because of the heavily regulated nature of these facilities, we will still need to rely on the CDFA to report anything they see.” See [Attachment 10 - Sheriff Emails](#).

Recall, however, the discussion in **Section B** above of the letter the CDFA sent to DxE, where the CDFA stated, “[Health and Safety Code] requirements are enforced by local enforcement agencies.” The Sonoma County Sheriff and the CDFA have both appeared to task the other with responsibility for this issue, and we speculate that a similar diffusion of responsibility exists with law enforcement in other counties. Furthermore, we subsequently sent public records requests to the CDFA for any reports of animal cruelty shared with any animal control office, any district attorney, or the Attorney General. The CDFA informed us that they had no record of any such reports. See [Attachment 11 - CDFA Records](#).

Therefore, not only has confusion existed among local law enforcement and the CDFA regarding animal cruelty in commercial operations, but the current stated procedure has not yielded a single instance of an investigation of the same. It is antithetic that California voters passed laws to criminalize animal abuse, yet there is no clear enforcement command, and not a single sanction has occurred to date.

**E. We recommend the Attorney General take specific actions to address these issues.**

Based on the foregoing, we respectfully ask the Attorney General to (1) study the conditions in which animals in California’s commercial operations are held and make recommendations as to how to improve those conditions, including enforcement mechanisms, inspections, and timelines; (2) establish an inter-agency task force to clarify and streamline reporting mechanisms for animal cruelty violations in commercial operations; and (3) establish a

department whose mission is to protect animals in commercial operations and investigate and prosecute cruelty and mistreatment allegations, either by itself or in concert with other agencies.

We would like to discuss these recommendations in person and hereby renew our request for an audience with the Attorney General or another member of the California Department of Justice. We believe that any policy regarding animals in commercial animal operations should be made in consultation with veterinarians who do not have financial ties to any such operations, and we are eager to facilitate such consultation with the Attorney General.

Finally, we note that animal advocates have worked successfully with law enforcement in other states to implement solutions to this issue. For example, since 2013, the Animal Legal Defense Fund has funded an Animal Cruelty Deputy District Attorney in Oregon that represents that state in animal cruelty cases. We would be eager to work in concert with the Attorney General and other animal advocacy organizations to fashion a similar position, or class of positions, in California.

Thank you very much for your consideration.

Sincerely,

Jonathan D. Frohnmayr



**CASE REPORT****SONOMA COUNTY ANIMAL SERVICES**

1247 Century Court, Santa Rosa, CA 95403 (707) 565-7100 Fax: (707) 565-7112

Classification: California Penal Code 597 – Cruelty Against an Animal.  
(Felony/Misdemeanor)

California Penal Code 597.1 – Not Providing Property Care and Attention  
to an Animal (Misdemeanor)

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Case No.: 18-09-15

Date of Incident: 09/29/18

Location of Incident: 120 Jewett Road, Petaluma, CA, 94952

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Investigating Department: Sonoma County Sheriff Department

Business Address: 2796 Ventura Avenue, Santa Rosa, CA, 95403

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Suspect: Robert Shawn McCoy

Residence Address: 120 Jewett Road, Petaluma, CA 94952

Driver's License: N7987462

DOB: 10/21/1960

Breed: 15 Chickens (9 live and 6 dead)

---

Narrative: On 09/29/18 at approximately 1400 hours, I, Officer Dengler, received a call from Supervising Animal Control Officer Davis. He stated that the Sheriff's Department is requesting assistance at 120 Jewett Road, Petaluma, pertaining to a protest at a chicken farm.

At approximately 1410 hours, I arrived at 120 Jewett Road, Petaluma. I was met by Sonoma County Sheriff Sergeant Buchignani. Sergeant Buchignani stated that there are 2 groups of protesters that have entered the property and removed some chickens. Sergeant Buchignani also stated that there are about a dozen chickens (some alive and some dead) that were removed from the facility and the protesters are holding most of the chickens.

I observed 2 groups of protesters (one at the base of the driveway and one about a 100 yards up the driveway). There were numerous protesters across the street from the property.

I contacted Officer Foster and requested his assistance. Officer Foster arrived at about 1445 hours. Officer Foster pulled his truck into the driveway.

Officer Foster and I were advised by Sergeant Buchignani that, as the deputies place the protester in custody, we were to take custody of the chickens that some of the

protesters were holding. Although the protesters were asking what is going to happen to the chickens and did not willingly relinquish the chickens, the only conversation between myself and the protesters was to request that the protester hand me the chicken. Officer Foster and I took custody of the chickens and loaded them into Officer Foster's truck.

I went to the top of the driveway (where the group of protesters were standing) and located 5 dead chickens on towels. I took custody of the dead chickens and loaded them into Officer Foster's truck.

It should be noted that neither Officer Foster nor myself did not entered the property or any structure on the property. I also did not observe any other chickens on the property, other than the chickens that the protesters were holding and the dead chickens on the towel.

Officer Foster completed a notice of impound and obtained the property owner's signature (Robert McCoy). On the notice of impound, Officer Foster had a count of 8 live chickens and 6 dead chickens.

I contacted Supervising Animal Control Officer Davis. He stated that a veterinarian would meet us at the shelter to examine the chickens.

At approximately 1645 hours, we arrived at the Sonoma County Animal Shelter. About 15 minutes later, DVM [REDACTED] arrived with a veterinarian technician.

One at a time, I removed each of the live chickens from Officer Foster's truck. I took a picture of each bird and placed the bird into individual carriers. The carriers were placed in a manner that the chicken's picture would be matched to DVM [REDACTED] examination notes (Pictures are on the attached CD). Upon removing the chickens from Officer Foster's truck, I realized that there were 9 live chickens and 6 dead chickens.

After DVM [REDACTED] examination, she spoke to Sonoma County Animal Shelter [REDACTED] on the telephone. According to DVM [REDACTED] they agreed that, due to the condition of the chickens, all but one of the chickens are to be humanely euthanized.

Two Sonoma County Veterinarian Technicians placed the one chicken in the veterinarian room at the shelter. They then humanely euthanized the other 8 chickens.

Officer Foster removed the dead chickens and took pictures of them (Pictures are on the attached CD). DVM [REDACTED] did an examination of the dead chickens.

The 6 dead chickens and the 8 euthanized chickens were individually bagged, marked, and placed into the freezer as evidence.

On 10/04/18, I called DVM [REDACTED]. She stated that she has completed her report and that it could be picked up at [REDACTED]. I arrived at [REDACTED] and obtained DVM [REDACTED] report (See attached report).

According to Supervising Animal Control Officer Davis, the Sonoma County Animal Care and Control Veterinarian (DVM [REDACTED]) examined the chickens (See attached report).

According to Supervising Animal Control Officer Davis, all of the chickens were transported to University of California, Davis (UC Davis). The UC Davis Veterinary Medicine Department performed a necropsy on all of the chickens (See attached report).

Recording Officer: R. Dengler	Badge No.: 509	Date: 09/29/18
Supervisor Approving: K. Davis <i>K. DAVIS</i>	Badge No.: 512 <i>#512</i>	Date: 09/29/18 <i>10-18-18</i>

### Supporting Evidence:

Attachments Include:

1. Copy of the Notice of Impound completed by Officer Foster, signed by Mr. McCoy.
2. CD with the pictures of the chickens.
3. Copy of DVM [REDACTED] examination report.
4. Copy of DVM [REDACTED] examination report.
5. Copy of the UC Davis Preliminary report.

SONOMA COUNTY  
ANIMAL CARE AND CONTROL  
1247 Century Court  
Santa Rosa, CA 95403-2810  
Phone (707) 565-7100, Fax (707) 565-7112

**NOTICE OF IMPOUNDMENT**

On 9-29-18 at 1550 a 8 live chickens, 6 dead chickens Lic. # \_\_\_\_\_  
Date Time Description

was impounded from property at 120 Jewett Rd, Petaluma CA  
Address or Location

If this animal belongs to you or is in your custody, it can be redeemed at the Sonoma County Animal Shelter,

**Note:**  This animal will be held for four working days. If not claimed, it may be put up for adoption or humanely destroyed.

The above described animal(s) was/were impounded for the following:

- To protect the public health, safety and welfare.
- To protect an animal which is injured, sick or starving and must be cared for.
- To protect an animal from injury which has strayed onto public property or right-of-way.
- To protect domestic animals.

If you feel the animal(s) was/were impounded in error, or you disagree with the impoundment, you may request a hearing by personally delivering a written request, within seventy two (72) hours after this notice was served, to the address above.

Robert Shawn McCoy J. Foster #520  
Accepted by Animal Care and Control Officer  
 9/30/08 Robert Shawn McCoy DL# N7987462

Poultry examined 9/29/2018 (251-3) Sonoma County Animal Services (251) (707)  
565-7100

POULTRY CHICKEN 8 Wks. 5 Days Undetermined 3.1 pounds (9/29/2018)

BRIEF EXAM/ NOTES:

BRIEF EXAM/ NOTES:

To Whom It May Concern:

I [REDACTED] was called to examine several chickens that were brought into the Sonoma County Animal Shelter by Animal Control Officers on Saturday afternoon of 09/29/2018 on an emergency basis. I am not a boarded Avian and Exotics Specialist or a Food Animal/Poultry Specialist. I am a general practitioner in Sonoma County who sees chickens as patients on a regular basis. I agreed to examine these birds for humane reasons as the staff veterinarian was unavailable.

A general summary of presented birds: There are nine living chickens which appear to be white broilers of around 7-8 weeks old, presented in single carriers. None are able to stand on their own and all are wet and soiled. All of these 9 birds appear stressed and are panting. There are 6 deceased birds which also appear to be white broilers in various states of decay presented in plastic bags. Each carrier or bag is labeled with a case number.

Individual exams of living birds following:

A377133 3.1lb White broiler, appears male. Alert and responsive. Eyes/ears/nares/oral cavity clean. Empty crop. BCS 5+/9 and unable to stand/bear weight on either leg with bilateral painful and widened hocks. Bird vocalizes in distress with manipulation of hocks and stifles. Ventral recumbent and unable to walk. Bilateral perosis. Ventrums are erythematous and wet. No open ulcers/lesions noted on feet or keel. NCC Animal Welfare Guidelines Gait Scoring #2

A377134 4.0lb White broiler, appears male. Alert and responsive. Eyes/ears/nares/oral cavity clean. Empty crop. BCS 5+/9 and unable to stand more than briefly. Ventral recumbent and unable/unwilling to walk. Bilateral widened and painful hocks, worse on the left. Left leg is deviating/rotating laterally at the hock and stifle. Bird vocalizes in distress with manipulation of hocks and stifles. Bilateral wing tip trauma, purple bruising and broken blood feathers. Left wing: most of ventral aspect is missing skin and there is exposed muscle tissue and bone. This area is soiled, darkened, appears infected, and has necrotic smell. This wing is painful on exam. Ventrums are erythematous and wet. No open ulcers/lesions noted on feet or keel. NCC Animal Welfare Guidelines Gait Scoring #2

A377135 4.9lb White broiler, appears male. Alert and responsive. Eyes/ears/nares/oral cavity clean. Empty crop. BCS 5+/9 and unable to stand or walk. Right lateral recumbency. Unable to maintain sternal position. Right leg underneath bird, left leg extends laterally and caudally. Bilateral widened and painful hocks, worse on the left. Bilateral perosis. Bird vocalizes in distress with manipulation of hocks and stifles. Purple bruising and open sore on left wing tip. Ventrums and right side are erythematous and wet. No open ulcers/lesions noted on feet or keel. NCC Animal Welfare Guidelines Gait Scoring #2

A377136 1.3lb White broiler, unknown gender. Lethargic and depressed. Debris on head and face. Eyes clear when briefly opened. Empty crop. Pale comb. BCS 1/9 Emaciated. Left lateral recumbency. Unable to maintain sternal position. Severely deformed and twisted right leg. Right leg is held caudally and laterally. Bilateral widened and painful hocks. Bilateral perosis. Right stifle feels deranged. Ventrums and left side are erythematous and wet. No open ulcers/lesions noted on feet or keel. NCC Animal Welfare Guidelines Gait Scoring #2

A377137 3.2lb White broiler, unknown gender. BCS 4/9. Alert and responsive. Eyes/ears/nares/oral cavity clean. Empty crop. Sternal recumbency. Unable to stand/bear weight on either leg with bilateral painful and widened hocks. Bird vocalizes in distress with manipulation of hocks and stifles. Bilateral perosis. Bilateral wing tip bruising/purple discoloration on dorsal surface, with broken blood feathers. Ventrums are

**Poultry examined 9/29/2018 (251-3) Sonoma County Animal Services (251) (707)**

565-7100

POULTRY CHICKEN 8 Wks. 5 Days Undetermined 3.1 pounds (9/29/2018)  
erythematous and wet. No open ulcers/lesions noted on feet or keel. NCC Animal Welfare Guidelines Gait Scoring #2

A377138 1.1lb White broiler, unknown gender. BCS 1/9. Depressed and lethargic. Eyes/ears/nares/oral cavity clear. Empty crop. Eyes are shut unless bird directly stimulated. Hunched posture with tail down. Ruffled feathers. Able to stand briefly and able to maintain ventral recumbent position. Appears to weak to walk. Biliary diarrhea, fecal staining under vent/tail. Possible coelomic mass (coelomic mass effect). Ventrums is erythematous and wet. No open ulcers/lesions noted on feet or keel. NCC Animal Welfare Guidelines Gait Scoring #2

A277139 3.7lb White broiler, appears male. BCS 5+/9 Alert and responsive. Eyes/ears/nares/oral cavity clean. Empty crop. Sternal recumbency. Unable to stand/bear weight on either leg with bilateral painful and widened hocks. Bird vocalizes in distress with manipulation of hocks and stifles. Bilateral perosis. Right wing is broken or dislocated at carpal joint. Right wing deviates ventrally and hangs loosely. Bird is painful in this area (vocalizes). Ventrums is erythematous and wet. No open ulcers/lesions noted on feet or keel. NCC Animal Welfare Guidelines Gait Scoring #2

A377140 3.1lb White broiler, unknown gender. BCS 5/9 Alert and responsive. Eyes/ears/nares/oral cavity clean. Empty crop. Sternal recumbency. Unable to stand/bear weight on either leg with bilateral painful and widened hocks. Right side much more painful than left, though appear grossly symmetrical. Bird vocalizes in distress with manipulation of hocks and stifles. Bilateral perosis. Left leg has deep full thickness scratches/lacerations on dorsal surface of left thigh. Wings appear normal. Ventrums is erythematous and wet. No open ulcers/lesions noted on feet or keel. NCC Animal Welfare Guidelines Gait Scoring #2

A377147 3.1lb White broiler, appears male. BCS 5+/9 Alert and responsive. Left side of face is soiled. Eyes/ears/nares/oral otherwise clean. Empty crop. Left lateral recumbency. Both legs are fully extended stiffly and caudally. Minimal to no ROM hocks/stifles. Unable to stand or remain sternal. Bilateral painful and widened hocks. Bird vocalizes in distress with manipulation of hocks and stifles. Bilateral perosis and possible stifle derangement. Wings appear normal. Ventrums and left side is erythematous and wet. No open ulcers/lesions noted on feet or keel. NCC Animal Welfare Guidelines Gait Scoring #2

All of living birds are in poor health and are in distress.

Individual exams of DOA birds following. Deceased birds were not weighed. Birds in advanced states of decay were not removed from bags due to gas and fluid accumulation within bag and contamination concerns.

A377146 White broiler. Unknown gender. Thin, BCS 2/9 Very thin. In rigor. Legs extended caudally. Green discoloration (appears to be biliary fecal contamination) on head. Body appears intact. Feathers and skin wet and erythematous. Appears recently deceased with no obvious external signs of decay.

A377142 White broiler. Unknown gender. Skin and musculature missing from almost entire ventrum. Bones of wings, keel, femurs exposed. Appears cannibalized or predated upon. Coelom appears intact. Advanced decay with purple to black tissues with significant drying of tissues. Likely deceased for several days.

A377145 White broiler. Appears male. Advanced decay with gaseous bloat. Body appears overall intact but has bones protruding through skin at stifles and wings on ventrum. Body is markedly distended with gas and is green and purple in color.

A377143 White broiler. Appears male. Appears recently deceased with intact body. BCS 5+/6 in rigor with legs caudally extended. Right eye is missing and ears, eyes, oral cavity is caked with debris (litter/feces). Green bruising on head and neck. Entire body is erythematous and wet.

Poultry examined 9/29/2018 (251-3) Sonoma County Animal Services (251) (707)

565-7100

POULTRY CHICKEN 8 Wks. 5 Days Undetermined 3.1 pounds (9/29/2018)

A377141 White broiler. Unknown gender. Advanced state of decay. Gaseous bloat with distended skin and extensive green/purple discoloration. Body appears grossly intact.

A377144 Unknown chicken breed. Extensive missing skin/musculature. Missing 1/2 of neck and entire head. Missing coelomic contents. Appears heavily cannibalized or predated. Remaining tissues are darkened, necrotic appearing and somewhat dry. Appears to have been deceased for many days.

[REDACTED]

10/2/2018 Brief Exam/Notes

[REDACTED] Final - 10/3/2018

[REDACTED]

*Sonoma County Animal Services – Shelter Veterinarian –*

**Case Report – Animal # 377134**

**Agency: Sonoma County Animal Services**

Address: 1247 Century Ct

Santa Rosa, CA 95403-8236

Phone: 707 565-7110

**Officer: Justin Foster**

**Examining Veterinarian: Dr. [REDACTED]**

**Sonoma County Animal Care Veterinarian**

Address: 1247 Century Ct

Santa Rosa, CA 95403-8236

Phone: [REDACTED]

Email: [REDACTED]

**Subject of Exam: Animal # 377134**

**Date of Exam:** 10/01/18

**Route of Delivery:** Brought in alive by animal control officer Roger Denglar

**Materials Provided/Reviewed:** Medical records of Dr. [REDACTED] who first examined this bird on 9/29/18. Necropsy Report from UC Davis.

**History:** On 9/29/2018, a group of animal rights protesters broke into a commercial poultry ranch in Petaluma, CA. The protesters removed approximately 15 chickens from the buildings/houses. The protestors were arrested by sheriff's deputies and our agency took





*Sonoma County Animal Services – Shelter Veterinarian –*

**Eyes:** Clean and clear, no obvious discharge nor irritation of the corneal surface seen.

**Ears:** Clean and clear, no evidence of ectoparasites or discharge seen.

**Beak:** Intact, nares clean and clear, with no evidence of discharge seen.

**Choana:** Clean and clear.

**Crop:** Moderately full.

**Auscultation:** Heart - Heart rate is approximately 280 bpm with regular rhythm sounds.

Respiratory (Lungs and airsacs) - Respiration rate is within normal limits. The respiratory sounds are clear.

**Abdominal Palpation:** The abdomen is soft on palpation. There is no palpable masses/organomegally/free fluid.

**Cloaca:** Appears moist, slightly inflamed, some dried droppings is noted to be stuck to the surrounding feathers but is relatively clean. Suspected to be female, on exam of cloaca.

**Musculoskeletal:**

- **Neck/Spine/Pelvis** – regular anatomy on palpation, no obvious pain, able to hold head up well. The spine is prominent, but palpable pain or instability is apparent.
- **Pectoral muscle** - fair condition with BCS 2/3, a moderate fat layer between the muscle and skin layers is noted. The keel is prominent.
- **Wings** – the left wing is noted to be broken at the radial metacarpal joint, with bone exposure through the skin ventrally. The fracture(s) appear chronic in nature with secondary infection associated with exposure through the skin. The fracture appears very painful on palpation. Further wounds are noted on both shoulders dorsally with full thickness puncture wounds/abrasions. Trauma to both wing tips are also noted.
- **Legs** – Mild muscle atrophy is noted with both legs, both hocks are noted to be thickened and painful on palpation. The left leg more so than the right leg. While the chicken is able to walk, it is noted that it is ataxic and to spend the majority of time in kennel in a sternal sitting/laying position. **Gait scoring is noted as 1/2.**
- **Feet/Toes** – The ventral paws are slightly discolored with mild to moderate hyperkeratosis (thickening of the skin) and mild to moderate lesions/scabs noted on the footpads. **Broiler Paw Scoring is 1/2.**

**Plumage (feather) / Skin Condition:** The ventral plumage is absent symmetrically on either side of the sternum/midline. The remaining plumage there is broken, moist and covered with organic debris. The plumage around the cloaca is also coated with organic debris and the

*Sonoma County Animal Services – Shelter Veterinarian –*

[REDACTED]  
[REDACTED]  
[REDACTED]

associated skin is moist and inflamed. Feathers are also noted missing on the ventral and lateral neck and both thighs medially. Trauma to the wing feathers and skin are described above in the musculoskeletal section of this report.

**Parasites:** No evidence of ectoparasites are seen.

**Treatment Plan Initiated:** Physical exam findings discussed with [REDACTED] [REDACTED] of Sonoma County Animal Services. Given the chronic trauma to the left wing and associated pain, as well as the poor body condition and thickening of the both hocks and associated pain, the decision is made to humanely euthanize. The chicken was euthanized on 10/01/18 at ~4.25pm by Animal Health Technician and Registered Veterinary Technician [REDACTED] [REDACTED]

**Samples Collected/Further Diagnostic Tests Ordered:** Complete necropsy through UC Davis.

**Necropsy Report:**

Performed at UC Davis California Animal Health and Food Safety Laboratory. Received there on 10/02/18. Coordinator [REDACTED] DVM, PhD, Dipl. ACVP.

Gross Pathological Findings – Left inner wing open wound at the radial metacarpal joint which is ulcerative and is noted to have dark red-black crusting (likely hemorrhage and necrosis of the epidermis) surrounding the ulceration exposing the dermis. Tenosynovitis. Prominent Bursa of Fabricius. There is a small amount of crop and ventriculus contents composed of mash corn. Female with small inactive ova. Pale enlarged spleen. The liver is dark mahogany. On the dorsal capsule, there are 3 pale, gray-tinged irregularly-shaped foci measuring about 4x8 and 2x3 mm. These foci do not extend to the parenchyma. The cranial lobes of the kidneys are pale.

Histology Findings – Mild to moderate lymphocytic plasmacytic histiocytic epiraditis with occasional myocarditis. Severe necroulcerative dermatitis with dermal perforation (perforating injury presumptive). No significant infection is seen on histopathology.

**Cultures:**

**Splenic swab** - Staph. Hominis, considered a contaminant.



*Sonoma County Animal Services – Shelter Veterinarian –*

**Summary of findings:**

Physical examination of the patient known as A 377134, was performed by myself, Dr [REDACTED] [REDACTED] BVSc, at Sonoma County Animal Services on 10/01/18. The patient is a white broiler hen of 9 weeks of age. The patients was found to have chronic painful fracture(s) and secondary infection to the left wing and thickened painful hock joints, both legs. The chicken was unable to walk properly. A 377134's body condition was 2/3, (as described in Appendix 2). A 377134's gait score was 1/2, (as described in Appendix 3). A 377134's broiler paw score was 1/2, (as described in Appendix 4).

The overall prognosis and quality of life for this chicken was found to be poor. The case was discussed with [REDACTED] who elected to proceed with humane euthanasia. The chicken was euthanized on 10/01/18 at ~4.25pm by Animal Health Technician and Registered Veterinary Technician [REDACTED]

The bird, along with 14 other chickens from same commercial poultry ranch in Petaluma, CA, were then sent to UC Davis California Animal Health and Food Safety Laboratory for necropsy (post mortem examinations).

Necropsy findings of A 377134 suggest infection with Reovirus as a likely cause of the inflammation and swelling in the legs and associated difficulty with walking. The abnormal findings in this bird's heart muscle are also suggestive of Reovirus.

*Sonoma County Animal Services – Shelter Veterinarian –*

**Conclusions:**

In order to reach a conclusion in this case involving the patient known as A 377134, all the evidence collected during physical examinations, necropsy examination and previous medical records is taken into account. The Five Freedoms of Animal Welfare found in the Guidelines for Standard of Care in Shelter Animals, Body Condition Scoring System for Layer Hens by the International managers of the Livestock Production Programme, the US NCC Gait Scoring System for Broiler Chickens and the AAAP Broiler Paw Scoring Guide are also utilized.

The suspected Reovirus infection is known to be common in commercial poultry ranches. There is no cure, but live and killed vaccines are available. No information as been provided to me at this time as to whether or not the commercial poultry ranch these chickens came from vaccinate against this virus.

Of the Five Freedoms for Animal Welfare.

Freedom from discomfort and freedom to express normal behavior have not been assessed by myself.

No evidence of gross starvation/dehydration/malnutrition is seen. Nor is evidence of ectoparasites seen. This suggests that the freedom from hunger and thirst is likely met.

The associated pain of the chronic trauma to the left wing and the associated pain and difficulties with gait is most concerning. With no evidence of treatment of the broken wing and associated infection the freedom from pain, injury or disease and freedom from fear and distress are both considered unmet.

**Date:** 10/17/18

*Sonoma County Animal Services – Shelter Veterinarian –*

**Appendix One - The Five Freedoms for Animal Welfare**

- **Freedom from Hunger and Thirst**  
By ready access to fresh water and diet to maintain health and vigor.
- **Freedom from Discomfort**  
By providing an appropriate environment including shelter and a comfortable resting area.
- **Freedom from Pain, Injury or Disease**  
By prevention or rapid diagnosis and treatment.
- **Freedom to Express Normal Behavior**  
By providing sufficient space, proper facilities and company of the animal's own kind.
- **Freedom from Fear and Distress**  
By ensuring conditions and treatment which avoid mental suffering.

Newberry, S., M.K.Blinn, P.A. Busby, C. Barker Cox, J.D. dinnage, K.F. Hurley, N. Isaza, W. Jones, L. Miller, J. O'Quin, G.J. Patronek, M. Smith-Blackmore, and M. Spindel. 2010. Guidelines for Standard of Care in Shelter Animals, p.10. Association of Shelter Veterinarians.

Sonoma County Animal Services – Shelter Veterinarian –

**Appendix Two – Body Condition Scoring System for Layer Hens by the International managers of the Livestock Production Programme**

**Body Condition Scoring System for Layer Hens**

The chicken is held by the legs in one hand, usually upside down. The palm of the other hand is then used for palpating and grading the protuberance of the keel (ie breast bone), the development of the breast muscles immediately alongside the ventral ridge of the keel, and the convexity or concavity of the breast muscle contour. A study by Gregory and Robins has demonstrated that this system of scoring has a good relationship with the bird's fat and muscle reserves.

Score	Characteristics
0	Prominent ridge on the keel with limited overall breast muscle and a concavity of the breast muscle alongside the keel
1	Greater development of breast muscle which is not concave and feels more or less flat. Keel still prominent.
2	Moderately developed convex breast muscle. Keel less prominent.
3	Well developed relatively plump breast. Smooth over the keel.

© copyright 2006, NR International managers of the Livestock Production Programme (LPP) funded by DFID



Sonoma County Animal Services – Shelter Veterinarian –

**Appendix Three – US NCC Gait Scoring System for Broiler Chickens**

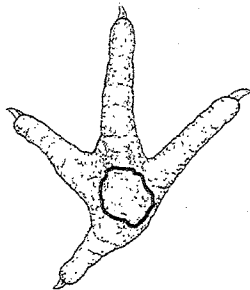
For most audits, the auditor will only watch the broiler and their movement. However if a “gait score” is required, the U.S. Gait Scoring technique is recommended (Gait Scoring in the Commercial Broiler. Office of Agricultural Communications, Box 9625, Mississippi State, MS 39762. (662) 325-2262).	No obvious signs of problems	Balance
Broilers may need to be gently encouraged to walk. If the broilers become stressed, especially in hot weather, discontinue scoring immediately	Obvious signs	Clear limp, awkward but can walk 5ft
<b>Score 0</b> – Bird should walk at least 5 feet, and while the bird may appear ungainly, there are no visible signs of lameness.	Severe signs	Will not walk 5ft

- Refer to: <https://www.nationalchickencouncil.org/wp-content/uploads/2017/07/NCC-Welfare-Guidelines-Broilers.pdf>

**Appendix Four - AAAP Broiler Paw Scoring Guide**



**Broiler Paw Scoring Guide**



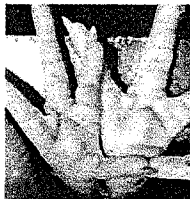
Paw scoring is an important part of welfare audits for broiler flocks. To optimize scoring accuracy & to minimize welfare concerns with handling broilers in the field, broiler paws should be evaluated in the processing plant to more precisely and efficiently assess the bottom of the foot. The paw includes the broiler foot pad (red circled area) and the toes.

At the processing plant, broiler paws should be assessed after the removal of the cuticle, or alternatively after paw cleaning. A random sample of 200 paws (representing 100 broilers) should be evaluated per flock and a pass or failure score should be assigned to each paw.

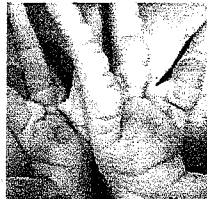
A result of 90% (or greater) of paws with a pass score is considered to be acceptable for animal welfare when evaluating broiler paws.

**PASS (Score Criteria)**

- Normal color\* and skin  
(\*note, skin color may vary from yellow to white due to breed or diet)
- Slight discoloration or darkened skin
- Hyperkeratosis (thickening of skin)
- Lesion covering less than 1/2 of foot pad



Pass (washed paws with no lesions & normal skin color)



Pass (paws with no cuticle and normal skin color)



Pass (washed, post-scald paws with scab covering less than 1/2 the area of the foot pad)



Pass (paws with no cuticle & some color variation, healed skin and no ulcerations)

**FAIL (Score Criteria)**

- Erosions, ulceration, or scab formation that covers more than 1/2 of foot pad and may include the toes
- Hemorrhages or swelling of foot pad



Fail (washed paws)  
Ulceration is present and lesion is more than 1/2 the area of the foot pad; lesions are also present on the toes

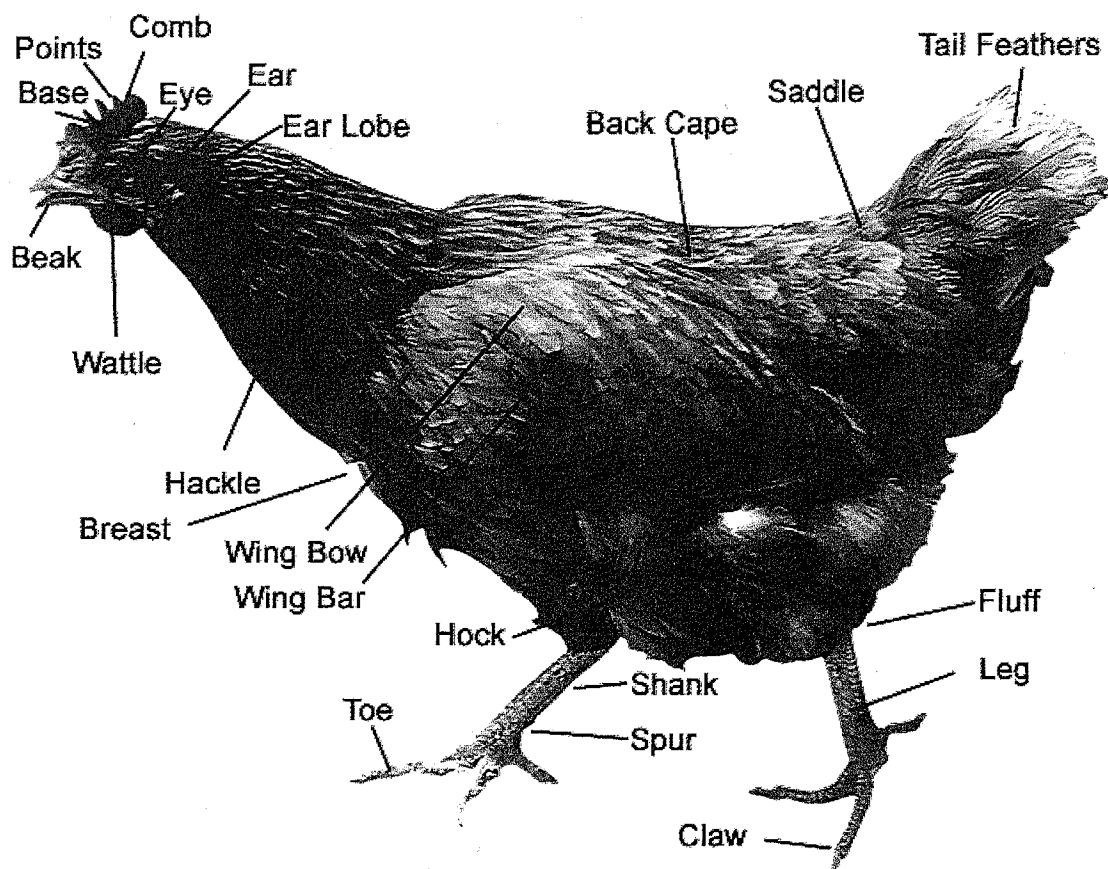


Fail (paws without cuticle)  
Ulceration is present and the lesion is more than 1/2 the area of the foot pad. Swelling of the foot pad is also visible.

Produced by the AAAP Animal Welfare & Mgmt Committee, 2015

Refer to: <https://www.nationalchickencouncil.org/wp-content/uploads/2017/07/NCC-Welfare-Guidelines-Broilers.pdf>

Appendix Five – Anatomy of a chicken



*Sonoma County Animal Services – Shelter Veterinarian –*

[REDACTED]

[REDACTED]

[REDACTED]

**Appendix Six – Photographs**

Attached are printed copies of photos of A 377134.

These photos and those of the other 14 chickens involved in this case can be found on the Sonoma County Animal Services computers.

[REDACTED]

*Sonoma County Animal Services – Shelter Veterinarian –*

[REDACTED]

Appendix Seven - [REDACTED] Preliminary  
Report

Attached report is considered a preliminary and is the only report that I have reviewed at the time of this report being written.

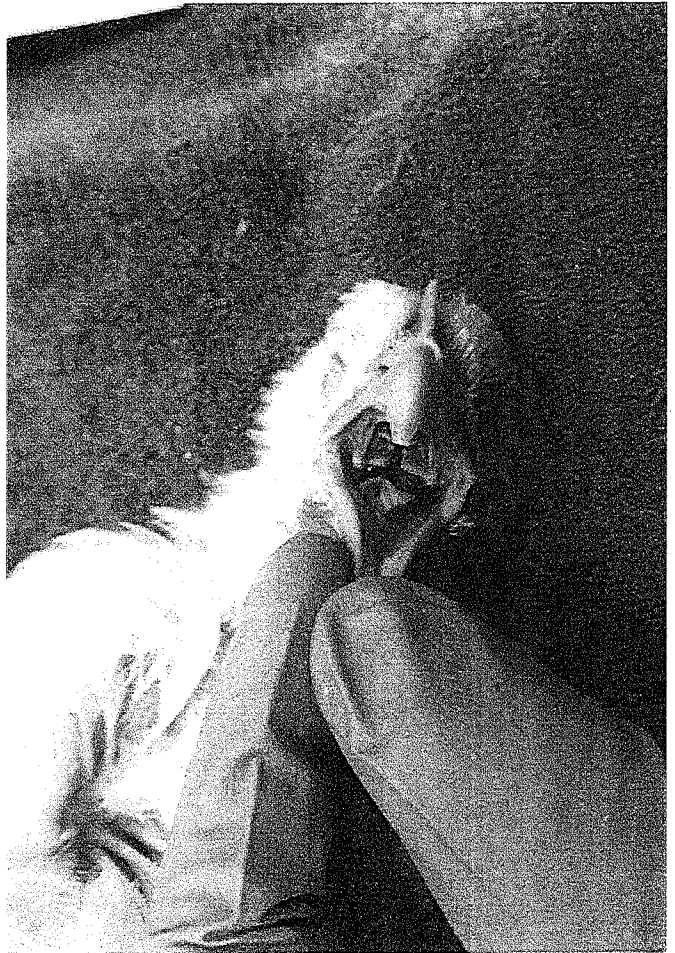
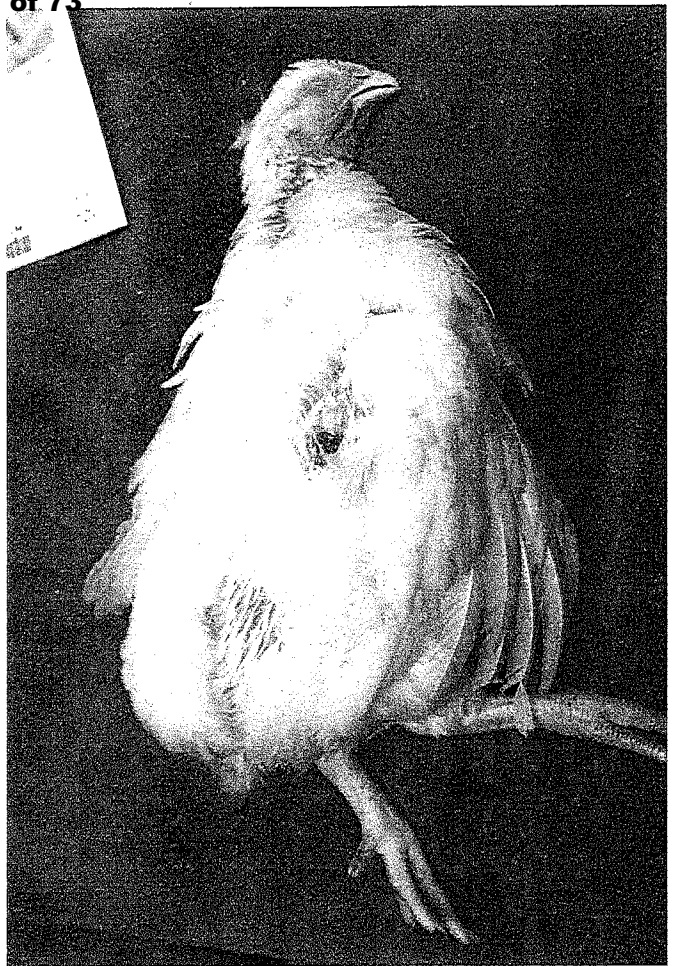
*Sonoma County Animal Services – Shelter Veterinarian –*

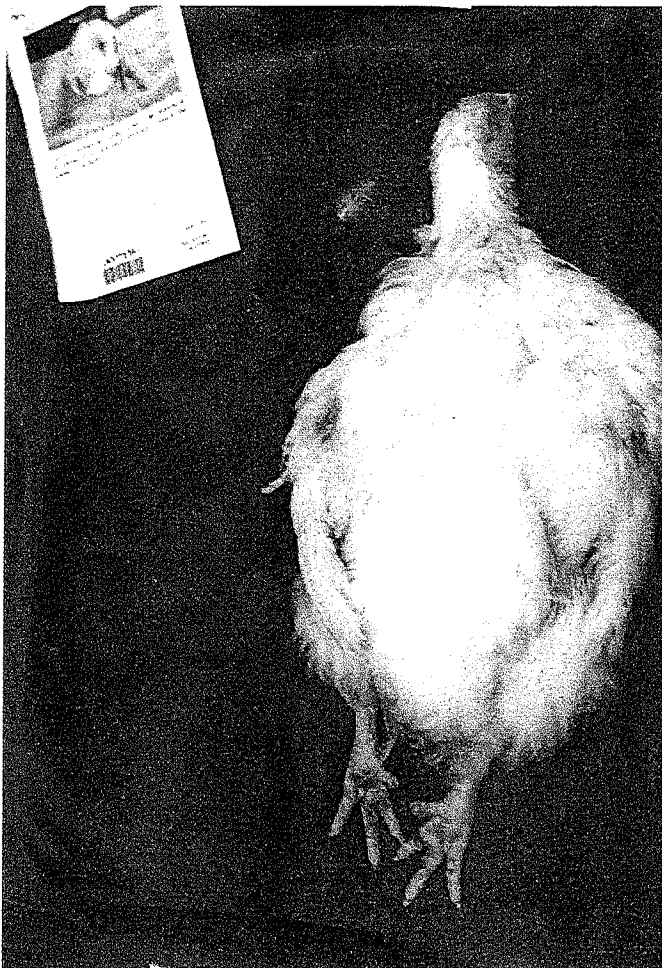
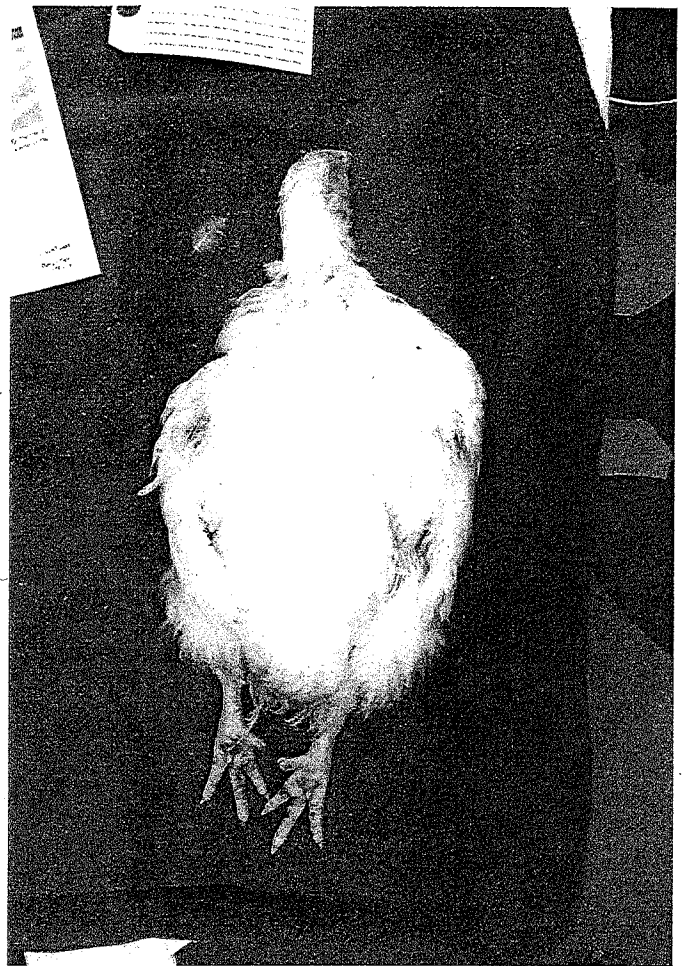
[REDACTED]

[REDACTED]

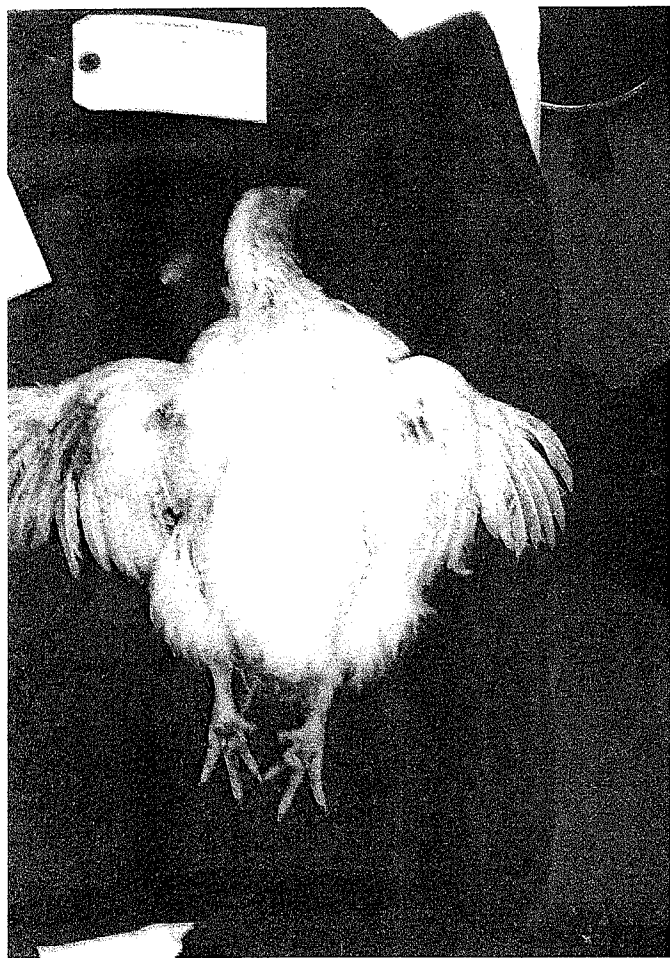
**Appendix Eight – UC Davis California Animal Health and Food Safety Laboratory**  
**CAHFS #: D1813703 Report – Preliminary Version 2.**

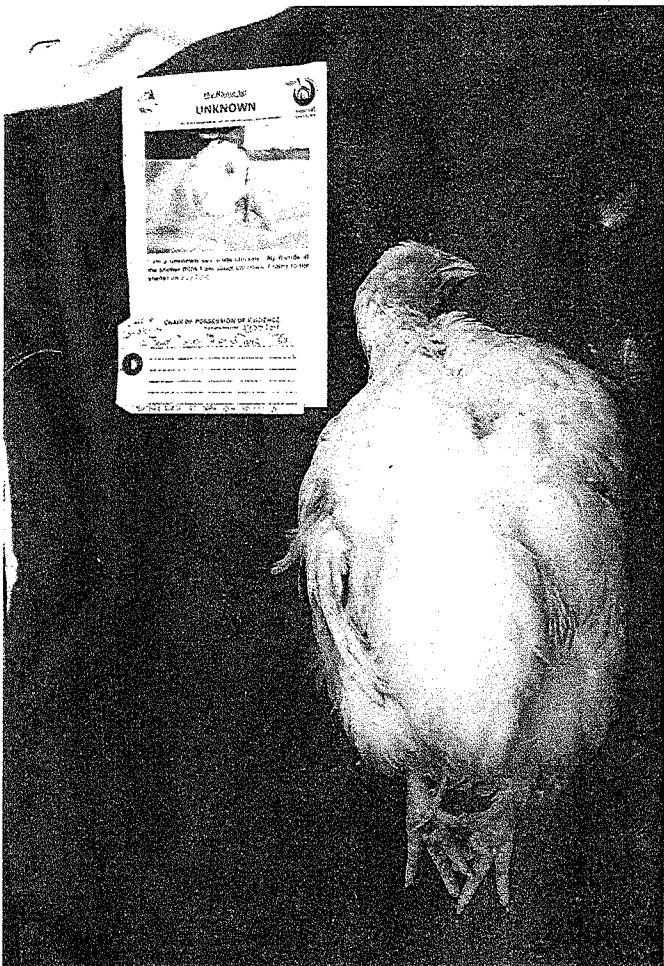
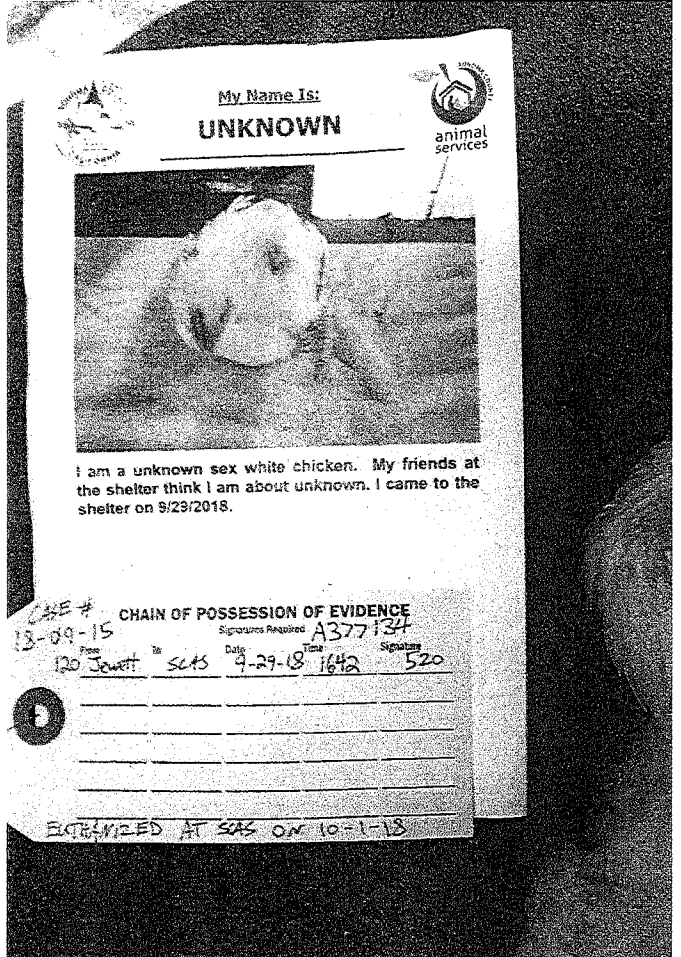
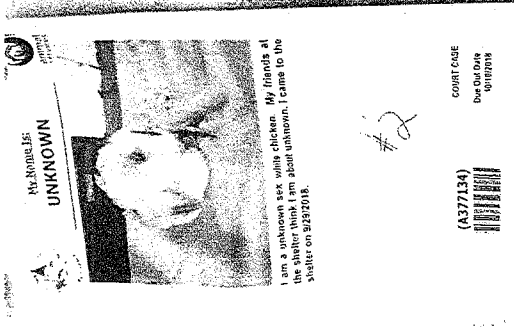
Attached report is considered a preliminary and is the only report that I have reviewed at the time of this report being written.

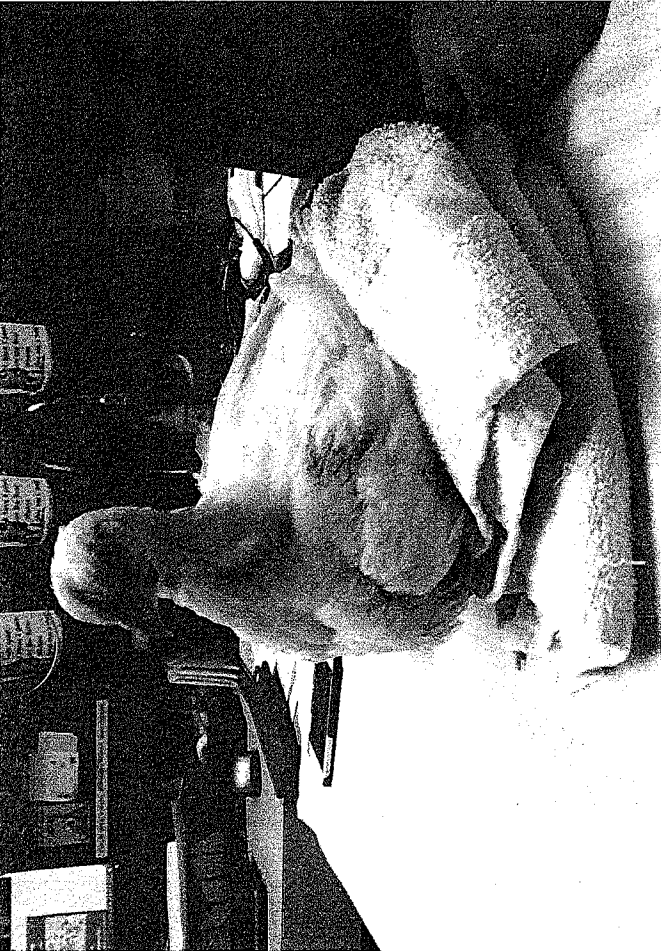
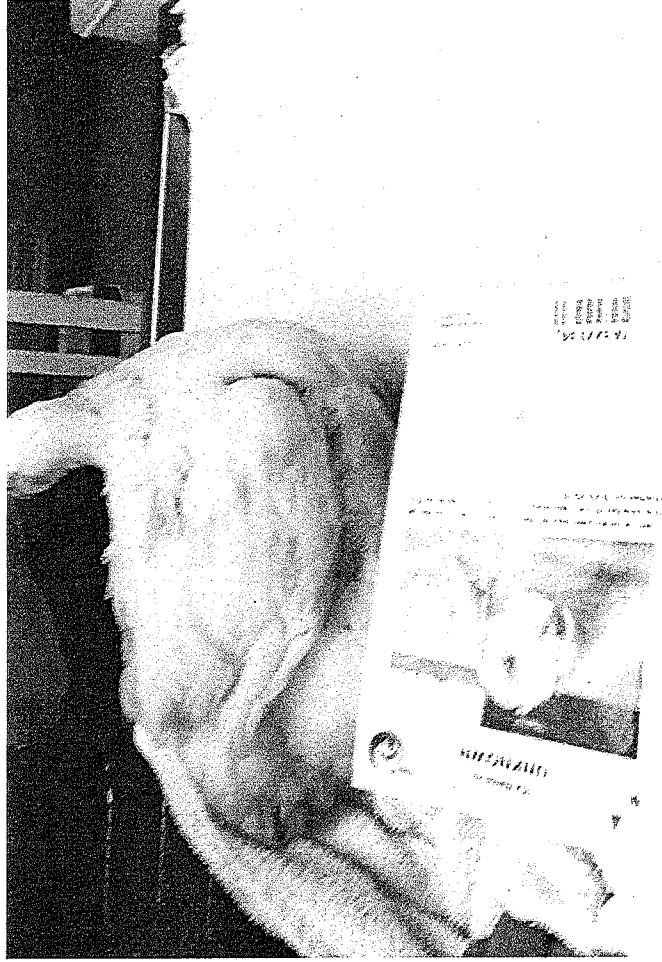


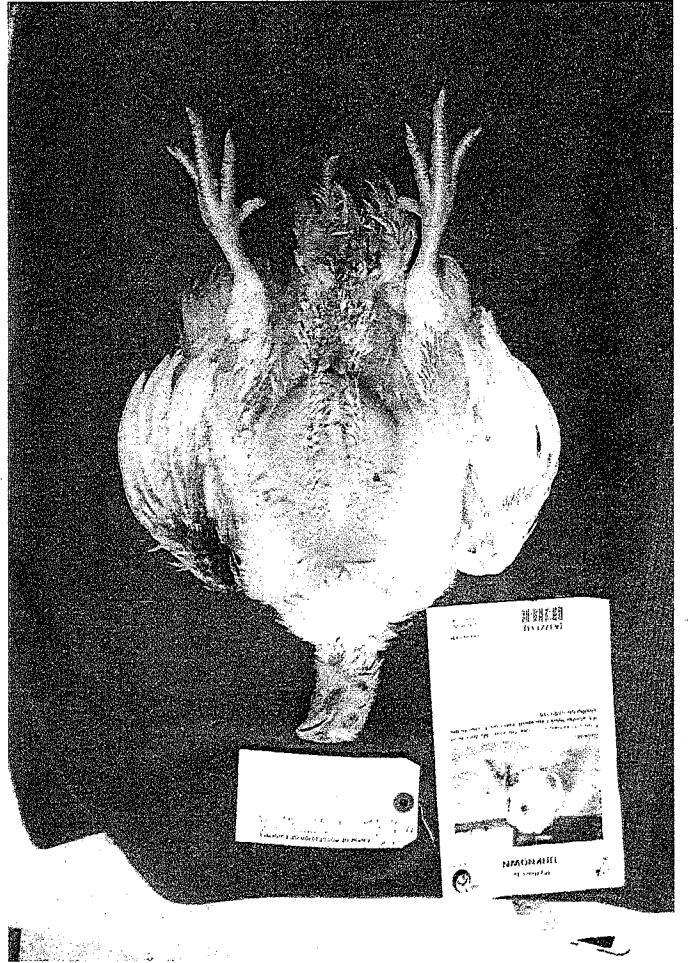


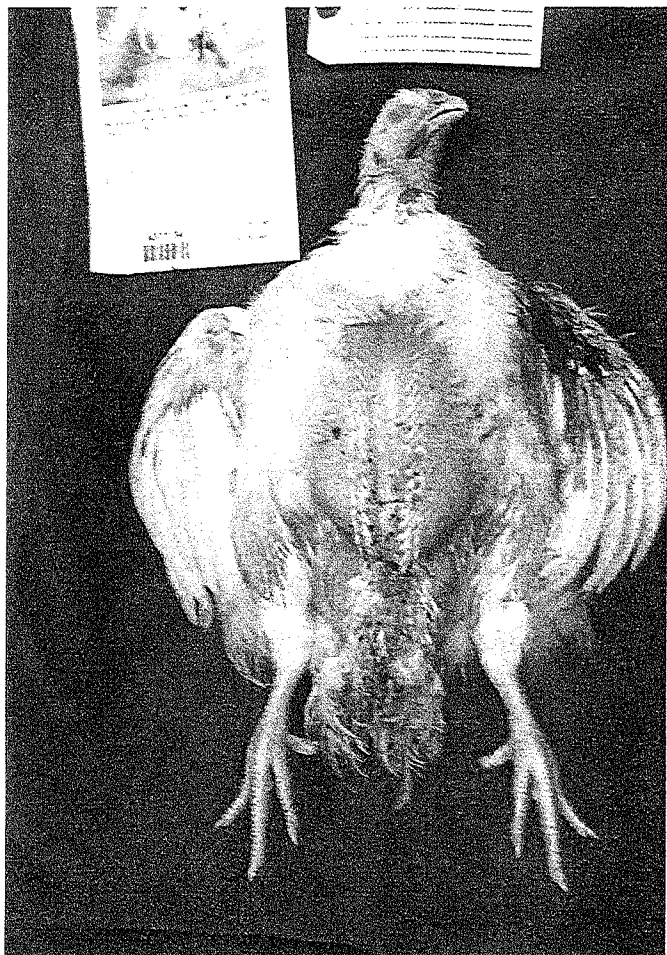
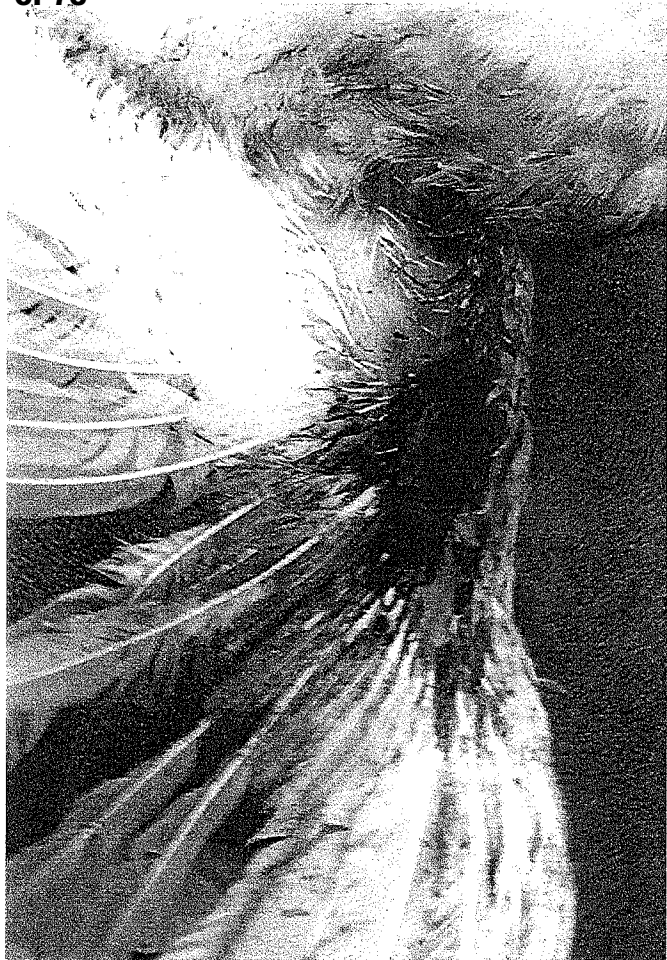


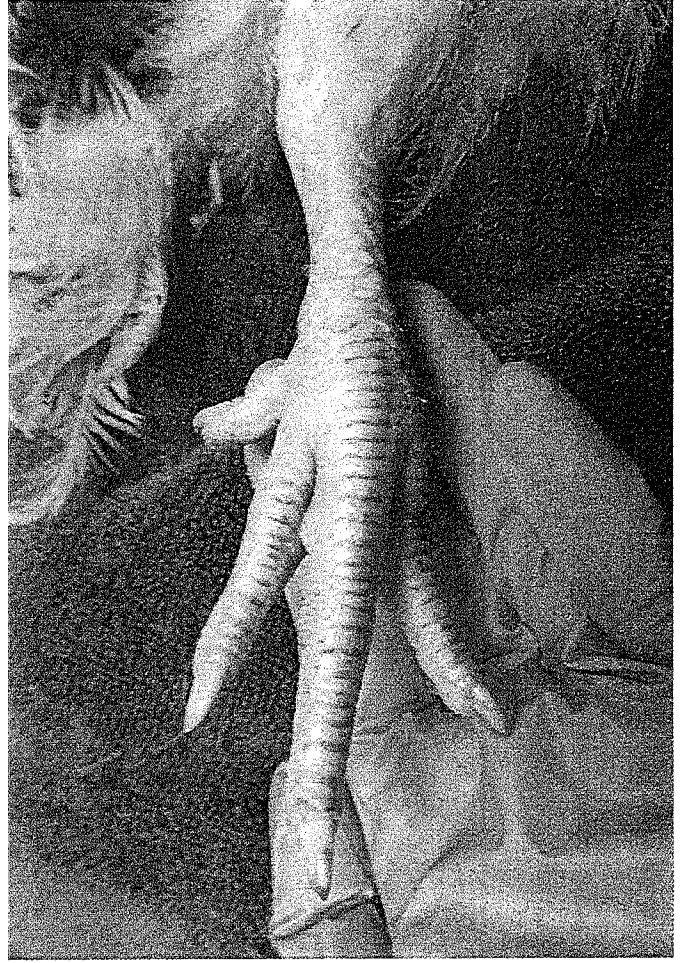


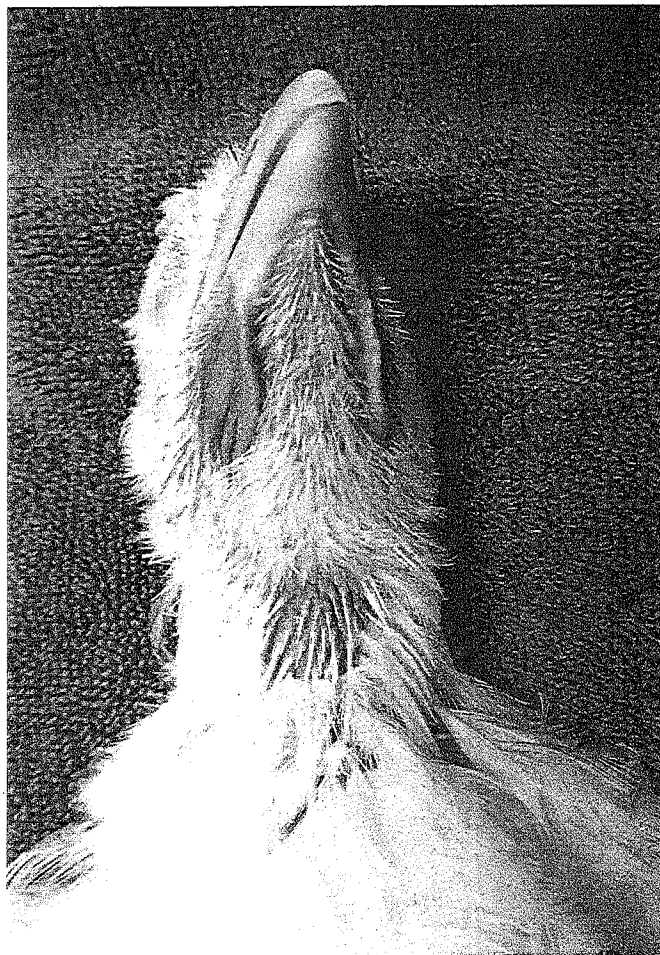


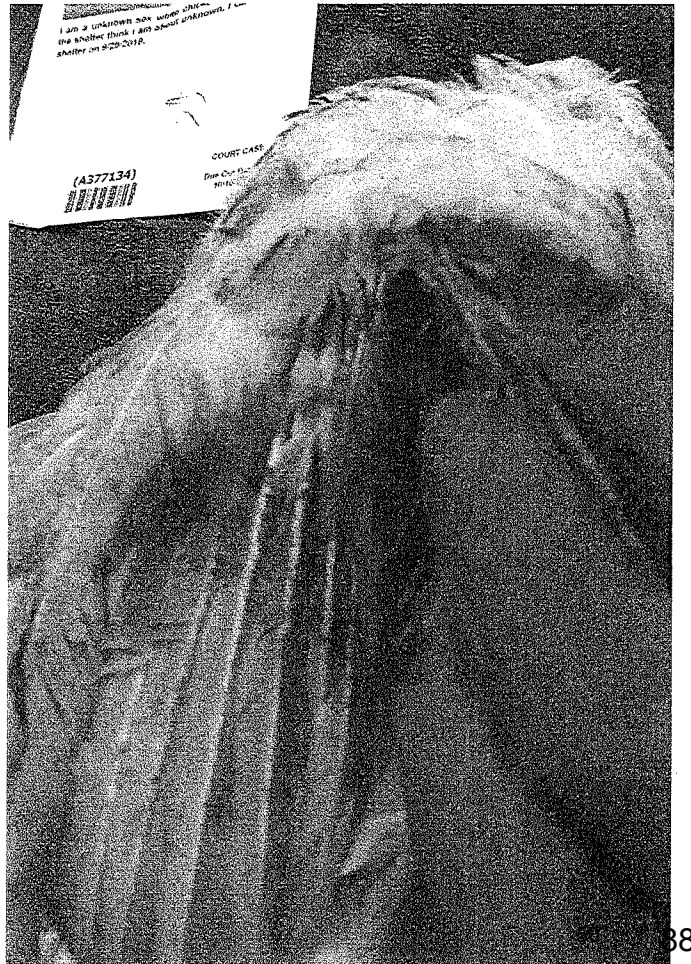
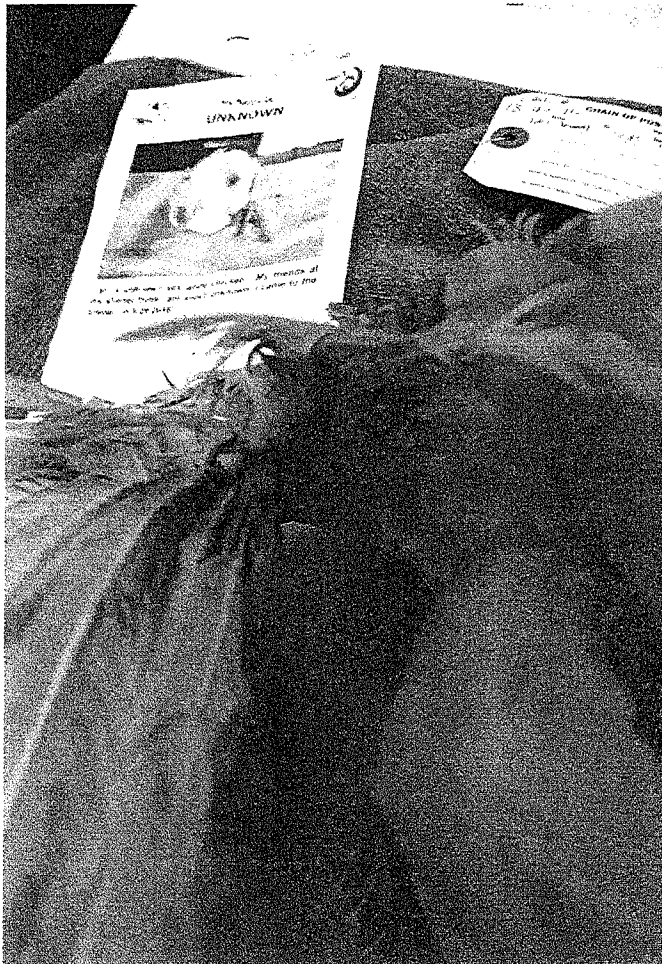
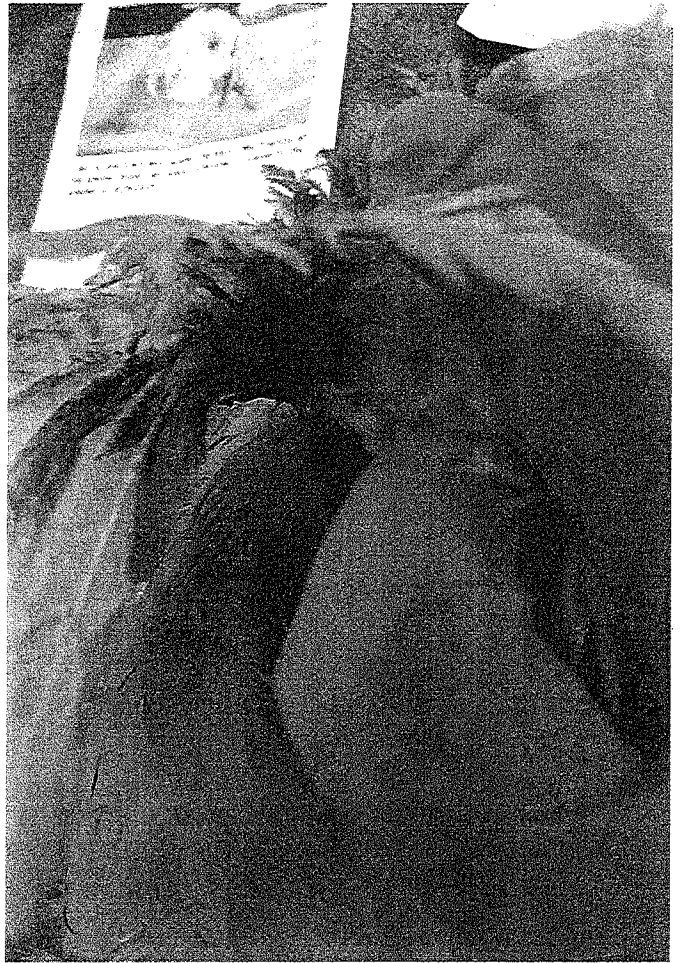




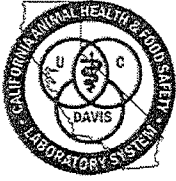












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**UC DAVIS**  
**VETERINARY MEDICINE**

California Animal Health and  
Food Safety Laboratory  
PO Box 1770, Davis, CA, 95617  
(530) 752-8700

CAHFS Accession #: D1813703

Preliminary Version 2

Ref. #:

Coordinator: [REDACTED] DVM, PhD, Dipl. ACVP

E-Signed and Authorized by: [REDACTED] on

10/12/2018 2:20:06PM

Email To:  
Sonoma Co Animal Control  
[REDACTED]

Collection Site:  
Sonoma Co Animal Control  
1247 CENTURY CT,  
SANTA ROSA CA 95403  
Sonoma County.

**This report supersedes all previous reports for this case**

Specimens Received: 15 Carcass;

Date Collected: 09/30/2018 Date Received: 10/02/2018

Comments: 15 frozen carcasses

**Case Contacts**

Submitter	Sonoma Co Animal Control	707-565-7106	1247 Century Ct	Santa Rosa	CA	95403
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**Specimen Details**

Animal/Source	ID Type	Taxonomy	Gender	Age
D1813703-01	CAHFS Internal ID	Chicken		

**Laboratory Findings/Diagnosis**

Histopathological findings:

- Chickens G-O: Mild to moderate lymphocytic plasmacytic tenosynovitis, reo virus infection
- Chickens C and F, severe fibrinonecrotizing colomitis, three different bacteria isolated from swabs from F
- Chickens G, H, K, L, M, O: Mild to moderate lymphocytic plasmacytic/histiocytic epicarditis with occasional myocarditis
- Chickens I, L, M, N, O: Bursal depletion
- Chicken H: Severe necroulcerative dermatitis with dermal perforation (perforating injury presumptive)
- Chickens C and F: Fibrinosuppurative coelomitis, marked

Gross pathological findings:

- Chickens C (#377143) and F (#377146): Severe fibrinous coelomitis, epicarditis
- Chickens G-O: Non-specific findings; no significant pathology
- Chicken H (#377134): Left inner wing open wound
- Chicken J (#377136): Lateral rotation of the right distal tibiotarsus and severe lateral and backward deviation of the distal limb (metatarsus and digits); valgus deformity

**Case Summary**

10/12/2018: Microscopic examination of the tissues are completed now, significant findings are summarized in the diagnosis section. The coelomitis in chickens C and F are confirmed, and on bacterial cultures of F there are three bacteria isolated, all typically found in the intestinal tract, likely due to autolysis (bird C was not cultured due to the autolysis). The fresh carcass, "H" had a pale and somewhat enlarged spleen, there is no significant infection on histopathology and cultures isolated Staph. hominis, also likely a contaminant.

A significant and relevant finding is the tenosynovitis observed in all G-O birds, and reovirus is detected in three of them by PCR. Reo virus is a vertically transmitted disease that has been affecting many broiler birds, and typically involves the tendons of the hocks, leading to rupture of the tendons in severe cases. None of these birds had gross lesions of arthritis/synovitis, however histopathology revealed the consistent lesions, and this may be the most contributing factor in these chickens not being able to

move and stand up well, as [REDACTED] had mentioned on our phone conversation. I had initially suspected the clinical signs and poor quality of life may be due to the rapid body weight gain issues of broilers however at least one of the birds was not overtly heavy and the joint inflammation is more likely. Most birds also had epicardial and myocardial inflammation, also typically associated with reovirus infections. Our reovirus PCR is not highly sensitive, thus we are pursuing virus isolation on the 6 chickens with negative PCR results.

10/4/18: Two birds examined from the "found dead" had severe coelimitis as the cause of death. The degree of autolysis and freeze-thaw may hinder the results however swabs are submitted for cultures in an attempt to identify the bacterial agent involved. The remainder four birds from this group were discarded due to the advanced autolytic state of the carcasses.

On postmortem examination of the euthanized birds there were no specific pathologic observations.

The one bird with the leg rotation seems to be due to a limb deformity likely from early life and developed with the severe deviation of the distal limb. Microscopy is pending, as well as some ancillary testing.

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### Clinical History

9/30: a group of animal right protesters broke into a commercial poultry ranch in Petaluma, CA. The protesters removed approximately 15 chicken from the buildings/houses. The protesters were arrested by sheriff's deputies and our agency took possession of 6 dead chickens and 9 live chickens. The 9 live chickens were examined by a vet and euthanized because of their health condition. 14 chicken have been frozen and one chicken has been kept col not frozen. We are trying to determine the cause of death of all 15 chickens; the 6 chickens that were brought in dead are all in one large bag and each chicken is clearly marked/identified. The 9 euthanized chicken are all in one bag and each chicken is clearly marked/identified. The one chicken that was kept in cold storage is in a bag by itself and also clearly marked.

---

### Gross Observations

Submitted are 15 chicken carcasses, designated "A" to "O" in the order of their ID numbers. Fourteen carcasses are frozen, the one chicken that is euthanized 10/1/2018 is refrigerated. Of the frozen chickens, five "found dead" chickens are in one large bag (A, B, C, D, F), the recently euthanized chicken is "H," and there are nine euthanized carcasses in a separate large bag (G, I-O). Frozen carcasses are thawed in lukewarm water throughout the day prior to necropsy.

Of the previously dead carcasses, chickens "C" and "F" are examined, birds "A", "B", and "D" are in advanced state of decomposition and cannot be evaluated. These two birds are in fair nutritional condition, the pectorals are straight, and there is scant adipose tissue stores internally. Both have prominent, developed Bursa of Fabricius (mostly around 1 cm diameter). Chicken E (ID #377145), although found in the bag of the "euthanized" birds, is severely autolytic and is discarded as well (presumed to be the 6th "found dead" bird). There is diffuse generalized green discoloration and with additional brown tinged soft internal organs, the skull is fractured into pieces, there is no open wound or hemorrhages (postmortem).

Postmortem changes in chickens C and F are similar. In chicken C diffusely the hepatic capsule, intestinal loops and the epicardium are overlain by thick fibrinous exudate. Spleen is mildly enlarged. Chicken F has severe fibrinous to fibrinosuppurative coelimitis. The right liver lobe is severely diffusely pale and shrunken with rounded edges in a compartment filled with yellow caseous material and fluid. The left liver lobe is severely enlarged extending to the cloaca and diffusely dark red-purple, containing military pinpoint pale foci.

Chickens G to O are all in good nutritional condition and in moderate to marked postmortem decomposition. All birds have wet, frothy, red to dark red lungs except lungs M and N are pink and frothy and chicken G has severe brown tinge of the lungs (freeze-thaw artifact, euthanasia artifact, and autolysis). Chickens H and L are females (small, inactive ova and oviduct), remainder birds are males. All have prominent, developed Bursa of Fabricius (mostly around 1 cm diameter). Most crops are empty or have scant corn/mash contents and the ventriculus typically have small amount of ingesta.

Chicken G: The crop is empty, ventriculus contains small numbers of pebbles. There is a focal region of koilin irregularities at the isthmus (erosions?). There is mild enlargement of the spleen. The cecal tonsils are petechiated.

Chicken H (refrigerated carcass): There is an ulcerative wound on the left inner wing at the radial metacarpal joint. There is dark red-black crusting (likely hemorrhage and necrosis of the epidermis) surrounding the ulceration exposing the dermis. The liver is dark mahogany. On the dorsal surface on the capsule, there are 3 pale, gray-tinged irregularly-shaped foci measuring about 4 x 8 and 2 x 3 mm. These foci do not extend to the parenchyma. This a female bird with small inactive ova. The cranial lobes of the kidneys are pale. There is a small amount of crop and ventriculus contents composed of mash-corn.

Bird I: Has an enlarged, diffusely pale spleen with some petechiations (swabbed). There is a small amount of corn in the crop and ventriculus.

Bird J: Small amount of crop contents are present, the ventriculus contains a moderate amount of corn mash. There is severe deviation of the right distal limb: the distal tibiotarsus is rotated leading to the lateral and backward rotation (>90 degrees) of the

metatarsus. The ligaments and joint are unremarkable. The rotation is associated with the distal tibia and does not release upon dissection of the tendons and ligaments of the tibiotarsus – metatarsus joint. The digits are in line with the metatarsus.

Chicken K: The crop is empty, the ventriculus has a small amount of mash feed.

Chicken L: A central brown friable circular area is in the entral hepatic parenchyma (euthanasia artifact, vascular). The ventriculus has a small amount of green to bright green contents. The crop is empty.

Chicken M: The crop is empty. There is some fibrous plant material in the ventriculus.

Chicken N: Has an empty crop. The ventriculus has scant contents.

Chicken O: The liver and heart have marked pallor, autolytic changes, as do most other birds like G and J. The ventricular wall is thinned and soft. The crop is empty, as well as the stomach with only a few pebbles.

**Bacteriology**

**BACTERIAL AEROBIC CULTURE**

Animal/Source	Specimen	Specimen Type	Results
D1813703-01	F/377146	Coelomic Cavity Swab	Enterococcus cecorum Lg# Enterococcus faecalis Rare# Escherichia coli Rare#
D1813703-01	H/377134	Liver Swab	No growth after 48 hours
D1813703-01	H/377134	Splenic Swab	Staphylococcus hominis Rare#

**Biotyper Organism Identification**

Animal/Source	Specimen	Specimen Type	Results
D1813703-01	F/377146	Coelomic Cavity Swab	Enterococcus cecorum Enterococcus faecalis Escherichia coli
D1813703-01	H/377134	Splenic Swab	Staphylococcus hominis

**Biotechnology**

**Influenza A PCR with Internal Control**

Animal/Source	Specimen	Specimen Type	Results
D1813703-01	Group 1	Oropharyngeal Swab Pool	Not Detected
D1813703-01	Group 2	Oropharyngeal Swab Pool	Not Detected

**Reovirus PCR**

Animal/Source	Specimen	Specimen Type	Analyte	Result	Units
D1813703-01	G/377133	Tendon tissue	Reovirus	Not detected	
D1813703-01	H/377134	Tendon tissue	Reovirus	Indeterminate	
D1813703-01	I/377135	Tendon tissue	Reovirus	Not detected	
D1813703-01	J/377136	Tendon tissue	Reovirus	Not detected	

CAHFS Preliminary Version 2

Accession # D1813703

October 12, 2018

D1813703-01	K/377137	Tendon tissue		
<b>Analyte</b>			<b>Result</b>	<b>Units</b>
Reovirus			Virus Detected	
D1813703-01	L/377138	Tendon tissue		
<b>Analyte</b>			<b>Result</b>	<b>Units</b>
Reovirus			Virus Detected	
D1813703-01	M/377139	Tendon tissue		
<b>Analyte</b>			<b>Result</b>	<b>Units</b>
Reovirus			Not detected	
D1813703-01	N/377140	Tendon tissue		
<b>Analyte</b>			<b>Result</b>	<b>Units</b>
Reovirus			Not detected	
D1813703-01	O/377147	Tendon tissue		
<b>Analyte</b>			<b>Result</b>	<b>Units</b>
Reovirus			Not detected	

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### Histology

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Chicken C: Sections of heart, air sacs, liver, spleen, kidneys, and gastrointestinal tract are examined. The epicardium is severely disrupted by a thick layer of caseonecrotizing exudate containing occasional bacterial colonies and large numbers of histiocytes and exudate are in the outer half of the myocardium. The liver capsule, serosal surfaces of organs, mesentery are overlain by severe similar exudate. There are frequent serum lakes and mild histiocytic hepatitis in the parenchyma of the liver.

Chicken F: Sections of heart, trachea, air sacs, liver, spleen, kidneys, skeletal muscle, and gastrointestinal tract are examined. The liver has multifocal to coalescing areas of necrosis and severe histiocytic, granulomatous hepatitis. The serosal surfaces of abdominal organs are overlain by fibrinocellular exudate. A large conglomerate taken from the coelomic cavity is composed of eosinophilic, caseonecrotic accumulations containing variable morphologies of bacteria.

Examined are sections of hock tendons and synovium, brain, feathered skin, peripheral nerves, heart, trachea, air sacs, lung, liver, spleen, kidneys, ova/testis, adrenal glands, bursa, skeletal muscle, esophagus, crop, proventriculus, ventriculus, pancreas and intestines from chickens G-O. Significant findings are as follows.

Chickens G-O: Mild to moderate lymphocytic plasmacytic tenosynovitis. In a couple cases there is also mild fibrillary synovial hyperplasia.

Chicken G: Marked diffuse epicarditis, with lymphocytic some histiocytic infiltrates and fibroblasts. Mild multifocal myocarditis histiocytic lymphocytic.

Splenic depletion. Multifocal fibrinous/serous effusion.

Chicken H: mild focal heterophilic, histiocytic, lymphocytic epicarditis and myocarditis, regionally extensive epicardial expansion and fibroblasts, mild (reactive?). Mild periportal mixed leukocytic expansion (incidental).

Left wing wound demonstrates segmentally ulcerated epidermis with severe caseonecrotic thick crust embedded with large numbers of bacterial colonies (cocci). The adjacent epidermis is intact. The dermis subjacent to this is expanded by large numbers of heterophils, and the deeper dermis is expanded by a linear track of necrotic cells and exudate, bacterial colonies, and several polarizing foreign material occasionally surrounded by macrophages (perforating wound presumptive).

Chicken I: Presumptive minimal myocarditis (freeze-thaw?). Fibrin/serum accumulations multifocally in the spleen, couple of lymphoid follicles, mostly not very cellular and histiocytic. Bursa is moderately depleted.

Chicken J: Also thyroid examined. There is focal periportal lymphocytic mixed expansion (incidental).

Chicken K: Multifocal mild lymphocytic histiocytic myocarditis and small focal epicardial infiltrates. Multifocal periportal lymphocytic mixed expansion (incidental).

Chicken L: Bursa is markedly depleted. The subepicardium is expanded by clear spaces and small numbers of mesenchymal cells, there is mild tombstoning of the lining cells and in one region there is prominent hypertrophy and hyperplasia. There are couple of suspicious areas of lymphoid cells infiltrating the myocardium (autolysis?). Focal lymphocytic adrenalitis.

Chicken M: Diffuse subepicardial expansion by fibropasia and histiocytes, lymphocytes. Multifocally there is moderate lymphocytic histiocytic myocarditis. Multifocal random acute hepatic necrosis and periportal expansions. The bursal stroma is expanded (atrophy?).

Chicken N: Bursa follicles are depleted. There is focal erosion/ulceration of the koilin with bacterial colonization.

Chicken O: There is depletion of the Bursa follicles and with expansion of the stroma. The subepicardium is expanded by clear spaces and large numbers of lymphocytic plasmacytic heterophilic histiocytic cells.

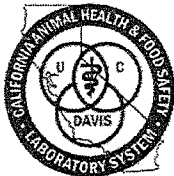
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### Virology

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**Avian Virus Isolation**

<b>Animal/Source</b>	<b>Specimen</b>	<b>Specimen Type</b>	<b>Results</b>
D1813703-01	G/377133	Tendon tissue	Pending
D1813703-01	H/377134	Tendon tissue	Pending
D1813703-01	I/377135	Tendon tissue	Pending
D1813703-01	J/377136	Tendon tissue	Pending
D1813703-01	M/377139	Tendon tissue	Pending
D1813703-01	N/377140	Tendon tissue	Pending
D1813703-01	O/377147	Tendon tissue	Pending



**UC DAVIS**  
**VETERINARY MEDICINE**  
 California Animal Health and  
 Food Safety Laboratory System

CAHFS Accession #: D1813703  
 Ref. #:  
 Coordinator: [REDACTED]  
 Date Received: 10/02/2018  
 Invoice Date: 10/12/2018  
 Billing ID: 00007358

www.cahfs.ucdavis.edu

**Preliminary - Fee Estimate**

This report supersedes all previous reports for this case

**Email To:**  
 Sonoma Co Animal Control  
 [REDACTED]

**Collection Site:**  
 Sonoma Co Animal Control  
 1247 CENTURY CT  
 SANTA ROSA, CA 95403  
 County: SONOMA

**Contacts:**

Role	Full Name	Phone	Address
Submitter	Sonoma Co Animal Control	707-565-7106	1247 CENTURY CT SANTA ROSA CA 95403

**FEE ESTIMATE ONLY.** Please pay from the statement of final charges that is mailed at the end of the month.  
 CAHFS is open, but will have only limited services on 11/12/2018, in observance of Veteran's Day. Please contact the laboratory to plan your testing needs accordingly.

**Specimens Received:** 15 Carcass;

**Customer Comments:** 15 frozen carcasses

**Total amount from previous estimates: 199.80**

**Current Charges:**

Item	Note	Qty	Units	Actual Price
Avian Virus Isolation		7	1	\$577.50
Reovirus PCR	Included in Cap	9	1	\$0.00
<b>Total for this Report:</b>				<b>\$577.50</b>
<b>Total for Case:</b>				<b>\$777.30</b>

**Remit Correspondence to:**  
 PO Box 1770  
 Davis, CA 95617  
 (530) 752-8700

**Remit Payment to:**  
 Cashier's Office  
 1200 Dutton Hall  
 Davis, CA 95616  
 (530) 752-4613

**CASE REPORT (Supplemental)**  
**SONOMA COUNTY ANIMAL SERVICES DIVISION**  
1247 Century Court, Santa Rosa, CA 95403 (707) 565-7100 Fax: (707) 565-7103

Classification: Crimes Against Animals: Sec: PC 597(b) Felony/Misdemeanor.  
Person having charge or custody of any animal, either as owner or otherwise, and subjects such animal to needless suffering and fails to provide proper care and attention.

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Case No.: 18-09-15  
Date of Incident: 09/29/18  
Location of Incident: 120 Jewett Road, Petaluma, CA, 94952

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Investigating Department: Sonoma County Sheriff Department  
Business Address: 2796 Ventura Avenue, Santa Rosa, CA, 95403

---

Suspect: Robert Shawn McCoy  
Residence Address: 120 Jewett Road, Petaluma, CA 94952  
Driver's License: [REDACTED] DOB: [REDACTED]

Breed: 15 Chickens (9 live and 6 dead)

---

Narrative: On 09/29/18 at approximately 1420 hours, I Officer Foster was contacted by Animal Control Officer Roger Dengler requesting assistance at 120 Jewett Road in Petaluma. At 1446 hours, I arrived at the location and met with Officer Dengler and Sonoma County Sheriff Sergeant Buchignani. I was informed that there were two groups of protesters that had both live and dead chickens in their possession that were illegally removed from the property.

I observed two groups of protesters (one at the base of the driveway and one about a 100 yards up the driveway).

Officer Dengler and I were advised by Sergeant Buchignani that the protesters would be led to our location at the base of the driveway, where the chickens would be handed over to us. After the protesters had relinquished the animals, they would then be placed into custody by the Sheriff's Office. I was instructed by Sergeant Buchignani to position my vehicle at the base of the driveway in order to better facilitate the impoundment of the chickens.

Prior to the impoundment, I made contact with the property owner, Robert McCoy. He informed me that the chickens could not be brought back to his facility once they left, and that if Sonoma County Animal Services (SCAS) wanted to keep the animals, it was

ok with him. I informed Mr. McCoy that we would be taking possession of the chickens at that time (Reference Signed Impound Notice).

Once all of the chickens were impounded, a final count of eight live and six dead was calculated. I contacted Supervising Animal Control Officer Kevin Davis by phone. He stated that we were to transport the animals to SCAS, where a veterinarian would meet us to examine the chickens.

At approximately 1645 hours, Officer Dengler and I arrived at SCAS. Approximately fifteen minutes later, DVM [REDACTED] arrived with a veterinarian technician.

Officer Dengler removed each of the live chickens from my vehicle, while I removed all of the dead chickens. It was at this time that Officer Dengler brought to my attention that there were in fact nine live chickens, not eight according to my impound notice. The count of six dead was correct however, for a total of fifteen live and dead chickens.

I Officer Foster photographed all of the deceased birds, and then placed them into the evidence freezer. After examining the live birds, DVM [REDACTED] then examined the dead ones. After examination, they were then placed back into the evidence freezer.

On 10-01-18, I Officer Foster assisted DVM [REDACTED] with taking additional photographs of all fifteen chickens. Chain of custody documentation with associated animal identification numbers were attached to each individual animal.

---

Recording Officer: J. Foster                      Badge No: 520                      Date: 10-08-18

J. Foster

#520

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Supervisor Approving:

K. DAVIS

Badge No:

#512

10-15-18



A18-096187-1

ASSIST/POLICE

Priority Level: 1

Total Animals: 1

Animal Type: DOG

Activity Address: [REDACTED]

Activity Comment: DEPUTY ON SCENE 5 BUSES W/ PROTESTORS AT CHICKEN FARM; REQUESTING ACO

**Caller Information:**

P267140 SHERIFF POLICE  
2796 VENTURA AVE  
SANTA ROSA CA 95403  
(707) 565-2121

**Result Codes:**

1 COMP

Officer: P999573 DALTON

Clerk: KADRAGNA

Call Date: 05/29/18 12:51 PM

New Date: 05/29/18 12:51 PM

Dispatch Date: 05/29/18 01:19 PM

Working Date: 05/29/18 02:23 PM

Complete Date: 05/29/18 03:10 PM

Memo:

Page 60 of 73  
Activity Card

A18-097499-1 ASSIST/POLICE Priority Level: 1 Total Animals: 1 Animal Type: CHICKEN

Activity Address: [REDACTED]

Activity Comment: DXE PLANNED ANIMAL PROTEST EVENT ON 7-29-18.

**Owner Information:**

P371302 [REDACTED]  
[REDACTED]  
[REDACTED]

**Caller Information:**

P267140 SHERIFF POLICE  
2796 VENTURA AVE  
SANTA ROSA CA 95403  
(707) 565-2121

**Result Codes:**  
1 COMP  
1 NVO

Officer: P999512 DAVIS Clerk: KCRANE

Call Date: 07/29/18 09:56 AM  
New Date: 07/29/18 09:56 AM  
Dispatch Date: 07/29/18 09:57 AM  
Working Date: 07/29/18 10:30 AM  
Complete Date: 07/29/18 02:55 PM

Memo:

M18-405193 7/29/2018 SYSADM  
2 OF 3

Next we walked to the north end of the Cage Free Building F & G. This building has two flocks in it, one on both sides. This building is also an aviary and was first put into production in 2016 & 2017. The building has nearly identical equipment as what I saw in house C. Per [REDACTED] the only difference is that this building is two levels. We visited the birds in house F which were placed in the building last week and have not started to lay. We stood near the fan that pulled air out of the building and though the air is typically the worst where it exits the building, the air quality in this building was very good.

We then walked to the manure drying room in House F where each day the wet manure from house F is dehydrated from 65% moisture down to 10% moisture. I noted a very minor smell of ammonia and the absence of flies as [REDACTED] explained, they have no habitat for flies to reproduce on the farm.

Last we entered the north end of House D. The colony cage house was put into production in 2014. Per [REDACTED] House D was one of the buildings that DXE trespassers used force to push past their employees to gain entry and steal hens. The age of the hens when they were stolen were approximately 20 weeks old. They had just been placed into the building and had yet to start laying. In House D we saw a colony cage system that [REDACTED] said is fully compliant with Proposition 2 requirements. I did not measure the dimensions of the cages. Proposition 2 requires 116 square inches per hen of placement. According to [REDACTED] their hens have over 120 square inches of placement. Similar to the cage free building, these hens have access to food and water 24 hours a day, their manure falls through the cage bottom onto a belt that removes the wet manure daily. The air quality in the building was good and we could see down the aisles.

M18-405194 7/29/2018 SYSADM

3 OF 3

Note 1: Of the thousands of chickens I observed, I only saw two dead chickens in the buildings I walked through. The Weber Family wanted to show me the buildings that the DXE Protesters had broken into on May 29, 2018 and made numerous accusations pertaining to their health and care standards. Health Manager [REDACTED] told me that he personally inspects each chicken that is found dead. If he is not able to determine the cause of death the chicken is sent to a lab for a necropsy.

Note 2: Virulent Newcastle Disease (VND), formerly known as Exotic Newcastle Disease is a contagious and fatal viral disease affecting the respiratory, nervous and digestive systems of birds and poultry. The disease is so virulent that many birds and poultry die without showing any clinical signs. There is a current outbreak in Southern California and by people/protesters trespassing on this ranch could possibly lead to a major disease outbreak. This was the reason I was fitted with a Tyvek suit and properly taped up before entering any of the buildings on the ranch/farm.

M18-403870 7/29/2018 SYSADM

1 OF 3

7-29-18 (512) I WAS ASKED BY RANCH OWNER'S [REDACTED] TO WALK THROUGH THEIR CHICKEN BARNs TO OBSERVE THE CONDITIONS THAT THEIR CHICKENS ARE BEING RAISED IN. THEY ASKED THAT I WALK THROUGH THE BARNs THAT THE DXE PROTESTERS BROKE INTO ON MAY 29, 2018 AND MADE SEVERAL ALLEGATIONS OF ABUSE!

I met with [REDACTED] (Director of Operations, [REDACTED]) and the farms Biosecurity/Animal Health manager [REDACTED] asked me if I would be willing to do a walkthrough of the farm before the protesters arrive. I had [REDACTED] sign a "Consent To Enter Property" agreement.

I slipped on a Tyvek suit (provided by [REDACTED]) and we entered the East end of Building C which is a cage free production building. Per [REDACTED] during the May 29th protest, DXE trespassers were able to pry open the door on the West End of Building C and run into the building wearing T-shirts over Tyvek suits and street shoes. Multiple hens were stolen from this building.

Building C contained hens that were 66 weeks of age. According to [REDACTED] most egg production hens have a life cycle of up to 85 weeks. For an older flock, the hens appeared well feathered, active and showed no abnormal behavioral signs. Per [REDACTED] the equipment in House C is a cage free aviary system that was installed in 2017. The system has multiple levels with feed and water available at all times. There are nest boxes providing hens with a dark, safe place to lay their eggs. The litter on the floor is made up of rice hulls which the hens use to dust bath and scratch. Throughout the system is perching for hens to roost, jump, and remain active.

We then toured the ranch packing area at the Far East end of Building C where all of the eggs from the three buildings are placed into flats before being transported to the top of the property for processing. There were two farm packers operating with one packing only cage free eggs and the other packing eggs from the colony cage building. There was hundreds of eggs being packed in two packers with no sight of a single bloody or malformed egg. It was noted that cage free eggs were packed into orange flats and colony cage eggs were packed into green flats.

Page 62 of 73  
Activity Card

A18-097877-2 FOLLOWUP/INVEST Priority Level: 3 Total Animals: 1 Animal Type: CHICKEN

Activity Address: [REDACTED]

Activity Comment: CONTACT RANCH MANAGER [REDACTED] 8-15-18 TO SET UP TIME TO INSPECT RANCH TODAY (512)

Caller Information:

P267140 SHERIFF POLICE  
2796 VENTURA AVE  
SANTA ROSA CA 95403  
(707) 565-2121

Result Codes:

3 MCO  
1 APPRV

Officer: P999573 DALTON Clerk: KADRAGNA

Call Date: 08/15/18 07:50 AM  
New Date: 08/15/18 07:50 AM  
Dispatch Date: 08/15/18 11:04 AM  
Working Date: 08/15/18 11:25 AM  
Complete Date: 08/15/18 12:05 PM

Memo:

M18-404398 8/15/2018 SYSADM  
8-15-18 (512) CONTACT RANCH MANAGER [REDACTED] TO SET UP TIME TO INSPECT CHICKEN RANCH TODAY. INSPECTION SHOULD BE DONE IN THE MORNING HOURS IF POSSIBLE. SEE 512 WITH QUESTIONS. INSPECTION IS BEING DONE AT THE REQUEST OF PETALUMA FARMS AND WAYNE HSIUNG (650-465-1672) ORGANIZER FOR ANIMAL RIGHTS NETWORK "DIRECT ACTION EVERYWHERE" AKA... DXE. ALLEGATIONS OF SUFFERING, STARVING AND ROTTING CHICKENS WITHOUT FOOD AND WATER.

SEE 512 TO GET A CONSENT TO ENTER PROPERTY FORM TO BE SIGNED BY THE RANCH MANAGER BEFORE ENTERING THE CHICKEN BARNS.

PETALUMA FARMS TO PROVIDE A BIO HAZARD SUIT BEFORE ENTERING ANY CHICKEN BARNS.

[REDACTED]

M18-404402 8/15/2018 CMCCAFFE  
8/15/18 I called S/O and set up a time to meet with him between 10:30-11am.-518

M18-404981 8/15/2018 RDALTON

(521) MC with Ranch Manager, [REDACTED] He provided me a Bio-Hazard suit and I signed the consent form to enter and walk through the facility.

Property, barns, both where the chickens and kept as well are where the eggs are processed was clean and free and any hazardous material. The Ranch's has a thorough cleaning and sanitation protocol.

The chickens were separated based on age. Each age group in different barns. All barns are set up with an automatic gravity water feeder that run the length of each enclosure in each barn. All barns and their enclosures are set up with automatic feeders. All water and food appeared to be clean. Ample water and food provided. All bird provided adequate space on the ground as well as roosting perch's in each enclosure. They had an isolation barns for sick birds.

In each barn they have a chart where they track egg production, weight and health of the birds. Once weekly they take 20 chickens and weigh them. Veterinary care provided as needed. Birds that died on property get picked up by a composting company.

PASSED INSPECTION.



DEADLY GERMS, LOST CURES

## *Tainted Pork, Ill Consumers and an Investigation Thwarted*

Drug-resistant infections from food are growing. But powerful industry interests are blocking scientists and investigators from getting information they need to combat the problem.

**By Matt Richtel**

Aug. 4, 2019

It was 7 a.m. on Independence Day when a doctor told Rose and Roger Porter Jr. that their daughter could die within hours. For nearly a week, Mikayla, 10, had suffered intensifying bouts of fever, diarrhea and stabbing stomach pains.

That morning, the Porters rushed her to a clinic where a doctor called for a helicopter to airlift her to a major medical center.

The gravity of the girl's illness was remarkable given its commonplace source. She had gotten food poisoning at a pig roast from meat her parents had bought at a local butcher in McKenna, Wash., and spit-roasted, as recommended, for 13 hours.

Mikayla was one of nearly 200 people reported ill in the summer of 2015 in Washington State from tainted pork — victims of the fastest-growing salmonella variant in the United States, a strain that is particularly dangerous because it is resistant to antibiotics.

What followed was an exhaustive detective hunt by public health authorities that was crippled by weak, loophole-ridden laws and regulations — and ultimately blocked by farm owners who would not let investigators onto their property and by their politically powerful allies in the pork industry.

The surge in drug-resistant infections is one of the world's most ominous health threats, and public health authorities say one of the biggest causes is farmers who dose millions of pigs, cows and chickens with antibiotics to keep them healthy — sometimes in crowded conditions before slaughter.

*[Read our other stories in our series on drug resistance, Deadly Germs, Lost Cures.]*

Overuse of the drugs has allowed germs to develop defenses to survive. Drug-resistant infections in animals are spreading to people, jeopardizing the effectiveness of drugs that have provided quick cures for a vast range of ailments and helped lengthen human lives over much of the past century.

## Cooler with Whole Hogs and Pig Parts



Much of the pork in a 2015 salmonella outbreak was traced to a Washington State slaughterhouse called Kapowsin Meats. Investigators inspecting the slaughterhouse were told to look at the farms that had supplied the pigs.

But public health investigators at times have been unable to obtain even the most basic information about practices on farms. Livestock industry executives sit on federal Agriculture Department advisory committees, pour money into political campaigns and have had a seat at the table in drafting regulations for the industry, helping to ensure that access to farms is generally at the owners' discretion.

Dr. Parthapratim Basu, a former chief veterinarian of the Agriculture Department's Food Safety and Inspection Service, said the pork industry regularly thwarted access to information on antibiotic use.

"When it comes to power, no one dares to stand up to the pork industry," he said, "not even the U.S. government."

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A reconstruction of the Washington outbreak provides a rare look into how these forces play out. The New York Times reviewed government documents, medical records and emails of scientists and public health officials, as well as conducted interviews with victims, investigators, industry executives and others involved.

Those industry officials argued in documents and interviews that farmers needed protection against regulators and scientists who could unfairly harm their business by blaming it for a food-poisoning outbreak when the science was complex and salmonella endemic in livestock. The tension mirrors a broader distrust in agriculture and other business about the intention of federal regulators and other government overseers.

"Have you ever heard of the phrase, 'I'm from the government, I'm here to help you' — and you know they're going to screw you?" said David J. Hofer, the secretary-treasurer of the Midway Hutterite Colony, a religious community that runs a hog farm in Conrad, Mont. Mr. Hofer said he was one of the farmers who objected to the farm inspections during the outbreak.

"They might have public health in mind, but they don't care if in the process they break you."



In the end, Mikayla Porter survived, but the threat of the infection that nearly killed her continues — not least because investigators still lack access to essential data.

“We can see resistance is really increasing,” said Dr. Robert V. Tauxe, director of the division of foodborne, waterborne and environmental diseases at the Centers for Disease Control and Prevention. Melissa Golden for The New York Times

## A Danger Grows

There are 2,500 different types of salmonella. The one that infected Mikayla is called 4,5,12:i-minus. It first showed up in the late 1980s in Portugal, and then in Spain, Thailand, Taiwan, Switzerland and Italy. In the United States, infections it causes have risen 35 percent over the past decade, while the overall rate of salmonella infections has stayed constant.

The strain typically resists four major antibiotics: ampicillin, streptomycin, sulfisoxazole and tetracycline.

“We can see resistance is really increasing,” said Dr. Robert V. Tauxe, director of the division of food-borne, waterborne and environmental diseases at the Centers for Disease Control and Prevention.

This particularly virulent strain of salmonella is just one of a growing number of drug-resistant germs that put farm families, and meat eaters generally, at risk.

A study in Iowa found that workers on pig farms were six times more likely to carry multidrug-resistant staph infections, notably MRSA. A study in North Carolina found that children of pig workers were twice as likely to carry MRSA than children whose parents didn't work in a swine operation.

Those germs can also wind up on pork sold to consumers. An analysis of government data by the Environmental Working Group, a research organization, found that 71 percent of pork chops at supermarkets in the United States carried resistant bacteria, second only to ground turkey, at 79 percent.

Like many outbreaks of resistant infections, the salmonella variant that sickened Mikayla is usually so widely dispersed that the C.D.C. has had a hard time tracking it.

But in the Washington outbreak, the infection was new to the region, and tests revealed the bug had the same genetic profile in patients, creating ideal conditions for scientific detective work.

“This was our real opportunity,” said Allison Brown, a C.D.C. epidemiologist. “Everything lined up.”



### Stealing Lauri

A pig kidnapping highlights the concerns over antibiotics in livestock.

Aug. 4, 2019

### A Celebration Turns Dire

The Porter family had invited friends and neighbors to the pig roast to celebrate a major life change: In three days, they would be moving to Costa Rica.

But the day after the roast, Mikayla felt sick, and by 4:30 a.m. the following morning, she had diarrhea so severe that her parents took her to the emergency room.

There, a doctor said she had a stomach bug, assuring them it would pass and approving her to travel. Her parents also felt sick, but not as seriously, and they flew to Costa Rica as planned.

After arriving, Mikayla got much worse, excreting mucus and blood. She lay in agony on the couch, the family dogs sitting beside her protectively.

A doctor at BeachSide Clinic near Tamarindo, the town where the family had rented a house, prescribed the antibiotic azithromycin, medical records show. It did not work.

The family returned to the clinic the next day. That is when Dr. Andrea Messeguer told Mikayla's parents their daughter could die, and helped arrange the airlift to Hospital CIMA in the capital, San José.

Mikayla recovering in a hospital in Costa Rica.  
The Porter family

There, doctors determined that Mikayla had a systemic infection. She received intravenous hydration and antibiotics. Tests came back from the national lab showing the drug-resistant salmonella strain.

Back in Washington, many others were also getting sick.

On July 19, Nicholas Guzley Jr., a police officer, ate pork at a restaurant in Seattle, and at 2 a.m. threw up in the shower. The medical ordeal that followed was so excruciating — vomiting, diarrhea, bleeding, a fever of 103.9 degrees, dehydration and multiple hospital visits — that he said it was worse than a near-death experience in 2003 when he had been hit by a truck.

“If you stack up all the pain from all the injuries, this blew it away,” he said.

On July 23, the head of Washington's Department of Health sent out an alert, warning that 56 people had fallen ill and publicizing an investigation into the outbreak by the state's health and agriculture agencies, coordinating with the C.D.C. The Washington State epidemiologist, Dr. Scott Lindquist, took the lead.

On July 27, a restaurant had its permit suspended for food safety violations, including failure to keep its food hot enough. Multiple restaurants were identified as possible sources of tainted pork, along with several pig roasts.

Dr. Lindquist and his team discovered that many of the infected roast pigs had come from a slaughterhouse called Kapowsin Meats. Tests of 11 samples taken from slaughter tables, knives, hacksaws, transport trucks and other spots showed that eight were positive for the resistant strain.

At Kapowsin, the state investigators spoke to the federal official responsible for inspecting the slaughterhouse, who suggested that they look for the farms where the tainted pork had come from.

## **The Heart of an Outbreak**

Records obtained by the state showed that many of the pigs supplied to Kapowsin originated on industrial farms in neighboring Montana.

On Aug. 13, state records noted that the investigative team — including the C.D.C. and the federal Agriculture Department — was in touch with officials in Montana to discuss gaining access to the farms.

Determining where the outbreak originated would have allowed the team to trace other possibly infected pork, recall it and advise the owners on how to change their practices.

But such investigations are extremely sensitive because the publicity can be bad for business, and because the law protects farmers in such situations. Over all, the government has little authority to collect data on farms.

“We have people in the slaughterhouses every day, all day long,” said Paul Kieker, the acting food safety administrator at the Agriculture Department. “We don’t have a lot of jurisdiction on farms.”

The Food and Drug Administration is charged with collecting antibiotic use data. But farms are not required to provide it, and only do so voluntarily.

As a result, the federal government has no information about the antibiotics used on a particular farm and no way to document the role of the drugs in accelerating resistance.

“I haven’t been on a farm for years,” said Tara Smith, a professor at Kent State University and an expert on the connection between resistance and livestock. “They’ve closed their doors to research and sampling.”

## **Investigators Are Turned Away**

Dr. Lindquist, the epidemiologist leading the investigation of the Washington outbreak, pleaded with Montana’s health agency to help him gain access to the farms that had supplied the Kapowsin slaughterhouse.

In a memo to state officials, he told them that such infections were increasing rapidly and that “on-farm investigations will help us better understand the ecology of salmonella” and “prevent future human illnesses.”

Days later, he received a phone call from Dr. Liz Wagstrom, the chief veterinarian for the National Pork Producers Council, a group that lobbies on behalf of the livestock industry. Its campaign donations to congressional candidates have more than doubled in the past decade, to \$2 million in 2018, according to the Center for Responsive Politics.

Dr. Wagstrom sought to find out what Dr. Lindquist had learned in his investigation and what he was saying to the media, he said, recalling the conversation. He said she was worried the pig farms might be unfairly tarnished, arguing that salmonella was common on farms, so an investigation wouldn’t prove anything, even if the infection was detected.

In an interview, Dr. Wagstrom said she was concerned that farm visit wouldn’t yield valuable information. “What would you learn that could positively impact public health?”

The industry soon became more involved. Officials from the National Pork Board joined regular crisis conference calls during the investigation, along with numerous state and federal health and agriculture officials.

The board is a group of pork industry executives whose members are elected by the industry and then appointed by the secretary of agriculture, cementing a tight bond between business and government.

Dr. Lindquist initially welcomed the executives’ presence, given their expertise, though he did not know who had initially invited them.

Dr. Scott Lindquist, the Washington epidemiologist who led the investigation of the tainted pork. Wigan Ang for The New York Times

## Rules With Big Loopholes

That same year, F.D.A. guidelines went into effect that were supposed to enable the tracking of antibiotics on farms. They required farms to obtain prescriptions from veterinarians to dispense antibiotics, and only to animals sick or at risk of illness. The guidelines said that farms must stop using antibiotics as “growth promoters.”

But the rules have loopholes, which were highlighted a year earlier when officials from the F.D.A., C.D.C., the Agriculture Department and the Pew Charitable Trusts met at the University of Tennessee. The group heard from Thomas Van Boeckel, an expert in statistical modeling and antibiotic resistance who was then at Princeton.

Dr. Van Boeckel told the group that he could build maps showing changing levels of antibiotic use on farms and compare them with changing levels of resistance.

To do so, he said, he needed data sets by region or, better yet, by farm.

“I was told there was a single data point per year, literally,” he said.

That data point: Around 33 million pounds of medically important antibiotics, a 26 percent increase from 2009, were sold in the United States for farm use. The figure, collected from sales data by the F.D.A., was the sum total of the information they were able to provide him.

Dr. Van Boeckel told the group that without more specific information, he couldn’t do any real measurement.

“They said: Yeah, that’s going to be challenging.”

A page from the Washington Agriculture Department's report, which included images of Kapowsin Meats.

As the end of August neared, Mikayla Porter had stabilized, but in Washington State, the salmonella caseload continued to grow.

On Aug. 26, Kapowsin agreed to cease operations, in cooperation with the state. The next day, there was a recall of 523,380 pounds of its pork products.

At the same time, the Montana Pork Producers Council wrote to the Washington health agency, saying it was “clear that there is little to no value in conducting on-farm investigations,” and that investigators should focus on slaughterhouses.

Anne Miller, the council's executive director, said she did not appreciate that the researchers were coming at a time of crisis. “The trick to getting good information is get research before you get to that situation,” she said. “Why hadn't this been done prior?”

She spoke to pork producers in the state, and some expressed concern about being unfairly blamed for the outbreak, worried that government officials seeking information on their farms could unfairly tarnish their image and business.

Mr. Hofer, of the farm in Conrad, said in a phone interview that he objected strongly to the investigation.

“I was animated about that,” he said. “Let's say they found something — it probably would have screwed up some other markets we had.”

Mr. Hofer said his farm provided pigs to Kapowsin but did not know if the sales had overlapped with the outbreak. He said it was clear to him that the slaughterhouse was to blame. “There was salmonella all over that plant.”

On Aug. 28, the National Pork Producers Council sent Washington State a follow-up letter concurring with Ms. Miller.

“I know that you do not want any inadvertent negative consequences to farms as a result of this proposed on-farm sampling,” Dr. Wagstrom wrote in the letter.

Ms. Miller and others in the industry said farms could provide voluntary information on antibiotic use, but they have taken a hard line on government access because of fears that individual farms would be singled out for a complex problem with multiple causes.

The position stuns some scientists.

“So let's not do anything to give anyone a bad reputation, including any bad behavior?” asked Dr. James Johnson, a professor at the University in Minnesota and an expert in resistant infections. “The people who stand to benefit from having everyone remain ignorant are the ones who protest the loudest.”

Mikayla with her mother, Rose Porter, and one of their chickens in Rainier, Wash. Ruth Fremson/The New York Times

That September, Dr. Lindquist still hoped his team would get the go-ahead to take samples from the five farms thought to have been possible sources for the outbreak, but it never came.

“I don’t know even to this day why this got stymied,” he said.

He said he did not know that Ms. Miller, the head of the Montana Pork Council, had contacted the farms and been told they would not permit a visit from researchers.

The farms officially declined, through her, to comment for this story.

By Sept. 22, the case load had hit 178 known infections, with 29 people hospitalized, but the outbreak was petering out. The investigation ended, Dr. Lindquist said, “with a whimper.”

“During the outbreak, I heard from restaurants, patients, the slaughterhouse, the U.S.D.A., F.D.A., the Department of Agriculture in Washington and Montana, the health department in Montana and the health department in Washington State,” Dr. Lindquist said. “I did not hear from the farms.”

Matt Richtel is a best-selling author and Pulitzer Prize-winning reporter based in San Francisco. He joined The Times staff in 2000, and his work has focused on science, technology, business and narrative-driven storytelling around these issues.

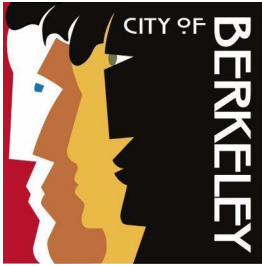
@mrichtel

A version of this article appears in print on Aug. 3, 2019, Section A, Page 1 of the New York edition with the headline: Across Farms, Illness Sleuths Hit Brick Wall

[READ 410 COMMENTS](#)







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CONSENT CALENDAR  
 December 10th, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett and Cheryl Davila  
 Subject: February 2020 Berkeley Black History Month organized by Berkeley Juneteenth Association: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds

#### RECOMMENDATION

Adopt a Resolution approving the expenditure of funds, including \$500 from Councilmember Bartlett, for Black History Month and the Berkeley Juneteenth Festival (organized by Berkeley Juneteenth Association, Inc. 501(c)(3)). The funds should be relinquished to the City's general fund for this purpose from the discretionary council office budget of Councilmember Bartlett and any other Councilmembers who would like to contribute.

#### BACKGROUND

Berkeley Juneteenth Association, Inc., (BJAI), has successfully produced thirty-two Juneteenth Festivals, and in 2014 began hosting Black History Month Celebrations. Ensuring that future generations are educated about the people, places, and events that have brought our community and our nation a mighty long way, is the cornerstone of Berkeley Juneteenth's commitment to the community. They believe that their most important work is bringing our diverse community together to honor and celebrate African American history, creativity and accomplishments.

The 7<sup>th</sup> Annual Black History Month Celebration will be held on Saturday, February 29, 2020, at the Judge Henry Ramsey Jr. South Berkeley Senior Center, 2939 Ellis St; and the 33<sup>rd</sup> Annual Berkeley Juneteenth Festival will be held on Sunday, June 21, 2020, on Alcatraz @ Adeline.

2020 funding for both events has been adversely affected. City allocations from the General Fund of \$4250 and \$4050, respectively, were eliminated, and for this current year, no 2020 funding whatsoever has been allocated by the City for the Black History Month event. Funding for this year and prior years was received from Civic Arts for the Festival only.

FINANCIAL IMPLICATIONS OF RECOMMENDATION Staff time to disperse funds

ENVIRONMENTAL SUSTAINABILITY No impact.

#### CONTACT PERSON

Councilmember Ben Bartlett	510-981-7130
James Chang	510-981-7131

ATTACHMENT: 1. Resolution

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

AUTHORIZE 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, Councilmembers Bartlett has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax-exempt corporation – Berkeley Juneteenth Association, Inc. – will receive the funds; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: Berkeley Juneteenth Association, Inc. (BJAI) Promotes greater societal cohesiveness and well-being by educating and involving the community-at-large in historical, family, and cultural activities pertaining to people of color; and

WHEREAS, BJAJ hosts various activities including Black History Month Celebrations and the Berkeley Juneteenth Festival; and

WHEREAS, cultural celebrations are critical to the social and spiritual unity of our community, and are integrated into BJAJ events; and

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, of an amount to be determined by each Councilmember, shall be granted to Berkeley Juneteenth Association, Inc.



TO: Honorable Members of the City Council

FROM: Mayor Arreguín, Councilmember Bartlett, and Councilmember Kesarwani

SUBJECT: Approval of a Memorandum of Understanding between the City of Berkeley and BART on Implementation of State Law AB 2923 at the Ashby and North Berkeley BART Stations and Establishment of a Community Advisory Group

### **RECOMMENDATION**

- (1) Approve a Memorandum of Understanding (MOU) between the City of Berkeley and the Bay Area Rapid Transit District (BART) to establish a process for cooperatively pursuing the implementation of Assembly Bill 2923 (AB 2923, Stats. 2018, Chp. 1000) at the Ashby and North Berkeley BART Stations. This action is pursuant to unanimous City Council direction on May 9, 2019, to direct the City Manager to “engage with BART to develop an MOU that outlines the project planning process including feasibility analysis, project goals, and roles and responsibilities; and direct that the MOU return to Council for adoption.”
- (2) Establish a Community Advisory Group (CAG) for the purposes of providing input:
  - To the City Planning Commission as it considers zoning standards that will be consistent with the City’s obligations under AB 2923 for the Ashby and North Berkeley BART station areas; and
  - To the City and BART as the parties establish a joint vision and priorities document that will be incorporated in eventual Requests for Proposal/Requests for Qualifications for potential developers of the BART Properties.

### **SUMMARY STATEMENT**

On May 9, 2019, the City Council unanimously voted to engage with BART on an MOU to collaborate on development at the North Berkeley BART Station and refer to the Planning Commission to study development of zoning for the site.<sup>1</sup> At the same time, the Adeline Corridor Plan public process has identified interest in the development of homes at the Ashby BART Station.<sup>2</sup> The City and BART both acknowledge that the region faces a shortage of affordable homes and a climate crisis that requires a significant reduction in vehicle miles traveled, and both entities have adopted policies that prioritize creating affordable homes and reducing greenhouse gas emissions. Publicly-owned land at the Ashby and North Berkeley Stations provides a rare

<sup>1</sup> [May 9, 2019, Special Meeting Annotated Agenda](#) [PDF]

<sup>2</sup> [Adeline Corridor Plan website](#) [cityofberkeley.info]

opportunity to meet the objectives of both the City and BART. Furthermore, state law AB 2923 requires the City of Berkeley to zone the Ashby and North Berkeley Stations in accordance with BART transit-oriented development (TOD) standards no later than July 1, 2022.<sup>3</sup> A significant benefit of the proposed collaboration with BART is the opportunity to identify and make infrastructure improvements in order to enhance station access for all Ashby and North Berkeley BART riders using all modes, including pedestrians, bicyclists, community members with access and functional needs, shared mobility users, and patrons using public and private transportation.

Therefore, the attached MOU establishes a process to:

1. Identify a shared vision and priorities for development for BART and the City, and set forth steps needed to pursue this vision and priorities;
2. Clarify the processes that BART and/or the City will pursue to address the activities and timelines; and
3. Provide greater clarity for all parties, including BART, the City, and members of the public, on the currently-planned steps, timelines, and the Parties' roles and responsibilities needed in seeking to commence construction of TOD on BART-owned property at both the Ashby and North Berkeley BART Stations.

The MOU specifies roles and responsibilities of the City and BART and does not specify in great detail financial arrangements, environmental review, and other relevant considerations to be addressed at a future time.

Given the importance placed on community input in the Adeline Corridor Specific Plan, Policy 3.7 (3-22),<sup>4</sup> and the North Berkeley BART Development Goals and Objectives,<sup>5</sup> a Community Advisory Group (CAG) shall be formed for the purposes of advising the Planning Commission on zoning for the Ashby and North Berkeley Stations. While there may be distinct concepts and requirements for each station site, the CAG will advise the Planning Commission on zoning that conforms with AB 2923 with the assistance of an AB 2923 Guidance Document to be prepared by BART. The CAG will also provide input to the City and BART as the parties establish a joint vision and priorities document that will be incorporated into eventual Requests for Proposal/Requests for Qualifications for potential developers of the BART Properties.

## **BACKGROUND**

### **Ashby BART Station**

As described in the Draft Adeline Corridor Plan (2-22), "The Ashby BART subarea is comprised of two large parcels adjacent to the Ashby BART Station, as well as the public street right-of-way and station area between them. The two parcels are owned by BART, but the City retains an

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<sup>3</sup> [Text of Assembly Bill 2923](#) [ca.gov]

<sup>4</sup> [Adeline Corridor Specific Plan, Public Review Draft, May 2019](#) [PDF]

<sup>5</sup> [A Community Visioning Process for the Ashby and North Berkeley BART Stations](#) [jessearreguin.com]

option to the ‘air rights’ over the parcel on the west side of Adeline. The parcel on the east side of Adeline is a 1.9-acre surface parking lot. The parcel on the west side is a 4.4-acre surface parking lot, the northern portion of which is used by the Berkeley Flea Market on weekends. Beyond the parking lots, this subarea consists of wide, busy streets, with high volumes of station-bound pedestrian, bicycle, and bus traffic. The streets are not as conducive to safe and comfortable pedestrian activity as they might be. There are grade changes and design features that limit the visibility and accessibility of station entrances.”

The collaborative community process identified a number of “big ideas” (2-16) that help achieve the five strategic goals of the Plan: Land Use and Community Character, Housing Affordability, Economic Opportunity, Transportation, and Public Space. One of the “big ideas” especially considers development at Ashby BART:

*Redevelop the Ashby BART Station Area as a vibrant neighborhood center with high-density mixed-use development, structured parking (including some replacement parking for BART riders), ground floor commercial and civic uses, and new public space. The BART development should incorporate green construction and become a model for sustainable transit-oriented development. It should unify both sides of Adeline Street, and provide public space for community gatherings, special events, and civic celebrations.<sup>6</sup>*

The CAG’s discussions should connect to the “big ideas” from the Adeline Corridor Plan, which include neighborhood priorities and amenities such as the Berkeley Flea Market, South Berkeley Farmers’ Market, Ed Roberts campus, and others in the context of requirements stipulated by AB 2923 TOD zoning standards.

### **North Berkeley BART Station**

The North Berkeley BART Station sits on approximately 8.1 acres of land in residential Northwest Berkeley, bounded by Sacramento Street on the east, Virginia Street on the north, Acton Street on the west, and Delaware Street on the south (with the exception of additional side parking lots abutting the Ohlone Greenway).

The North Berkeley BART site is currently zoned U-Unclassified, meaning there is no zoning designation, and therefore zoning and development standards will have to be developed by the Planning Commission in consultation with the CAG.

After a series of public meetings, including a community visioning session in October 2018, the City Council gave direction on January 15, 2019, to the City’s Planning Department to develop conceptual land use scenarios for the North Berkeley BART site. On May 9, 2019, the City Council reviewed these scenarios, and unanimously voted to make a referral to the Planning Commission to study development of zoning for the site.

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<sup>6</sup> See Chapters 3, 4 and 7 of the Draft Adeline Corridor Plan for more on Ashby BART.

The CAG's discussions should connect to the North Berkeley BART Development Goals and Objectives, including the discussion of station access, affordability, livability, and environmental sustainability in the context of requirements stipulated by AB 2923 TOD zoning standards.

### **REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS**

A number of City and regional plans and policies emphasize the value of creating affordable homes and transit-oriented development, enhancing infrastructure, reducing vehicle miles traveled, and improving safety for pedestrians and bicyclists, as briefly described below.

#### **Berkeley General Plan<sup>7</sup>**

Policies to increase residential and commercial density near transit are articulated in the Berkeley General Plan which include:

- Policy H-12 Transit-Oriented New Construction: Encourage construction of new medium and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plan, design review guidelines and the Climate Action Plan. Actions include:
  - Consider adjusting zoning to allow for greater residential density and specified commercial uses along certain transit corridors and in proximity to the Downtown Berkeley, Ashby and North Berkeley BART Stations.
- Policy LU-23 Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit-service.
- Policy LU-25 Affordable Housing Development: Encourage the development of affordable housing in the Downtown Plan area, the Southside Plan area, and other transit-oriented locations.
- Policy LU-32 Ashby BART Station: Encourage affordable housing or mixed use development including housing on the air rights above the Ashby BART Station lot west of Adeline Street. Actions include:
  - Consider a joint City/BART development plan to encourage and ensure appropriate development design, density and parking to accommodate the BART station and transit-oriented development. Development at Ashby BART should include multi-family, transit-oriented housing and ground-floor commercial space and if feasible, at least 50% of housing units should be affordable to low and very-low income households.
  - Consider revising the zoning for the site to reduce the on-site parking requirements for new housing above the BART station.

#### **South Berkeley Area Plan<sup>8</sup>**

The Plan recommends practical approaches to implementing goals and policies that ensure access to affordable rental housing and homeownership opportunities, preserve the diversity of

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<sup>7</sup> [Berkeley General Plan, Housing](#) & [Berkeley General Plan, Land Use](#) [PDF]

<sup>8</sup> [South Berkeley Area Plan](#) [PDF]

South Berkeley's population, maintain and expand South Berkeley's housing stock and improve transit and paratransit opportunities for South Berkeley residents.

### **South Shattuck Strategic Plan<sup>9</sup>**

The Plan serves as a guide for future development in South Shattuck that offers action steps to improve traffic and encourage the use of alternative modes of mobility such as public transit, shuttles, bicycling and walking. Such action steps include incorporation of elements to encourage non-auto travel in the Public Improvements Plan and working with residents and merchants to define transit needs for South Shattuck.

### **Plan Bay Area 2050<sup>10</sup>**

Plan Bay Area 2050 is a comprehensive Bay Area planning effort to look at the intersection of transportation, housing and the environment. The Plan expands on Plan Bay Area 2040's long-range plan which outlines Priority Developments Areas as a mechanism to maximize growth in transit-rich communities and reduce vehicle miles traveled and greenhouse gas emissions.

### **Berkeley Bicycle Plan<sup>11</sup>**

The Plan speaks to policies and action steps to foster a bicycle-friendly city. Such steps include integrating bicycle network and facility needs into City projects, supporting a successful bike share system that promotes an alternative mode of travel to BART stations and designing a Bikeway Network that is accessible to people of all ages and abilities.

### **Vision 2050<sup>12</sup>**

The citizen-led effort will develop a framework for Berkeley's 30-year Sustainable Infrastructure Plan to address the City's growing population and ever-changing climate. Community information sessions informed additional research conducted by the Vision 2050 Task Force in identifying the need for infrastructure projects that improve equity and community and environmental resilience, emerging technologies in transportation and cost effective financing options for building and maintaining Berkeley's infrastructure.

### **Berkeley Climate Action Plan<sup>13</sup>**

The Berkeley Climate Action Plan outlines measures to ensure that the community continues to meet its greenhouse gas reduction target by increasing density along transit corridors through new development of affordable housing, retail services and employment centers. The Plan also promotes a resilience framework that highlights the steps the City has taken to advance neighborhood equity, adapt to the changing climate and establish community partnerships to further its climate commitments.

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<sup>9</sup> [South Shattuck Strategic Plan](#) [PDF]

<sup>10</sup> [Plan Bay Area 2050](#) [planbayarea.org]

<sup>11</sup> [Berkeley Bicycle Plan](#) [cityofberkeley.info]

<sup>12</sup> [Vision 2050](#) [jessearreguin.com]

<sup>13</sup> [Berkeley Climate Action Plan](#) [cityofberkeley.info]

In addition, see Chapter 3 of the Draft Adeline Corridor Plan — “EXISTING PLANS, PROGRAMS AND REGULATIONS” (3-3).

### **OUTREACH OVERVIEW AND RESULTS**

Extensive information about community process and outreach can be found at:

[jessearreguin.com/bart](http://jessearreguin.com/bart)

[cityofberkeley.info/council3/adeline](http://cityofberkeley.info/council3/adeline)

[rashikesarwani.com/issues/north-berkeley-bart](http://rashikesarwani.com/issues/north-berkeley-bart)

In addition, see Chapter 1 of the Draft Adeline Corridor Plan — “Table 1-2 Planning Process & Community Engagement” (1-10).

### **RATIONALE FOR RECOMMENDATION**

The Public Review Draft of the Adeline Corridor Specific Plan, Chapter 3.7 - Ashby BART, states:

*Because of the importance of the BART site both to the success of the proposed housing strategy and to the overall character of the neighborhood, any development process should include a deliberate and extensive community decision making process ... which includes a Station Area Advisory Group or similar body comprised primarily of representatives of local stakeholder organizations. (3-24)*

On May 9, 2019, the City Council unanimously adopted the North Berkeley BART Development Goals and Objectives, which states:

*A Community Advisory Committee shall be created for the purposes of providing input to the City’s Planning Commission as it considers City and BART TOD zoning standards.*

As directed by the full City Council, the MOU establishes a process for the City and BART to identify a shared vision and priorities, clarify activities and timelines, and identify roles and responsibilities. While the City has a process for zoning and entitlements, and BART has a process for development of its properties, this MOU identifies in broad terms how these processes will work together.

Approving the attached MOU is a critical next step in the overall station development process.

### **IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT**

This item will establish a Community Advisory Group (CAG) comprised of an odd-number of members no greater than 15. Members of the CAG may be appointed from the following commissions: Commission on Disability; Housing Advisory Commission; Planning Commission; and the Transportation Commission. The commissions shall select a representative to serve on the CAG.

Representatives from the following stakeholder groups and communities will also be considered:



- Berkeley Flea Market
- Bicycle and Pedestrian advocacy
- Neighborhood groups in the Adeline Corridor area
- Neighborhood groups in the North Berkeley area
- Faith-based communities
- At-large members

The CAG members will be appointed with an eye toward ensuring a diversity of views, perspectives, and experiences including: (1) representing all geographic areas of the city on which station area development would have an impact such as immediate as well as commuter neighborhoods, (2) reflecting a wide-range of relevant expertise in areas such as city planning, architecture, transit, and environmental sustainability, and (3) incorporating diverse life experiences. The representative from the Planning Commission shall serve as Chair of the CAG unless they defer and shall be responsible for creating and providing reports to the Planning Commission on the CAG's discussions.

Members of the CAG shall be appointed no later than January 31, 2020, by a subcommittee of the City Council comprised of the Mayor and the City Councilmembers who represent the districts that include the Ashby and North Berkeley Stations. The subcommittee comprised of the Mayor and Councilmembers will undertake extensive public outreach to appoint CAG members that represent the diversity of backgrounds and perspectives of the community.

The charge of the CAG is to: (1) provide input to the Planning Commission on matters directly related to zoning of the Ashby and North Berkeley BART Stations in conformance with AB 2923 zoning standards; (2) bridge communication between the Planning Commission's zoning process and other neighborhood groups and the community at large; and (3) provide input on a joint vision and priorities document to be developed by the City and BART.

The CAG's work plan and schedule shall be dependent upon the Planning Commission's schedule and will align with the Planning Commission's timeline and workflow regarding development of zoning at the Ashby and North Berkeley Stations. It is anticipated that the CAG's work will ultimately depend on the Planning Commission's workflow and will include the following scope: two meetings on design, two meetings on economic feasibility, and two meetings to review preliminary zoning concepts.

Once the Planning Commission recommends zoning to the City Council, the CAG shall have completed its charge as it relates to zoning. It is anticipated that the CAG will be re-established to provide input to the City and BART as the two parties establish a joint vision and priorities document to be included in eventual Requests for Proposal/Requests for Qualifications for potential developers of the BART properties.

## **ENVIRONMENTAL SUSTAINABILITY**

The current use of the Ashby and North Berkeley BART Station parking lots solely for vehicle parking is not the optimal environmental use of scarce, publicly-owned land. By creating homes on these sites, the City Council would further its goals to address the Climate Emergency and reduce greenhouse gas emissions from vehicle miles traveled. A reimagined use of these sites and reconfigured public spaces can allow for enhanced public and neighborhood amenities to flourish while improving bicycle and pedestrian facilities and providing safe routes to encourage alternate means of access to the BART stations.

## **FINANCIAL IMPLICATIONS**

The MOU between the City of Berkeley and BART specifies that at least 35% of the housing units proposed to be constructed at the BART Properties would be deed-restricted to low, very low and/or extremely low-income affordable housing, as defined by the federal Department of Housing and Urban Development. The City recognizes that meeting this level of affordability will require significant local, state, and federal subsidy.

Complying with AB 2923 to zone the Ashby and North Berkeley Stations will require significant staff and consultant resources by the City's Planning Department. The City is making efforts to seek outside sources of funding:

- On November 12, 2019, the City Council authorized the City Manager to submit an application for Senate Bill 2 Planning Grants Program (PGP) in the amount of \$310,000.<sup>14</sup> SB 2 provides funding and technical assistance to all local governments in California to help them prepare, adopt, and implement plans and process improvements that streamline housing approvals and accelerate housing production. Funding is non-competitive and based on population estimates published by the State's Department of Finance. The City of Berkeley is classified as a "medium city" and is therefore eligible to apply for \$310,000. Grants issued through the 2019 PGP can be used for updating local planning documents, updating zoning ordinances, conducting environmental analyses or for local improvements to expedite local planning and permitting. More specifically, planning activities funded through this program are to focus on preparation, adoption and implementation of plans and zoning regulations that streamline housing approvals and accelerate housing production. The City will use these funds for developing TOD zoning regulations on BART properties in Berkeley. Further, the Mayor's Office has been supportive of additional grant applications by BART.<sup>15,16</sup>
- On November 19, 2019, the City Council considered adoption of a resolution in support of nominating the North Berkeley Station as a Priority Development Area (PDA).<sup>17</sup> It should be noted that this area refers to the parking lot itself, and street surfaces area that abut

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<sup>14</sup> [Council Authorization to the City Manager to Submit Senate Bill 2 Planning Grants Program Application](#) [PDF]

<sup>15</sup> [Mayor's Letter of Support for BART Sustainable Communities Grant](#) [PDF]

<sup>16</sup> [Mayor's Letter of Support for BART FTA TOD Grant](#) [PDF]

<sup>17</sup> [Priority Development Area Nomination – North Berkeley BART Station](#) [PDF]

the station. If the Metropolitan Transportation Commission (MTC) opts to designate the station as such, the City of Berkeley will become eligible to apply for and receive grant funding from MTC for activities related to the community engagement and advisory processes; to help develop the zoning and design guidelines; and to support infrastructure improvements related to the development of the North Berkeley Station.

- On November 12, 2019, the City Council referred \$250,000 to the mid-year budget allocation process to initiate environmental review required as part of developing and adopting zoning for the Ashby and North Berkeley BART Stations that conforms with AB 2923.<sup>18</sup>

### **OUTCOMES AND EVALUATION**

This item represents the next steps in an iterative process responding to the City Council's direction on May 9, 2019, as well as the Adeline Corridor Plan process. As such, the intended outcome is a successful Planning Commission zoning process in which extensive community input is received from people of diverse backgrounds and perspectives.

### **CONTACT**

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Councilmember Ben Bartlett, District 3  
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### **ATTACHMENTS**

1. Memorandum of Understanding (“MOU”) by and between the San Francisco Bay Area Rapid Transit District (“BART”) and the City of Berkeley (“City”) to cooperatively pursue transit oriented development (“TOD”) and the implementation of Assembly Bill 2923 (“AB 2923”) at the Ashby and North Berkeley BART Stations
2. Exhibit 1 - Policy 3.7 of the Draft Adeline Corridor Specific Plan
3. Exhibit 2 - North Berkeley BART Development Goals and Objectives
4. Exhibit 3 - BART TOD Policy
5. Exhibit 4 - BART Affordable Housing Policy
6. Exhibit 5 - BART Station Access Policy

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<sup>18</sup> [Budget Referral: BART Station Environmental Planning](#) [PDF]

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into on this \_\_\_ day of \_\_\_\_\_, 2020, by and between the San Francisco Bay Area Rapid Transit District (“BART”) and the City of Berkeley (“City”) to cooperatively pursue transit oriented development (“TOD”) and the implementation of Assembly Bill 2923 (“AB 2923”) at the Ashby and North Berkeley BART Stations.

### RECITALS

- A. BART and the City both acknowledge that the region faces a shortage of affordable homes and a climate crisis that requires a significant reduction in vehicle miles traveled; and
- B. BART and the City have adopted District- and City-wide policies that prioritize creating affordable homes and reducing greenhouse gas emissions; and
- C. Publicly-owned land at the Ashby and North Berkeley BART stations provides a rare opportunity to create more homes, including below-market-rate affordable homes, in a manner that reduces residents’ reliance on driving; and
- D. State law AB 2923 (AB 2923, Stats. 2018, Chp. 1000) requires BART to adopt TOD zoning standards for BART-owned property surrounding its stations and requires that the City’s local zoning conform with TOD zoning standards by July 1, 2022; and
- E. BART and the City are committed to enabling multiple opportunities for community input and engagement that inform site master planning and zoning; and
- F. The purpose of this agreement is to:
  - 1. Identify a shared vision and priorities for development for BART and the City, and set forth steps needed to pursue this vision and priorities;
  - 2. Clarify the processes that BART and/or the City will pursue to address the activities and timelines outlined below in Section III; and
  - 3. Provide greater clarity for all parties, including BART, the City, and members of the public, on the currently-planned steps, timelines, and the Parties’ roles and responsibilities needed in seeking to commence construction of TOD on BART-owned property at both the Ashby and North Berkeley BART Stations.

**MUTUAL UNDERSTANDING OF THE PARTIES**

**I. Framework for Development at Ashby and North Berkeley BART Stations**

- A. Goals and objectives for TOD have been established for Ashby and North Berkeley BART stations by the City through two separate processes. Similarly, BART has adopted policies and performance targets guiding its TOD program as a whole. These documents will inform the Parties' respective goals and objectives with regard to TOD at the Ashby Station and North Berkeley Station.
- B. The Draft Adeline Corridor Specific Plan (published in May 2019) sets forth a vision, policies and objectives for the Ashby BART Station area. Specifically, Policy 3.7 of the Plan, shown in Exhibit 1, includes seven objectives relating to affordable housing, public space, development parameters, public art, pedestrian and bicycle connections, transportation and demand management and community engagement.
- C. On May 9, 2019, the Berkeley City Council unanimously approved the City's goals and objectives for North Berkeley BART development, which are shown in Exhibit 2. The City's goals focus on community input, station access, affordability, livability and environmental sustainability.
- D. In 2016, the BART Board adopted three policies which set overall goals for BART's transit-oriented development (TOD) program:
  - 1. A TOD Policy (Exhibit 3), setting the goals of creating complete communities, advancing sustainable communities, increasing ridership, capturing the value of transit, enhancing transportation choice, and increasing affordability with a district-wide affordability target of 35%.
  - 2. An Affordable Housing Policy, which requires a 20% affordable housing minimum for its projects, and favors projects with the greatest depth and quantity of affordable housing (Exhibit 4).
  - 3. A Station Access Policy (Exhibit 5) to guide access practices and investments through 2025. The policy is designed to support the broader livability goals of the Bay Area, reinforce sustainable communities, increase the share of BART passengers walking and biking to the stations, and enable riders to get to and from stations safely, comfortably, affordably, and cost-effectively.
- E. Together these documents, as well as further engagement of community stakeholders and additional collaboration and activities as set forth in this MOU, lay the groundwork for future development at the Ashby and North Berkeley BART Stations.

## II. Scope of Agreement

- A. This MOU applies to development of the following properties, henceforth known as the “BART Properties”:
1. Ashby BART Western Parking Lot: Bounded by Ashby Ave, Adeline St, and Martin Luther King Jr Way. Site is owned by BART, with an option to the City to retain the air rights above 10 feet;
  2. Ashby BART Eastern Parking Lot: Located on the east side of the station, behind the Ed Roberts campus, which is owned by BART; and
  3. North Berkeley BART Main Parking Lot: Bounded by Sacramento, Delaware, Acton and Virginia Streets. Site is owned by BART.
- B. In order to ensure that development of the BART Properties is, to the extent possible, consistent with the vision and priorities established by the City and BART, during the TOD planning process outlined in this MOU there will be an opportunity to consider infrastructure enhancements to other areas that are owned by BART or the City. These may include the following (henceforth known as “Surrounding Areas”):
1. North Berkeley BART: auxiliary parking lots owned by BART, and areas owned by the City that abut the Ohlone Greenway;
  2. Other public infrastructure (e.g., streets, crosswalks, bicycle paths, on-street parking, stormwater and sewer infrastructure) within a one-mile radius of the BART Properties; and
  3. Proposed changes to access and circulation at each Station would be identified through the Station Access Study described in Section III.F of this MOU, as well as through the development master plan or entitlement process. Any such changes would therefore be subject to public review and comment, and to approval by the Parties.

## III. Activities and Timelines

Activities and Timelines – Summary Table

Activity	Lead Party	Milestone	Date
1. Community Advisory Process and other community engagement activities	City	Establish a Community Advisory Group to inform site zoning and to facilitate community input on site master planning and zoning	Initiate December 2019
2. Zoning for Ashby and North Berkeley BART Stations	City	<ul style="list-style-type: none"> <li>a. Zoning alternatives proposed</li> <li>b. Draft CEQA document released</li> <li>c. Planning Commission and community review</li> <li>d. Planning Commission approval</li> <li>e. Council zoning approval</li> </ul>	Complete by June 2021
3. BART AB 2923 Guidance Document	BART	<ul style="list-style-type: none"> <li>a. Draft Guidance</li> <li>b. Final Guidance</li> </ul>	<ul style="list-style-type: none"> <li>a. February 2020</li> <li>b. July 2020</li> </ul>
4. City Affordable Housing Funding	City	Decision on set-aside of City funding for affordable housing to Ashby and North Berkeley Stations	December 2020 (pending further definition of zoning and site capacity)
5. Developer Solicitation	BART	Decision on timeline to initiate solicitation of a developer (as part of BART's 10-Year TOD Work Plan)	July 1, 2020
6. Station Access Studies	BART	Station Access Studies Completed	Timeline dependent upon Developer solicitation for each station

**A. Community Advisory Process and other Community Engagement Activities**

1. Pursuant to the Draft Adeline Corridor Specific Plan (Policy 3.7) and the North Berkeley BART Development Goals and Objectives adopted by the City Council on May 9, 2019, an advisory group consisting of members of the community will be created for the purposes of providing input:
  - a. To the City Planning Commission as it considers zoning standards that will be consistent with the City's obligations under AB 2923 for the Ashby and North Berkeley BART station areas; and
  - b. To the City and BART as the Parties establish a joint vision and priorities document ("Joint Vision and Priorities") that will be incorporated in eventual Requests for Proposal/Requests for Qualifications for potential developers of the BART Properties.
2. The City will be responsible for the selection and all logistics and funding for the Community Advisory Process.
3. Contingent on availability of funding, the City will also organize public participation design charrettes that inform predictable form-based design standards that BART will incorporate into guidelines for future development of the BART properties.
4. BART will support the City's efforts by participating in meetings, presenting information, as necessary, and considering input arising from the Community Advisory Process as part of its larger community engagement for AB 2923, TOD and station access studies in the City.

**B. Zoning Ashby and North Berkeley BART Stations.** As required by AB 2923, the City will pursue rezoning of developable, BART-owned property within ½-mile of the Ashby and North Berkeley Stations. The City will be responsible for all logistics and funding required for these rezoning efforts. As the agency responsible for local zoning regulations, the City will work in good faith with BART to coordinate the City's rezoning efforts with BART's development of AB 2923 guidance.

**C. BART AB 2923 Guidance.** BART and the City understand that AB 2923 requires further clarification related to height, floor-area-ratio, density, bicycle parking minimums, automobile parking minimums and maximums. To address these points of clarification, BART will publish a guidance document offering all affected local jurisdictions information on AB 2923. As the



agency responsible for determining whether local zoning conforms to state law, BART will be responsible for all logistics and funding required for the AB 2923 guidance document. The guidance document will provide guidance on TOD zoning standards for all local jurisdictions as those jurisdictions seek to comply with their obligations under AB 2923.

#### **D. City Affordable Housing Funding Decision**

1. The voters of Berkeley recently established three important new sources of funding to support the creation and preservation of affordable housing, keep vulnerable people housed, and rehouse the homeless:
  - a. Measure O provides for issuance of \$135 million in bonds to fund capital expenditures for a variety of types of affordable housing;
  - b. Measure P established a real estate transfer tax on the most expensive one-third of real estate sales with a stated intent to rehouse the homeless and fund the services they need to remain housed; and
  - c. Measure U1 increased the gross receipts tax on most residential rental properties with a stated intent to fund affordable housing and protect Berkeley residents from homelessness.
2. The above measures establish advisory panels which advise the City Council as it makes determinations regarding the allocation of these and other affordable housing monies (such as City Housing Trust Fund resources) and related resources such as public land and inclusionary units.
3. The City will set-aside appropriate funding, including development fees and other above-mentioned sources, to support deed-restricted affordable housing at a range of income levels to meet BART and the City's affordable housing goals at the Ashby and North Berkeley BART Stations (as referenced in Section I).

#### **E. Developer Solicitation**

1. Consistent with its standard practice, BART will issue a Request for Qualifications ("RFQ"), Request for Proposals ("RFP") or both to initiate the process of identifying and recommending potential developers of the BART Properties to the BART Board of Directors. The committee(s) established to evaluate RFQ/RFP submissions will include City Representatives and BART staff as well as an independent financial consultant, who

will evaluate the capabilities of each proposer to deliver the project. The criteria used to select a developer with whom to negotiate will be based on the BART Station Development Joint Vision and Priorities that will take into account community input as outlined in Section III.A.

2. For the Ashby BART Western Parking Lot, which is owned by BART with an option to the City to retain the air rights above 10 feet, and assuming that the City exercises said option, the City and BART will enter into a separate agreement detailing how they will share decision-making authority in the developer solicitation process.
3. The evaluation committee's role is to make a recommendation to the BART Board of Directors regarding a developer with whom BART will negotiate for the development of TOD. The BART Board of Directors has the sole discretion and authority to determine whether, and with whom, BART will enter into an exclusive negotiating agreement ("ENA") relating to potential TOD development on the BART Properties. It is anticipated that, among other things, the ENA will require the developer to advance the proposed project through the City's entitlement process, lead or participate in a community engagement process, fund a Station Access Study for BART (see below), pay BART an option fee in exchange for exclusive negotiating rights, and reimburse BART for its expenses, including engineering review, outside legal fees, and outside consultant expenses.

#### **F. Station Access Study**

1. Per the draft policies in the Adeline Corridor Plan, Council-adopted goals and objectives for development of the North Berkeley BART property, BART's TOD Policy, and the requirements of AB 2923, a Station Access Study must be prepared prior to development of the BART Properties that identifies sustainable access options for both the Ashby and North Berkeley BART Stations in light of potential changes to the BART Properties and surrounding areas resulting from TOD. AB 2923 added Section 29010.6(h) to the California Public Utility Code, which requires BART—with respect to any station where BART commuter parking is reduced as a result of a TOD project on land where TOD zoning standards apply—to develop and fund an access plan that maintains station access for at least the number of customers affected by the reduced number of commuter parking spaces, with specific consideration for customers who live further than one-half mile from the station.
2. The Station Access Studies will evaluate a range of access options that support BART's goals to increase the share of BART patrons who access the stations via modes other than the private automobile, and that maximize the potential number of homes

(including homes restricted to low, very low, and extremely low-income households) on site. In exploring alternatives to parking, the Studies will evaluate whether and how to offer viable, multimodal access to BART for the station catchment areas, and how to ensure that TOD and associated improvements result in an overall increase in the number of people who use the BART Stations. The Studies will identify infrastructure needs on and near BART's property to improve access for riders using all modes, including pedestrians, bicyclists, community members with access and functional needs, shared mobility users, and patrons using public and private transportation.

3. BART will be responsible for all logistics required for the Station Access Studies. BART will fund these Studies in advance, but may require reimbursement for the Studies from a developer or developers pursuant to an ENA with said developer(s). Findings from the Ashby and North Berkeley BART station access studies will be presented to the community.

#### **IV. Zoning and Solicitation Process; Retention of Decision-making Authority by City and BART**

- A. To demonstrate its commitment to advancing development at BART property, and in consideration for its inclusion as a high priority in BART's 10-year work plan for development, the City will: 1) complete rezoning of the properties by June 2021, and 2) make a decision by the end of December 2020 to set-aside funding sufficient to assure BART, in its sole discretion, that at least 35% of the housing units proposed to be constructed at the BART Properties would be deed-restricted to low, very low and/or extremely low affordable housing. The City recognizes that meeting this level of affordability will require significant local, state, and federal subsidy. The Planning Commission has a target date of December 2020 to review zoning alternatives as a show of progress towards completion of zoning by June 2021.
- B. To support the City's zoning process, BART agrees to provide guidance that will be applicable to North Berkeley Station and all other stations in the BART system to which AB 2923 applies. BART will work with the City of Berkeley to explore possible approaches to conformance with AB 2923 zoning standards in the context of the built form characteristics of a surrounding lower density neighborhood. The City will consult with BART regarding zoning alternatives for the North Berkeley Station that conform with AB 2923 zoning standards.
- C. It is understood that both BART and the City desire for more work to be completed in support of zoning, such as site master planning or objective design guidelines. At the time of this MOU, the City and BART are actively working to identify additional resources to accelerate this work.

- D. The City and BART will meet in December 2020 to review the City's efforts undertaken pursuant to Section III.B and III.D, in order to:
1. Determine whether the City has approved a set-aside of sufficient funding to meet the 35% affordable housing minimum for each station as described in Section IV.A;
  2. Negotiate possible additional City participation in the solicitation processes; and
  3. Agree upon the timing of the developer solicitations for the BART Properties in December 2020.
- E. If the zoning for the Ashby and North Berkeley Stations and the set-aside of City affordable housing funds occurs after the dates indicated for those actions in the timeline in Section IV.A above, BART may re-evaluate the inclusion of these stations in its 10-year work plan. Likewise, if BART does not proceed with developer solicitations for the BART Properties as determined in Section III.D, the City may reallocate affordable housing funding to other projects.
- F. Notwithstanding any other provision in this MOU, nothing herein shall be construed to limit or restrict the discretionary decision-making authority of the City or of BART. The Parties acknowledge that any reference to a project or proposed project in this MOU or in any document that may be created in connection with this MOU does not constitute a Project or Project approval by either Party as those terms are defined in CEQA and discussed in *Save Tara v. City of West Hollywood*, 45 Cal. 4th 116 (2008).

## 3.7 ASHBY BART

**Future development within the Ashby BART subarea shall provide public space, community-oriented facilities, and affordable housing, consistent with the objectives, parameters, and process outlined in the Adeline Corridor Specific Plan.**

The Ashby BART Station is one of the most prominent landmarks and amenities along the Adeline Corridor, with the potential to support and advance all five key topic areas addressed in this Plan – land use, housing, economic opportunity, transportation, and public space.

As stated in Chapter 2, the Ashby BART subarea is envisioned to be redeveloped as a vibrant neighborhood center with high-density mixed-use development that unifies and knits back together the east and west sides of Adeline Street. The Ashby BART development will be a model for sustainable transit-oriented development, incorporating high levels of affordable housing and complementary commercial and civic uses; public space for community gatherings, special events, and civic celebrations; and green construction.

The Plan lays the groundwork for future engagement with the community and BART by outlining key objectives that apply to future development and describing a process for evaluating development proposals for these sites. Future development in the Ashby BART subarea shall be consistent with the seven objectives below, which shall be incorporated into any future master plan and development agreements with potential developers.

**OBJECTIVE 1. AFFORDABLE HOUSING.** For any future development in the BART subarea, at least 50% of the total housing units produced should be comprised of deed-restricted affordable housing, which could also include supportive services or other spaces associated with the affordable housing. This



*The Ashby BART Station*

goal for at least 50% affordable housing at a range of income levels (e.g. Extremely Low, Very Low, Low and Moderate) would be calculated across the entire Ashby BART subarea and could be accomplished through multiple phases of development. Any future development agreement should commit to deliver at least this level of affordable housing, and provide a plan to do so. Amounts of affordable housing exceeding 50% of the total square footage and number of units are encouraged.

**OBJECTIVE 2. PUBLIC SPACE.** Any future development shall include one or more publicly accessible spaces incorporated onto the development parcels within the Ashby BART subarea. The public space could potentially be provided as plazas, green space, pedestrian paseos, rooftop patios, flexible event space, or other pedestrian-accessible spaces that are open to the public. Incorporating elements of “green infrastructure” in these elements is highly encouraged (See Chapter 7).

Future redevelopment of the Ashby BART west parking lot shall incorporate a large civic plaza that could be designed and programmed to accommodate the Berkeley Flea Market and potentially a relocated Farmers Market, as well as support the Juneteenth Festival and other music and entertainment events. This space could include dedicated flexible space on the site and/or in a nearby location such as on Adeline Street. The space shall be designed with the general and specific needs of the Flea Market and Farmers Market, as well as allow flexibility for other programming such as the Juneteenth Festival, music and entertainment, civic events, or other public uses – at different times of the week or in complementary locations. This could include dedicated flexible space on the site or in a nearby location such as on Adeline Street.

**OBJECTIVE 3. ADDITIONAL DEVELOPMENT PARAMETERS.** The following general development parameters will be further refined as implementation steps of this Specific Plan:

**Building Height.** To achieve the affordable housing goal, climate action goals and maximize community benefits from development of public land, high density mixed-use development is envisioned that are generally up to four to seven stories. The City will continue to coordinate with BART as it refines development parameters as part of implementation of Assembly Bill 2923. In general, development fronting on Adeline Street and Ashby Avenue should “step down” or transition to lower heights where development fronts on Martin Luther King Jr. Way, Woolsey, Tremont and Essex Streets.

**Ground-Floor Uses.** As noted in Policy 3.1, the following types of uses shall be required for ground floor uses for the Ashby BART subarea:

- Adeline Street frontage: Ground floor retail or active commercial use required.

## WHAT IS ASSEMBLY BILL (AB) 2923?

Assembly Bill 2923 was signed into law by Governor Jerry Brown on September 30, 2018. AB2923 grants BART the authority to establish transit-oriented development (TOD) zoning standards that apply to its property across the Bay Area, including the North Berkeley and Ashby BART Station sites. The intent of the law is to enable BART to work together with cities to maximize the public benefit of scarce transit-adjacent land (see Appendix B for more information). Although BART has the ultimate authority to establish zoning standards for its property, BART has indicated that it intends to work in close collaboration with local elected officials and community stakeholders. Furthermore, since the City controls the “air rights” for the west Ashby BART parking lot, it would have a direct role in approving any future master plan and development agreement for that site, and would work with BART to implement the Objectives described in the Adeline Corridor Specific Plan for any redevelopment of the Ashby BART subarea.

- Ashby Avenue frontage: Ground floor commercial use required.
- Martin Luther King Jr. Way: Residential or commercial use allowed on ground floor.
- Tremont, Woolsey and Fairview Streets: Residential or commercial use allowed on ground floor.

**Additional Land Uses.** Additional land uses that would be encouraged in the Ashby BART area include the following:

- Potential space for a new African American Holistic Resource Center (see Chapter 5 for more information)
- Ground floor retail, restaurants and family-oriented entertainment;
- Affordable space for neighborhood non-profits
- Small, affordable workspaces
- Universally-accessible community event and recreation space, or performance venues.

**OBJECTIVE 4. PUBLIC ART.** Future redevelopment should maximize opportunities to incorporate permanent and/or temporary public art installations that celebrate neighborhood history, cultural heritage and identity (see Chapters 2, 5 and 7 for more information).

**OBJECTIVE 5. PEDESTRIAN AND BICYCLE CONNECTIONS.** Future development should include pedestrian and bicycle connections that serve users of all abilities and ages. Development of the west parking lot should incorporate the following key bicycle connections at minimum, consistent with the City of Berkeley Bike Plan and as described in the Transportation Chapter of this Plan:

- Connection of the Woolsey/Prince bicycle boulevard facility across the Ashby site
- Provision of an off-street/protected bicycle facility along Adeline Street between Ashby and the intersection with MLK Jr. Way.

## WHAT ARE "AIR RIGHTS?"

Ownership of land can be divided into rights on the surface, subsurface (i.e. mining or mineral rights) and air rights. The City of Berkeley acquired air rights over both parking lots at Ashby BART Station back in 1966 after the voters approved undergrounding the BART lines. In 1999, the City executed a contract with the Ed Roberts Campus to assign the City's option to the air rights over the eastern Ashby BART parking lot (the current Ed Roberts Campus site and the remainder parking lot behind it), to facilitate development of the Ed Roberts Campus. An agreement between the City and the Ed Roberts Campus in 2008 confirmed that the City assigned the air rights over the eastern BART parking lot to the Ed Roberts Campus, but the City still retained the option over the western BART parking lot. The air rights generally refer to the space starting 10 feet above the average finished grade location.

## OBJECTIVE 6. PARKING AND TRANSPORTATION DEMAND MANAGEMENT.

Any future development must include aggressive and innovative Transportation Demand Management strategies to reduce demand for parking and single-use automobile trips (See Chapter 6). Consistent with BART Transit-Oriented Design Guidelines and the City's Climate Action Plan, any future mixed-use development shall provide parking at ratio not to exceed 0.5 spaces/residential unit and 1.6 spaces per 1000 sqft of commercial space. Because of the urban environment of the station, replacement parking for BART patrons can be provided at a ratio of 0.5 spaces/per existing space or less while access improvements are incorporated to offset the loss of parking and ride spaces and offer viable non-auto alternatives to BART patrons.

## OBJECTIVE 7. PROCESS AND ENGAGEMENT.

Because of the importance of the BART site both to the success of the proposed housing strategy and to the overall character of the neighborhood, any development process should include a

deliberate and extensive community decision making process. The City will work with BART to complete a planning process which includes a Station Area Advisory Group or similar body comprised primarily of representatives of local stakeholder organizations. This stakeholder group should participate in decisions regarding the site requirements to be included in any Request for Proposals (RFP). In addition, any RFP that is issued for development at the BART site will outline specific requirements that a selected developer continue to invest in proactive community engagement throughout the development process and to identify appropriate additional community benefits as part of the project design process. A development team's proven track record of managing this kind of community engagement/community benefits process will be one criteria for selection. The local community should continue to be closely involved in development of these key public sites. Chapter 4 (Housing Affordability) includes additional information and considerations for future phasing, funding, programming, and affordable housing strategies for the Ashby BART area.



## North Berkeley BART Development Goals and Objectives

(Approved unanimously by the Berkeley City Council on May 9, 2019)

State law (AB 2923, Chiu) passed in 2018 requires the San Francisco Bay Area Rapid Transit District (BART) to develop transit-oriented development (TOD) zoning standards for each BART station, establishing minimum local zoning requirements for height, density, parking, and floor area ratio by July 1, 2020.

Prior to the enactment of AB 2923, the Berkeley City Council initiated a community process to explore the potential for transit-oriented development at the North Berkeley BART station. Creating homes at the North Berkeley BART parking lots will help the City of Berkeley address the shortage of affordable homes; reduce vehicle miles traveled and meet our climate change goals; and improve the livability of the surrounding neighborhood through the creation of green open space, pedestrian and bicycle infrastructure improvements; and possible small-scale community, non-profit, and/or retail uses.

AB 2923 requires local jurisdictions like Berkeley to adopt a local zoning ordinance that conforms to BART TOD zoning standards.

While the Berkeley City Council voted at its May 29, 2018 meeting to oppose AB 2923, the City Council recognizes that we now have an obligation to comply with the law. The Council is seeking to comply as soon as possible with AB 2923 for the purposes of developing the North Berkeley BART station in order to ensure that the community has a meaningful opportunity to engage with BART on how the site is developed.

At the same time, the Berkeley City Council acknowledges the unique neighborhood characteristics of each BART station and expresses its intent to incorporate a station-specific design that is sensitive to the existing single-family (R-1) and two-family (R-2) residential zoning directly adjacent to the North Berkeley BART station.

The City of Berkeley seeks to enter into a Memorandum of Understanding with BART that enumerates, among other terms, the following goals and objectives for development:

### **Community Input**

**A Community Advisory Committee shall be created for the purposes of providing input to the City's Planning Commission as it considers City and BART TOD zoning standards.**

**The planning process will engage the community in order to ensure that the site reflects the community's values for equity, sustainability, and sense of place.** In particular, community input should be considered for:

- The number/percentage of affordable housing units and populations to be served, including the possibility of a 100% affordable project

- The size, height, scale, spacing, and setbacks of buildings, and their responsiveness to the neighborhood
- The inclusion of green and open spaces
- The possibility of limited, small-scale community, non-profit, and retail space to serve the immediate neighborhood
- Exploration of whether it's appropriate to include small-scale community, non-profit, and/or retail space to serve the immediate neighborhood, whether any parking should be provided for such uses, and consideration of the tradeoff of foregone housing units
- Access options, including traditional modes such as public transit, taxis and private vehicles, active modes such as biking, walking and scooters, emerging modes such as car share, ride share, driverless cars, etc., and access for the disabled and mobility impaired
- Green and sustainable features

### **Station Access**

**BART, the City of Berkeley, and a future developer(s) will address station access.** Specifically, Section 29010.6(h) of AB 2923 requires BART—in cases in which commuter parking is reduced as a result of a TOD project—to develop and fund an access plan that maintains station access for at least the number of customers affected by the reduced number of commuter parking spaces, with specific consideration for customers who live further than one-half mile from the station. A station access plan for implementation will seek to explore feasible and effective alternatives to individuals driving to and parking at the station, such as reserved parking spaces for carpools and car-share vehicles, ride-share, enhanced bus/shuttle service, additional electric-assist bikes and scooters, among other alternatives. We will also consider limiting or eliminating parking for residential and/or potential community, non-profit, or retail uses in order to maximize parking availability for commuters. We note that the station access plan should take into account the rapid evolution of mobility trends and technologies and consider the adaptability of the plan to future mobility patterns. Further, we intend to conduct a traffic study to help determine the number of parking spaces that are needed at the site, including reserved spaces for people with disabilities.

In light of Berkeley's long tradition of leadership on issues related to the disabled and mobility impaired, access at the North Berkeley BART station should be first in its class, including consideration for access to and from the station itself, within the station, and to and from the BART platform.

All traditional modes should be considered: public transit, taxis, carpools and cars; all active modes including walking, biking and scooters; all emerging modes including car share, ride share, van pools and driverless vehicles; and all modes of accessibility for the disabled.

### **Affordability**

**Maximize the number of affordable below-market-rate units that are available to low-income households of diverse types and sizes, including affordable live/work units for artists.** We seek to exceed BART's 35% system-wide affordability goal by aiming for a high number of affordable

units—to potentially be funded by local, state, and regional funding sources. In order to ensure housing for a range of income levels, we will consider inclusionary below-market-rate units and engagement of an affordable housing developer to develop a fully affordable building.

We will seek to support the creation of local jobs through a project labor agreement for construction of the development.

We will engage in a community dialogue that is positive, productive, and thoughtful in regards to community benefits and financial feasibility.

### **Livability**

**Enhance the livability of the neighborhood surrounding the North Berkeley BART station.** The site should create a visual and physical connection with the neighborhood through its architectural design, height, and scale. In particular, we seek a development that considers the character and context of the neighborhood and steps down in height around the perimeter of the station (with consideration for the varying width of streets around the station) in order to blend in visually and physically with the residential neighborhood. Such a design honors a common theme of many of the designs submitted as part of the October 2018 visioning event. We also seek reasonable spacing between buildings, setbacks, and plantings at the perimeter of the station.

The inclusion of green open space should serve as an amenity that enhances the neighborhood's sense of place.

The streetscape design should strive to minimize neighborhood traffic and congestion impacts and support safe access to the station for bicyclists and pedestrians. Transportation demand management and other best practices should be used to reduce traffic and parking impacts in the surrounding neighborhood.

### **Environmental Sustainability**

**Reflect the City's commitment to reducing our carbon footprint in every possible way.** All buildings should strive to: incorporate all-electric designs, achieve Zero Net Energy, and reduce parking for residents and retail to the maximum extent possible.

To ensure universal access, regardless of age or ability, Universal Design should be considered for all elements of housing and of all other private and public spaces.

## Transit-Oriented Development Policy

Adopted June 9, 2016

Amended August 22, 2019

### VISION

The San Francisco Bay Area Rapid Transit District (BART) is a steward of a large scale public investment. This includes real estate assets essential to BART's transit operations, and real estate assets that can be used to catalyze transit-oriented development in furtherance of BART's purpose and goals. BART leverages these opportunities by working in partnership with the communities it serves in order to implement the regional land use vision and achieve local and regional economic development goals. Strengthening the connections between people, places, and services enhances BART's value as a regional resource.

### GOALS

- A. Complete Communities.** Partner to ensure BART contributes to neighborhood/district vitality, creating places offering a mix of uses and incomes.
- B. Sustainable Communities Strategy.** Lead in the delivery of the region's land use and transportation vision to achieve quality of life, economic, and greenhouse gas reduction goals.
- C. Ridership.** Increase BART ridership, particularly in locations and times when the system has capacity to grow.
- D. Value Creation and Value Capture.** Enhance the stability of BART's financial base by capturing the value of transit, and reinvesting in the program to maximize TOD goals.
- E. Transportation Choice.** Leverage land use and urban design to encourage non-auto transportation choices both on and off BART property, through enhanced walkability and bikeability, and seamless transit connectivity.
- F. Affordability.** Serve households of all income levels by linking housing affordability with access to opportunity.

### STRATEGIES

- A. Manage Resources Strategically to Support Transit-Oriented Development**
  - 1. Develop a 4-Year Work Plan to assess how staff and financial activities toward TOD will be most fruitful. Identify BART staffing priorities and assignments to promote TOD on and around District property, including contributions to efforts such as planning and development, community engagement, funding and financing strategies.
  - 2. Favor long-term ground leases of no more than 66 years, rather than sale of property, as the standard disposition strategy for joint development projects, except in cases where alternative approaches are required to achieve specific development objectives or where other strategies would generate greater financial return to the District.
  - 3. Solicit proposals for transit-oriented development in localities that have an adopted plan allowing for transit-supportive land uses as defined in the TOD Guidelines. Utilize a competitive selection process but ensure the solicitation process considers property assembly with adjacent land owners for optimal TOD.

## Transit-Oriented Development Policy

Adopted June 9, 2016

Amended August 22, 2019

4. Develop a procedure that will allow BART to respond to unsolicited proposals for property development on BART-owned land. Although BART does not encourage unsolicited proposals, they can be a valuable means for BART to partner with local communities and/or the development community to produce innovative or unique developments that deliver benefits in excess of what is typically provided by the market.
5. Revisit the Transit-Oriented Development Policy every 10 years.

### **B. Support Transit-Oriented Districts**

1. Proactively support local jurisdictions in creating station area plans and land use policies that: a) encourage transit-supportive, mixed-use development on and around station properties, b) enhance the value of BART land, and c) enhance the performance of the BART system as a whole.
2. Form partnerships with public agencies, developers and landowners, community development organizations, finance entities, and consider strategic land acquisition to help build TOD both on and off BART property.
3. For BART system expansion, ensure that transit-oriented development and value capture opportunities are explicitly accounted for in major investments such as the location of new station sites, design and construction of station facilities, and acquisition of new properties.

### **C. Increase Sustainable Transportation Choices using Best Practices in Land Use and Urban Design**

1. Utilize BART's TOD Guidelines to ensure future development and investments seamlessly connect BART stations with surrounding communities.
2. Ensure that combined TOD/parking/access improvements on and around each BART station encourage net new BART ridership, utilizing corridor-level, shared, and off-site approaches to parking replacement as appropriate. Following the aspirational Station Access Policy place types, use the following guidelines to replace current BART parking as follows when developing BART property with TOD: strive for no or limited parking replacement at "Urban with Parking" Stations; and use the access model to maximize revenue to BART from development and ridership when determining a parking replacement strategy at all station types.
3. Utilize strategies including mixed-use development, transportation demand management, and pedestrian-friendly urban design to encourage reverse-commute, off-peak, and non-work trips on BART and other modes of non-auto transportation, thereby reducing greenhouse gas emissions.

### **D. Enhance Benefits of TOD through Investment in the Program**

1. Evaluate the financial performance of proposed projects based on sound financial parameters and the ability to generate transit ridership, fare revenue, lease payments, parking revenues, grant resources, other financial participation, and/or cost savings. Consider the opportunity cost to the District of delaying or accelerating development opportunities.
2. Use a variety of financing and governance mechanisms, including joint powers authorities, assessment districts, improvement districts, and lease credits to achieve station area TOD objectives.
3. As appropriate, and in consideration of District-wide financial needs, reinvest revenues from the sale and lease of BART land into the TOD Program, informed by the priorities identified in the 4-Year Work Plan.

**Transit-Oriented Development Policy**

**Adopted June 9, 2016**

**Amended August 22, 2019**

**E. Invest Equitably**

1. Increase scale of development at and near BART stations through catalytic investments in TOD, to help address the regional shortfall in meeting housing and other sustainable growth needs.
2. Implement BART's adopted Affordable Housing Policy and aim for a District-wide target of 30 percent of all units to be affordable, with a priority to very low (<50% AMI), low (51-80% AMI) and/or transit-dependent populations.
3. Ensure the 4-Year Work Plan addresses how BART will achieve its affordable housing goals.

## AFFORDABLE HOUSING POLICY

It shall be the policy of the District that at each station where the District intends to pursue development that the cumulative development consist of a number of affordable housing units amounting to no less than 20 percent of the total proposed housing units on the property. This goal is for the total aggregate number of residential units on BART property at the station, regardless of the planned phasing of the project.

Each Request for Qualifications (RFQ) or Request for Proposals (RFP) issued by the District relating to proposed residential development projects at BART stations shall include the current percentage of affordable housing constructed at that station along with the cumulative 20 percent goal of affordable housing units per station.

The percentage of affordable units and/or depth of unit affordability based on Area Median Income (AMI) categories in any residential developments at its stations shall be a part of the District's assessment of RFQ/RFP responsiveness. There shall be a priority on residential units made available to very low (< 50% AMI) and low (51-80% AMI) income households. The General Manager or his/her designee will develop an approach to evaluating respondents' affordability housing proposals, that will consider a proposal's quantity and depth of affordability, as well as the proposal's validity and feasibility with respect to this policy.

If a party responding to the RFQ or RFP determines that such a goal is not feasible, that party shall provide an impact analysis, which will be assessed by the District to determine if the goal cannot be attained.

Upon selection of a Developer, the District commits to working with the Developer throughout the development's negotiation process to achieve the pre-established affordable housing goal.

As the negotiations of the proposed development proceed, the General Manager or his/her designee will provide periodic updates to the Board regarding the financial details of each component of the development, culminating in a term sheet for Board approval.

BART also affirms its commitment to develop sustainable partnerships to achieve thriving Priority Development Areas (PDA) at or near BART stations with housing opportunities for residents of all income levels – particularly those populations most reliant on public transit – in order to reduce Greenhouse Gas Emissions (GHG), encourage use of public transit and active transportation, and decrease reliance on automobiles.

On a project-by-project basis, the General Manager or his/her designee may request from the Board an exception to this Policy if staff determines it is infeasible for a specific project.

This policy shall be prospective, and shall not be applicable to past or present development projects for which exclusive negotiating agreements, option agreements for ground leases, or ground leases have already been executed between BART and developers.

Adopted: January 28, 2016



## BART STATION ACCESS POLICY

Adopted June 9, 2016

### VISION

For more than 40 years, the San Francisco Bay Area Rapid Transit District (BART) has been a steward of major public investment to connect people and places. The BART Station Access Policy is designed to support the broader livability goals of the Bay Area, reinforce sustainable communities, and enable riders to get to and from stations safely, comfortably, affordably, and cost-effectively.

### GOALS

**A. Safer, Healthier, Greener.** Advance the region's safety, public health, and greenhouse gas (GHG) and pollution-reduction goals.

1. Ensure safe access for all users of the BART system, including users with disabilities.
2. Promote and invest in active transportation access modes to improve public health.
3. Prioritize the most sustainable access modes, with a focus on the lowest greenhouse gas and pollutant emissions per trip.
4. Reduce the access mode share of the automobile by enhancing multi-modal access to and from BART stations in partnership with communities and access providers.
5. Develop station-level designs that are consistent with the Station Design Access Hierarchy (Figure 1).

**B. More Riders.** Invest in station access to connect more riders cost-effectively, especially where and when BART has available capacity.

1. As ridership grows, invest in and manage access resources so as not to exacerbate peak period – peak direction crowding, including by ensuring users can find parking spaces at all times of day.
2. Develop access solutions that promote reverse-peak and off-peak ridership to optimize use of the BART system.

**C. More Productive and Efficient.** Manage access investments, programs, and current assets to achieve goals at the least cost.

1. Consider life-cycle costs, including capital and operating budget implications, using best asset management practices.
2. Factor land value in decision-making, prioritizing access that generates the most riders with the least space.
3. Consider the Station Access Investment Framework (Figure 2) in identifying contextual access investments at each station, and seek to move stations from their existing to their aspirational types.

**D. Better Experience.** Be a better neighbor, and strive for an excellent customer experience, including on the first and last mile of the trip to and from BART stations.

1. Expand station access choices for all riders.



## BART STATION ACCESS POLICY

2. Promote Transit-Oriented Development (TOD) on and off of BART property as a powerful access tool, putting more riders within walking distance of stations, connecting communities.
3. Collaborate with local jurisdictions to improve station access and create more sustainable communities, including by promoting access improvements off BART property.
4. Ensure high quality design for access improvements, with careful consideration of the local context and the quality of the environment accessing BART.

**E. Equitable Services.** Invest in access choices for all riders, particularly those with the fewest choices.

1. Ensure that disadvantaged communities share in the benefits of BART accessibility.
2. Strive to be a partner to reduce the cost of living (i.e., transportation and housing) in the Bay Area for low-income communities by increasing access and housing options (i.e. TOD), providing greater access to opportunity.
3. Use Universal Design principles to improve safety and ensure access is available for everyone at all times.

**F. Innovation and Partnerships.** Be an innovation leader, and establish durable partnerships with municipalities, access providers, and technology companies.

1. Involve BART riders in station access decision-making.
2. Develop partnerships with municipalities, transit operators, developers, technology providers, corporate shuttle providers, Transportation Network Companies, bike share operators, advocacy groups and other entities to best meet access goals.
3. Continue to research and pilot emerging technologies and new forms of access services to keep up with the rapidly-changing transportation ecosystem.
4. Remain technology- and operator-agnostic; make long-term investments in the access technologies and services that best meet the needs of BART riders.
5. Prioritize projects that leverage other fund sources and local matches both to further build partnerships and to capture more value from BART investments.

## STRATEGIES

### Plan, Innovate and Partner

1. Plan for systemwide access mode shift to reduce drive alone rates.
2. Partner with interested stakeholders to improve access to the BART system.
3. Plan all BART facilities to be accessible to all users, including users with disabilities.

### Invest and Implement

1. Invest in the pedestrian and bicycle assets with a focus on BART property, and partner to advance projects off BART property, including partnering on local initiatives, such as Vision Zero, Safe Routes to School, and Safe Routes to Transit.

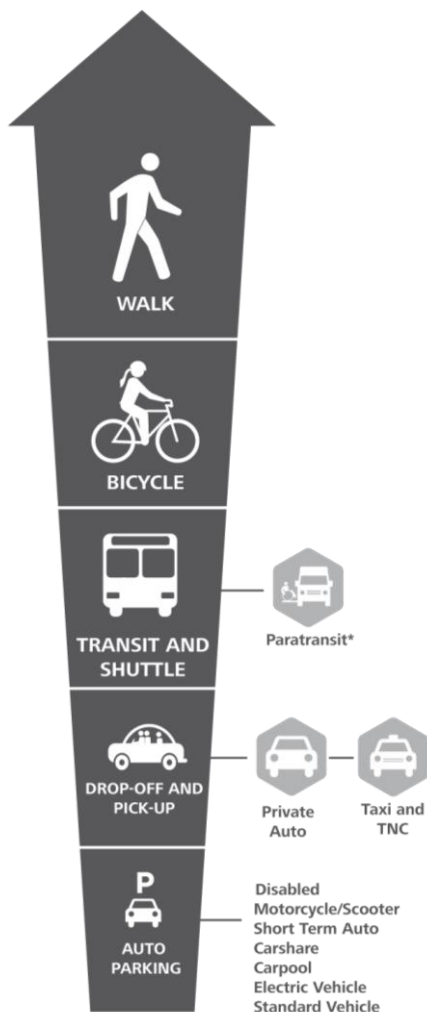
### BART STATION ACCESS POLICY

- 2. Invest in transit connections, including investments that improve passenger experience in transit transfers (shelters, real-time information); seek to reduce barriers to transit connections; and partner with local transit service providers on last mile improvements.
- 3. Prioritize station access investments that support ridership growth where and when the system has capacity.
- 4. Improve management of existing parking resources, and invest in or partner on strategic parking resources; including shared parking, on-street parking, programs to maximize existing parking assets, and locating new parking resources only where other approaches are not sufficient, consistent with the station typology investment matrix.

### Manage and Assess

- 1. Manage resources we have.
- 2. Regularly collect and analyze station access data, and consider emerging data sources.
- 3. Develop a 4-year work plan to identify projects BART staff will advance in the near-term.
- 4. Revisit the Station Access Policy every ten years.































FIGURE 1: STATION ACCESS DESIGN HIERARCHY



\*All Stations must be paratransit accessible  
Note: All stations must always remain readily accessible to and usable by persons with disabilities

BART STATION ACCESS POLICY

FIGURE 2: STATION ACCESS INVESTMENT FRAMEWORK

STATION TYPE	PRIMARY INVESTMENTS	SECONDARY INVESTMENTS	ACCOMMODATED	NOT ENCOURAGED
URBAN	  Walk Bicycle	 Transit and Shuttle	  Taxi and TNC Drop-Off and Pick-Up	 Auto Parking*
URBAN WITH PARKING	  Walk Bicycle	 Transit and Shuttle	  Taxi and TNC Drop-Off and Pick-Up	 Auto Parking*
BALANCED INTERMODAL	  Walk Bicycle	  Transit and Shuttle Drop-Off and Pick-Up	  Taxi and TNC Auto Parking*	
INTERMODAL/AUTO RELIANT	 Walk	   Bicycle Drop-Off and Pick-Up Transit and Shuttle	  Taxi and TNC Auto Parking*	
AUTO DEPENDENT	 Walk	    Bicycle Drop-Off and Pick-Up Auto Parking* Transit and Shuttle	 Taxi and TNC	

**Primary Investment:**  
 BART will prioritize investments of funds and staff time on and off of BART property, consistent with access goals; priority projects best achieve policy goals, focus on safety and sustainability.

**Secondary Investment:**  
 BART will invest funds and staff time on and off of BART property, consistent with policy goals; secondary investments balance policy goals.

**Accommodated:**  
 BART will maintain and manage existing assets, and partner with other access providers as needed.

**Not Encouraged:**  
 BART will not invest in construction of parking expansion.

Note: TNC is for Transportation Network Company (shared use mobility)

\*Parking Management is a secondary investment at all stations with parking.

\*Parking replacement for transit-oriented development to be determined by BART's Transit-Oriented Development Policy.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Updating Berkeley Telecom Ordinances and BMC codes

#### RECOMMENDATION

Direct the City Manager to adopt a resolution to include the attached sample language and contained hyperlinked references to update the City's Telecom Ordinances and BMC codes.

#### BACKGROUND

For several months now, the community has been concerned about the potential installation of 5G technology and small cells throughout the city. The technology has not been thoroughly tested concerning radiation.

Some City of Berkeley communities bear the brunt of health-related impacts caused by industrial and other activities. The California Environmental Protection Agency has identified various census tracts within the City as disadvantaged communities disproportionately burdened by and vulnerable to multiple sources of pollution.

It is important now more than ever, to update the City's Telecom Ordinances to protect the health and safety of our residents that cover the following areas:

**1. FCC CLAUSE:** Include a clause voiding relevant sections of the ordinance, or requiring modification, in the event of a regulatory change or overturning of the FCC Order. (see report by Next Century Cities) **Laws, permits, and re-certifications need to be CONDITIONAL**, so that they may be revoked or modified if out of compliance or if/when federal law is modified. (Fairfax, Sonoma City) Also include a **SEVERABILITY** clause.

#### **2. PERMITS**

2.a. **Conditional Use Permits:** Maintain that each wireless facility requires a Conditional Use Permit (Planning Dept, ZAB, or Public Works) followed by an encroachment permit

2.b. **Significant Gap in coverage:** Require that a significant gap in coverage be proven by applicant before approval of a wireless antenna and confirmed by an independent engineer.\* (Calabasas, Old Palos Verdes)

**Least Intrusive Methods:** Require the least intrusive methods to fill any gaps for small cells and other wireless facilities. A justification study which includes the rationale for selecting the proposed use; a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option. (Old Palos Verdes) An independent\* engineer shall confirm, or not.

2.c. **Radio-frequency Data Report:** Require a thorough radio-frequency (RF) data report as part of the permit submittal for consultants. For all applications, require both an RF Compliance Report signed by a registered, independent professional engineer, and a supporting RF Data Request Form. (Calabasas, Palos Verdes, Suisun City, Sonoma City) The independent\* engineer will be hired by the City of Berkeley and billed to the applicant.

2.d. **Mock-up, Construction Drawings, Site Survey, Photo Simulations:** Require full-size mock-up of proposed Small Cell Facilities (SCF) and other pertinent information in order to adequately consider potential impacts. (Larkspur, Calabasas, Palos Verdes. Also see Boulder, CO Report) Require **Balloon Tests**. (Town of Hempstead NY 2013)

2.e. **Public notification:** Telecom related Planning Commission, Public Works, and Zoning Adjustment Board hearings shall be publicized in the most widely read local newspapers and local online news sources\* and on the City website no less than 30 days prior to the hearing or meeting. No less than 30 days prior, a U.S. 1st class mail shall be sent to all addresses within 3,000 feet of the proposed facilities. The outside of the envelope shall be printed with "Urgent Notice of Public Hearing." Due to the "shot clock", City requires applicants to hold a publicly noticed meeting two weeks prior to submitting an application within the affected neighborhood. Applicants mail all affected residents and businesses date, time, and location of hearings at least two weeks prior. The applicant pays associated costs including mailings and meeting location rent.

**Community Meeting:** Applicant is required to [publicize in local newspapers and local online news sources\* and] hold a community meeting at least two weeks prior to the hearing on the use permit. (San Anselmo, Palos Verdes) Applicants shall mail all affected residents and businesses date, time, and location of hearings at least two weeks prior, 1st class etc. [as in 2.e].

2.f. **Notification:** Notify property owners, residents, tenants, business owners, and workers within 3000 feet of a proposed wireless installation within one week of application submittal and again within one week of permit approval. 1st class etc. [as in 2.e].

2.g. **Independent Expert\*** The City shall retain an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following: xxxx (Old Palos Verdes) Paid by applicant (San Anselmo)

2.h. **Trees:** No facility shall be permitted to be installed in the drip line of any tree in the right-of-way. (Old Palos Verdes, 15' in Los Altos) (See Berkeley's Heritage Tree ordinance.)

2.i. **Transfer of Permit:** The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.080(B)(5). (Palos Verdes)

2.j. **General Liability Insurance:** To protect the City, the permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of commercial general liability insurance, with minimum limits of two million dollars for each occurrence and four million dollars in the aggregate, that fully protects the City from claims and suits for bodily injury and property damage. The insurance must name the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with 30 days prior written notice to the city, except for cancellation due to nonpayment of premium.... (Old Palos Verdes, Fairfax, Newark. San Anselmo has an indemnification clause.)

2.k. **Attorneys' Fees:** The Permittee is required to pay any/all costs of legal action. (Suisun City)

2.l. **Speculative Equipment:** Pre-approving wireless equipment or other alleged improvements that the applicant does not presently intend to install, but may wish to install at an undetermined future time, does not serve the public interest. The City shall not pre-approve telecom equipment or wireless facilities. (Fairfax, Old Palos Verdes, Sebastopol)

2.m. **Citizens may appeal** decisions made. (San Anselmo)

**3. ACCESS Americans with Disabilities Act (ADA):** All facilities shall be in compliance with the ADA. (New Palos Verdes, Fairfax, Sebastopol, Mill Valley, Sonoma City, Suisun City) Electromagnetic Sensitivity (EMS) is a disabling characteristic, recognized by the Federal Access Board since 2002. The main treatment for this condition is avoidance of exposure to wireless radiation. Under the 1990 Americans with Disabilities Act, people who suffer from exposure to Electromagnetic Fields (EMF) are part of a protected disabled class under Title 42 U.S. Code § 12101 et seq. (Heed Berkeley's pioneering disability rights laws and Berkeley's Precautionary Principle ordinance NO. 6,911-N.S "to promote the health, safety, and general welfare of the community.")

#### **4. SETBACKS:**

4.a. **Prohibited Zones** for Small Cells: Prohibits small cell telecommunication facilities in residential zones and multi-family zoning districts (Calabasas, Mill Valley, Los Altos, Sonoma City)

4.b. **Preferred or Disfavored Locations:** In addition to residential areas, designate areas where cell towers are disfavored and not permitted, i.e. near schools, residential areas, city buildings, sensitive habitats, on ridge lines, public parks, Historic Overlay Districts, in open spaces or where they are favored i.e. commercial zoning areas, industrial zoning areas. (Calabasas, Sebastopol, Boulder Report)

4.c. **Disfavored Location:** Small cell installations are not permitted in close proximity to residences, particularly near sleeping and living areas. Viable and defensible setbacks will vary based on zoning. (ART ordinance) 1500 foot minimum setback from residences that are not in residential districts!

4.d. **1500 Foot Setback from other small cell** installations: Locate small cell installations no less than 1500 feet away from the Permittee or any Lessee's nearest other small cell installation. (Calabasas, Petaluma, Fairfax, Mill Valley, Suisun City, Palos Verdes, Sebastopol San Ramon, Sonoma City,-Boulder Report)

4.e. **1500 Foot Minimum Setback** from any educational facility, child/elder/healthcare facility, or park. (ART Ordinance) The California Supreme Court ruled on April 4, 2019 that San Francisco may regulate based on "negative health consequences, or safety concerns that may come from telecommunication deployment." (Sebastopol forbids potential threat to public health, migratory birds, or endangered species, also in combination with other facilities. Refer to Berkeley's Precautionary Principle Ordinance)

4.f. **500 Foot Minimum Setback from any business/workplace** (Petaluma, Suisun City)

#### **5. LOCATION PREFERENCE:**

5.a. **Order of preference:** The order of preference for the location of small cell installations in the City, from most preferred to least preferred, is: (1) Industrial zone (2) Commercial zone (3) Mixed commercial and residential zone (4) Residential zone (ART Ordinance, New Palos Verdes) [Residential zone ban]

5.b. **Fall Zone:** The proposed small cell installation shall have an adequate fall zone to minimize the possibility of damage or injury resulting from pole collapse or failure, ice fall or debris fall, and to avoid or minimize all other impacts upon adjoining property

5.c. **Private Property:** If a facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit) will be located on or in the property of someone other than the owner of the facility, the applicant shall provide a duly executed and notarized authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property. (Palos Verdes) [Many Berkeleyans do not want wireless antennas allowed on private property. If a permit is considered for private property, not just the property owners but all those who spend time or own/rent property within 1500 feet must be notified immediately of how they may weigh in, and be informed of the decision immediately with possibility of appeal if a permit is granted.]

5.d. **Endangerment, interference:** No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

## 6. **TESTING:**

6.a. **Random Testing for RF Compliance:** The City shall employ a qualified, independent \* RF engineer to conduct an annual random and unannounced test of the Permittee's small cell **and other** wireless installations located within the City to certify their compliance with all Federal Communications Commission (FCC) RF emission limits. The reasonable cost of such tests shall be paid by the Permittee. (Fairfax, (ART, Old Berkeley. Suisun City requires annual inspections and testing.)

6.b. **RF/EMF Testing:** Berkeley's current law states that the City Manager "may" require independent testing of telecom equipment. Change "may" to "shall" and delete the word "Manager" so that, if s/he does not find time to hire an independent expert, other City staff or a Council Committee may do so. The law needs to require independent testing of all equipment, unannounced in advance, twice annually, with permittees required to reimburse the City for costs and to pay a deposit in advance. Dates, addresses, and results of testing shall be posted on the City website and published in local media. \*\* [Montgomery County Maryland studied RF radiation levels from small cells and found that FCC exposure levels were exceeded within 11 feet.]

6.c. **Violation of Compliance Notification:** In the event that such independent tests reveal that any small cell installation(s) owned or operated by Permittee or its Lessees, singularly or in the aggregate, is emitting RF radiation in excess of FCC exposure standards as they pertain to the general public, the City shall notify the Permittee and all residents living within 1500 feet of the installation(s) of the violation(s), and the Permittee shall have 48 hours to bring the installation(s) into compliance. Failure to bring the installation(s) into compliance shall result in the forfeiture of all or part of the Compliance Bond, and the City shall have the right to require the removal of such installation(s), as the City in its sole discretion may determine is in the public interest. (ART)

6.d. **Non-acceptance of Applications:** Where such annual recertification has not been properly or timely submitted, or equipment no longer in use has not been removed within the required 30-day period, no further applications for wireless installations will be accepted by the City until such time as the annual re-certification has been submitted and all fees and fines paid. (ART)

7. **RIGHT TO KNOW:** The City shall inform the affected public via website, local news publications \*\*, and US 1st class mail (with topic prominently announced in red on outside of envelope) of Master Licensing Agreement between the City and telecom, Design Standards for Small Cells or other wireless equipment, other telecom agreements, and notification within 2 business days of receiving permit applications, calendaring related hearings/meetings, and approving permits. Notice shall include location and date of expected installations, description of the appeals process, and dates of installations. A map featuring all telecom equipment shall be on the City website and available to residents who request it at 2180 Milvia St. Applicants/Permittees, who are profiting from using Berkeley's public right of way, will reimburse City for the reasonable cost of mailings, Town Halls, and staff to handle telecom applications, public notification, inspections, recertifications, etc.

## 8. **RECERTIFICATION:**

8.a. **Annual Recertification:** Each year, commencing on the first anniversary of the issuance of the permit, the Permittee shall submit to the City an affidavit which shall list all active small cell



wireless installations it owns within the City by location, certifying that (1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the City as an additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (ART) Any installation that is out of compliance will be promptly removed; the permit for that installation will be terminated, with all associated expenses paid by the applicant.

8.b. **Recertification Fees:** Recertification fees will be calculated each year by the City. They will be based on the anticipated costs of City for meeting the compliance requirements put in place by this ordinance. The total costs will be divided by the number of permits and assigned to the permit-holders as part of the recertification process

8.c. **Noise Restrictions** (Sonoma City): Each wireless telecommunications facility shall be operated in such a manner so as not to cause any disruption to the community's peaceful enjoyment of the city.

o Non-polluting backup generators shall only be operated during periods of power outages, and shall not be tested on weekends, holidays, or between the hours of 5:00 p.m. and 9:00 a.m.

o At no time shall any facility be permitted to exceed 45 DBA and the noise levels specified in Municipal Code XXX. (Los Altos)

· 8.d. **Noise Complaints:** If a nearby property owner registers a noise complaint, the City shall forward the same to the permittee. Said complaint shall be reviewed and evaluated by the applicant. The permittee shall have 10 business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the City determines the complaint is valid and the applicant has not taken steps to minimize the noise, the City may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee. The matter shall be reviewed by City staff. If sound proofing or other sound attenuation measures are required to bring the project into compliance with the Code, the City may impose conditions on the project to achieve said objective. (Old Palos Verdes, Calabasas)

9.a. **AESTHETICS and UNDERGROUNDING:** At every site where transmitting antennas are to be placed, all ancillary equipment shall be placed in an underground chamber beneath the street constructed by the Permittee. (Calabasas, Mill Valley, Petaluma) The chamber shall include battery power sufficient to provide a minimum of 72 hours of electricity to the ancillary equipment. \*\*\*

· Permittee is responsible for placing on the pole two signs with blinking lights, with design approved by City, each in the opposite direction, to inform people walking on the sidewalk, what is installed on the pole. Should a sign be damaged, Permittee shall replace it within 5 business days. (Town of Hempstead NY required a 4 foot warning sign on each pole.)

9.b. **Aesthetic Requirements:** According to the Baller Stokes & Lide law firm, some of the aesthetic considerations that local governments may consider include: \*\*\*\*

o Size of antennas, equipment boxes, and cabling;

o Painting of attachments to match mounting structures;

o Consistency with the character of historic neighborhoods;

o Aesthetic standards for residential neighborhoods, including "any minimum setback from dwellings, parks, or playgrounds and minimum setback from dwellings, parks, or playgrounds; maximum structure heights; or limitations on the use of small, decorative structures as mounting locations." (Boulder Report)

**"Independent"** means: The RF engineering company has never provided services to a telecom corporation, and the company's employee who tests exposure levels has also never provided services to a telecom corporation.

**Right to Know** - Publish on City website, in online local news: Berkeley Daily Planet, Berkeleyside, and local newspapers: Berkeley Voice, Berkeley Times (2019. Update as needed)

**\*\*\* Undergrounding** - A single shielded multi-wire cable from the underground chamber shall be used to transmit radiation to the antennae for the purpose of transmitting data. If the pole is of hollow metal, the cable shall be inside the pole; if the pole is solid wood, the cable can be attached to the pole. Installation shall include its own analogue electricity meter and Permittee shall pay the electrical utility a monthly charge for the amount of electricity used.

Except during construction, or essential maintenance, automobiles and trucks, of an allowed weight, shall be allowed to park at the site of the underground chamber. If maintenance is required within the underground chamber the Permittees shall place a notice on the parked car or truck, to be moved within 24 hours. If no vehicle is parked on top of the underground chamber the Permitted shall place a No Parking sign for up to 24 hours.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

It is imperative to protect the most vulnerable and all our citizens from these hazards. .

CONTACT PERSON

Cheryl Davila,  
Councilmember, District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY SUPPORTING AMENDMENTS TO THE CITY'S TELECOM ORDINANCES

WHEREAS, communities in the City of Berkeley are disadvantaged and disproportionately bear the brunt of health-related impacts caused by industrial and other activities. The California Environmental Protection Agency has identified various census tracts within the City of Richmond as disadvantaged communities disproportionately burdened by and vulnerable to multiple sources of pollution

Now, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley support amendments to the City Telecom Ordinances to protect the health and safety of our residents.

BE IT FURTHER RESOLVED, the City Council directed the City Attorney to prepare any draft ordinances using the attached sample language and hyperlink references to update the City's Telecom Ordinances:

**1. FCC CLAUSE:** Include a clause voiding relevant sections of the ordinance, or requiring modification, in the event of a regulatory change or overturning of the FCC Order. (see report by Next Century Cities) **Laws, permits, and re-certifications need to be CONDITIONAL**, so that they may be revoked or modified if out of compliance or if/when federal law is modified. (Fairfax, Sonoma City) Also include a **SEVERABILITY** clause.

## **2. PERMITS**

**2.a. Conditional Use Permits:** Maintain that each wireless facility requires a Conditional Use Permit (Planning Dept, ZAB, or Public Works) followed by an encroachment permit

**2.b. Significant Gap in coverage:** Require that a significant gap in coverage be proven by applicant before approval of a wireless antenna and confirmed by an independent engineer.\* (Calabasas, Old Palos Verdes)

**Least Intrusive Methods:** Require the least intrusive methods to fill any gaps for small cells and other wireless facilities. A justification study which includes the rationale for selecting the proposed use; a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option. (Old Palos Verdes) An independent\* engineer shall confirm, or not.

**2.c. Radio-frequency Data Report:** Require a thorough radio-frequency (RF) data report as part of the permit submittal for consultants. For all applications, require both an RF Compliance Report signed by a registered, independent professional engineer, and a supporting RF Data Request Form. (Calabasas, Palos Verdes, Suisun City, Sonoma City) The independent\* engineer will be hired by the City of Berkeley and billed to the applicant.

**2.d. Mock-up, Construction Drawings, Site Survey, Photo Simulations:** Require full-size mock-up of proposed Small Cell Facilities (SCF) and other pertinent information in order to adequately consider potential impacts. (Larkspur, Calabasas, Palos Verdes. Also see Boulder, CO Report) Require **Balloon Tests**. (Town of Hempstead NY 2013)

**2.e. Public notification:** Telecom related Planning Commission, Public Works, and Zoning Adjustment Board hearings shall be publicized in the most widely read local newspapers and local online news sources\* and on the City website no less than 30 days prior to the hearing or meeting. No less than 30 days prior, a U.S. 1st class mail shall be sent to all addresses within 3,000 feet of the proposed facilities. The outside of the envelope shall be printed with "Urgent Notice of Public Hearing." Due to the "shot clock", City requires applicants to hold a publicly noticed meeting two weeks prior to submitting an application within the affected neighborhood. Applicants mail all affected residents and businesses date, time, and location of hearings at least two weeks prior. The applicant pays associated costs including mailings and meeting location rent.

**Community Meeting:** Applicant is required to [publicize in local newspapers and local online news sources\* and] hold a community meeting at least two weeks prior to the hearing on the use permit. (San Anselmo, Palos Verdes) Applicants shall mail all affected residents and businesses date, time, and location of hearings at least two weeks prior, 1st class etc. [as in 2.e].

**2.f. Notification:** Notify property owners, residents, tenants, business owners, and workers within 3000 feet of a proposed wireless installation within one week of application submittal and again within one week of permit approval. 1st class etc. [as in 2.e].

**2.g. Independent Expert\*** The City shall retain an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following: xxxx (Old Palos Verdes) Paid by applicant (San Anselmo)

2.h. **Trees:** No facility shall be permitted to be installed in the drip line of any tree in the right-of-way. (Old Palos Verdes, 15' in Los Altos) (See Berkeley's Heritage Tree ordinance.)

2.i. **Transfer of Permit:** The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.080(B)(5). (Palos Verdes)

2.j. **General Liability Insurance:** To protect the City, the permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of commercial general liability insurance, with minimum limits of two million dollars for each occurrence and four million dollars in the aggregate, that fully protects the City from claims and suits for bodily injury and property damage. The insurance must name the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with 30 days prior written notice to the city, except for cancellation due to nonpayment of premium.... (Old Palos Verdes, Fairfax, Newark. San Anselmo has an indemnification clause.)

2.k. **Attorneys' Fees:** The Permittee is required to pay any/all costs of legal action. (Suisun City)

2.l. **Speculative Equipment:** Pre-approving wireless equipment or other alleged improvements that the applicant does not presently intend to install, but may wish to install at an undetermined future time, does not serve the public interest. The City shall not pre-approve telecom equipment or wireless facilities. (Fairfax, Old Palos Verdes, Sebastopol)

2.m. **Citizens may appeal** decisions made. (San Anselmo)

**3. ACCESS Americans with Disabilities Act (ADA):** All facilities shall be in compliance with the ADA. (New Palos Verdes, Fairfax, Sebastopol, Mill Valley, Sonoma City, Suisun City) Electromagnetic Sensitivity (EMS) is a disabling characteristic, recognized by the Federal Access Board since 2002. The main treatment for this condition is avoidance of exposure to wireless radiation. Under the 1990 Americans with Disabilities Act, people who suffer from exposure to Electromagnetic Fields (EMF) are part of a protected disabled class under Title 42 U.S. Code § 12101 et seq. (Heed Berkeley's pioneering disability rights laws and Berkeley's Precautionary Principle ordinance NO. 6,911-N.S "to promote the health, safety, and general welfare of the community.")

#### **4. SETBACKS:**

4.a. **Prohibited Zones** for Small Cells: Prohibits small cell telecommunication facilities in residential zones and multi-family zoning districts (Calabasas, Mill Valley, Los Altos, Sonoma City, Elk Grove Ca)

4.b. **Preferred or Disfavored Locations:** In addition to residential areas, designate areas where cell towers are disfavored and not permitted, i.e. near schools, residential areas, city buildings, sensitive habitats, on ridge lines, public parks, Historic Overlay Districts, in open spaces or where they are favored i.e. commercial zoning areas, industrial zoning areas. (Calabasas, Sebastopol, Boulder Report)

4.c. **Disfavored Location:** Small cell installations are not permitted in close proximity to residences, particularly near sleeping and living areas. Viable and defensible setbacks will vary based on zoning. (ART ordinance) 1500 foot minimum setback from residences that are not in residential districts!

4.d. **1500 Foot Setback from other small cell** installations: Locate small cell installations no less than 1500 feet away from the Permittee or any Lessee's nearest other small cell installation. (Calabasas, Petaluma, Fairfax, Mill Valley, Suisun City, Palos Verdes, Sebastopol San Ramon, Sonoma City, Boulder Report)

4.e. **1500 Foot Minimum Setback** from any educational facility, child/elder/healthcare facility, or park. (ART Ordinance) The California Supreme Court ruled on April 4, 2019 that San

Francisco may regulate based on "negative health consequences, or safety concerns that may come from telecommunication deployment." (Sebastopol forbids potential threat to public health, migratory birds, or endangered species, also in combination with other facilities. Refer to Berkeley's Precautionary Principle Ordinance)

4.f. **500 Foot Minimum Setback from any business/workplace** (Petaluma, Suisun City)

## **5. LOCATION PREFERENCE:**

5.a. **Order of preference:** The order of preference for the location of small cell installations in the City, from most preferred to least preferred, is: (1) Industrial zone (2) Commercial zone (3) Mixed commercial and residential zone (4) Residential zone (ART Ordinance, New Palos Verdes) [Residential zone ban]

5.b. **Fall Zone:** The proposed small cell installation shall have an adequate fall zone to minimize the possibility of damage or injury resulting from pole collapse or failure, ice fall or debris fall, and to avoid or minimize all other impacts upon adjoining property

5.c. **Private Property:** If a facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit) will be located on or in the property of someone other than the owner of the facility, the applicant shall provide a duly executed and notarized authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property. (Palos Verdes) [Many Berkeleyans do not want wireless antennas allowed on private property. If a permit is considered for private property, not just the property owners but all those who spend time or own/rent property within 1500 feet must be notified immediately of how they may weigh in, and be informed of the decision immediately with possibility of appeal if a permit is granted.]

5.d. **Endangerment, interference:** No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

## **6. TESTING:**

6.a. **Random Testing for RF Compliance:** The City shall employ a qualified, independent \* RF engineer to conduct an annual random and unannounced test of the Permittee's small cell **and other** wireless installations located within the City to certify their compliance with all Federal Communications Commission (FCC) RF emission limits. The reasonable cost of such tests shall be paid by the Permittee. (Fairfax, (ART, Old Berkeley. Suisun City requires annual inspections and testing.)

6.b. **RF/EMF Testing:** Berkeley's current law states that the City Manager "may" require independent testing of telecom equipment. Change "may" to "shall" and delete the word "Manager" so that, if s/he does not find time to hire an independent expert, other City staff or a Council Committee may do so. The law needs to require independent testing of all equipment, unannounced in advance, twice annually, with permittees required to reimburse the City for costs and to pay a deposit in advance. Dates, addresses, and results of testing shall be posted on the City website and published in local media. \*\* [Montgomery County Maryland studied RF radiation levels from small cells and found that FCC exposure levels were exceeded within 11 feet.]

6.c. **Violation of Compliance Notification:** In the event that such independent tests reveal that any small cell installation(s) owned or operated by Permittee or its Lessees, singularly or in the aggregate, is emitting RF radiation in excess of FCC exposure standards as they pertain to the general public, the City shall notify the Permittee and all residents living within 1500 feet of the installation(s) of the violation(s), and the Permittee shall have 48 hours to bring the installation(s) into compliance. Failure to bring the installation(s) into compliance shall result in

the forfeiture of all or part of the Compliance Bond, and the City shall have the right to require the removal of such installation(s), as the City in its sole discretion may determine is in the public interest. (ART)

6.d. **Non-acceptance of Applications:** Where such annual recertification has not been properly or timely submitted, or equipment no longer in use has not been removed within the required 30-day period, no further applications for wireless installations will be accepted by the City until such time as the annual re-certification has been submitted and all fees and fines paid. (ART)

7. **RIGHT TO KNOW:** The City shall inform the affected public via website, local news publications \*\*, and US 1st class mail (with topic prominently announced in red on outside of envelope) of Master Licensing Agreement between the City and telecom, Design Standards for Small Cells or other wireless equipment, other telecom agreements, and notification within 2 business days of receiving permit applications, calendaring related hearings/meetings, and approving permits. Notice shall include location and date of expected installations, description of the appeals process, and dates of installations. A map featuring all telecom equipment shall be on the City website and available to residents who request it at 2180 Milvia St. Applicants/Permittees, who are profiting from using Berkeley's public right of way, will reimburse City for the reasonable cost of mailings, Town Halls, and staff to handle telecom applications, public notification, inspections, recertifications, etc.

## 8. **RECERTIFICATION:**

8.a. **Annual Recertification:** Each year, commencing on the first anniversary of the issuance of the permit, the Permittee shall submit to the City an affidavit which shall list all active small cell wireless installations it owns within the City by location, certifying that (1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the City as an additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (ART) Any installation that is out of compliance will be promptly removed; the permit for that installation will be terminated, with all associated expenses paid by the applicant.

8.b. **Recertification Fees:** Recertification fees will be calculated each year by the City. They will be based on the anticipated costs of City for meeting the compliance requirements put in place by this ordinance. The total costs will be divided by the number of permits and assigned to the permit-holders as part of the recertification process

8.c. **Noise Restrictions (Sonoma City):** Each wireless telecommunications facility shall be operated in such a manner so as not to cause any disruption to the community's peaceful enjoyment of the city.

o Non-polluting backup generators shall only be operated during periods of power outages, and shall not be tested on weekends, holidays, or between the hours of 5:00 p.m. and 9:00 a.m.

o At no time shall any facility be permitted to exceed 45 DBA and the noise levels specified in Municipal Code XXX. (Los Altos)

· 8.d. **Noise Complaints:** If a nearby property owner registers a noise complaint, the City shall forward the same to the permittee. Said complaint shall be reviewed and evaluated by the applicant. The permittee shall have 10 business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the City determines the complaint is valid and the applicant has not taken steps to minimize the noise, the City may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee. The matter shall be reviewed by City staff. If sound proofing or other sound attenuation measures are required to bring the project into compliance with the Code, the City may impose conditions on the project to achieve said objective. (Old Palos Verdes, Calabasas)

9.a. **AESTHETICS and UNDERGROUNDING:** At every site where transmitting antennas are to be placed, all ancillary equipment shall be placed in an underground chamber beneath the street constructed by the Permittee. (Calabasas, Mill Valley, Petaluma) The chamber shall include battery power sufficient to provide a minimum of 72 hours of electricity to the ancillary equipment. \*\*\*

· Permittee is responsible for placing on the pole two signs with blinking lights, with design approved by City, each in the opposite direction, to inform people walking on the sidewalk, what is installed on the pole. Should a sign be damaged, Permittee shall replace it within 5 business days. (Town of Hempstead NY required a 4 foot warning sign on each pole.)

9.b. **Aesthetic Requirements:** According to the Baller Stokes & Lide law firm, some of the aesthetic considerations that local governments may consider include: \*\*\*\*

- o Size of antennas, equipment boxes, and cabling;
- o Painting of attachments to match mounting structures;
- o Consistency with the character of historic neighborhoods;
- o Aesthetic standards for residential neighborhoods, including “any minimum setback from dwellings, parks, or playgrounds and minimum setback from dwellings, parks, or playgrounds; maximum structure heights; or limitations on the use of small, decorative structures as mounting locations.” (Boulder Report)

“**Independent**” means: The RF engineering company has never provided services to a telecom corporation, and the company’s employee who tests exposure levels has also never provided services to a telecom corporation.

**Right to Know** - Publish on City website, in online local news: Berkeley Daily Planet, Berkeleyside, and local newspapers: Berkeley Voice, Berkeley Times (2019. Update as needed)

\*\*\* **Undergrounding** - A single shielded multi-wire cable from the underground chamber shall be used to transmit radiation to the antennae for the purpose of transmitting data. If the pole is of hollow metal, the cable shall be inside the pole; if the pole is solid wood, the cable can be attached to the pole. Installation shall include its own analogue electricity meter and Permittee shall pay the electrical utility a monthly charge for the amount of electricity used.

Except during construction, or essential maintenance, automobiles and trucks, of an allowed weight, shall be allowed to park at the site of the underground chamber. If maintenance is required within the underground chamber the Permittees shall place a notice on the parked car or truck, to be moved within 24 hours. If no vehicle is parked on top of the underground chamber the Permitted shall place a No Parking sign for up to 24 hours.

\*\*\*\* WiRED deleted four of the points that were either not approved or not understood.

Various cities' wireless facilities ordinances are hyperlinked in the Key Points.

Scroll down ~20 pages to find them: <https://mdsafetech.org/cell-tower-and-city-ordinances/>

N.B. **More cities than those listed have adopted these points.**







Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings

#### RECOMMENDATION

Adopt a Resolution Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration.

In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be prohibited during all City Council meetings. The use of digital technologies outside of the provided City tablets, upon which Agenda Items and notes can be stored, is distracting, disrespectful, and jeopardizing to democratic process.

The Council Rules of Procedure and Order should be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.

#### FISCAL IMPACTS OF RECOMMENDATION

None.

#### ENVIRONMENTAL SUSTAINABILITY

None.

#### BACKGROUND

After serving three consecutive years on Berkeley City Council, it has become clear that the cell phones are being overused in City Council meetings, including in Closed Sessions. As elected officials and public servants, Berkeley City Councilmembers should be fully attentive in meetings, focused on the issues being raised by constituents and fellow Councilmembers. Especially when residents are giving public comment and only allowed to speak for 2 minutes, it is imperative that City Councilmembers utilize active listening strategies and show utmost respect to those we represent. Currently, members of the public have expressed feeling ignored or neglected by Berkeley City Council members who appear to be preoccupied with their technology and personal communication devices during Public Comment sessions.

In addition to being rude, texting during the meetings creates additional channels for lobbyists to influence Councilmembers votes and results in a lack of transparency. Additionally, if 3 or more Councilmembers of speaking to each other on text threads about a legislative topic this is in violation of the Brown Act. Thus, the use of cellular telephones on the dais communicates disregard for the general public, the deprioritization of our constituency's concerns, disengagement in ethical democracy, and ought to be banned.

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENT: 1: Resolution

REFERENCES:

1. <https://www.pe.com/2014/04/13/city-councils-officials8217-texting-during-meetings-sparks-debate/>

2. [http://local.anaheim.net/docs\\_agend/questys\\_pub/6575/6605/6606/6897/6913/Resolution6913.pdf](http://local.anaheim.net/docs_agend/questys_pub/6575/6605/6606/6897/6913/Resolution6913.pdf)

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

RESOLUTION OF THE COUNCIL OF THE CITY OF BERKELEY PROHIBITING THE USE OF CELL PHONES, EMAIL, TEXTING, INSTANT MESSAGING AND SOCIAL MEDIA BY ELECTED CITY COUNCILMEMBERS DURING OFFICIAL CITY MEETINGS

WHEREAS, the City of Berkeley Council Rules of Procedure and Orders *Section I.D.* page 4, specifies the Duties of Councilmembers and code of Decorum, stating “While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other’s time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council... nor disturb any other member while that member is speaking...”; and

WHEREAS, the use of cellular telephones and digital communications including text-messaging, emailing, perusing social media, or non-pertinent websites is distracting, and a threat to decorum; and

WHEREAS, members of the public have expressed feeling ignored or neglected by Berkeley City Council members who appear to be preoccupied with their technology and personal communication devices during Public Comment sessions; and

WHEREAS, the use of cell phones during the council meeting opens additional channels to influence Councilmembers immediately during a vote, leading to a lack of transparency; and

WHEREAS the Brown Act, California Government Code section 6200 *et seq.*, prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration; and

WHEREAS a text message thread could include participation of many Berkeley City Councilmembers addressing topics of legislation, in violation of the Brown Act; and

WHEREAS, other City Councils in the State of California, including, Palm Springs, Santa Rosa<sup>1</sup>, and Anaheim<sup>2</sup>, have banned the use of text-messaging, instant messaging, and/or emailing during their Council meetings;

Now, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the use of cell phones during City Council meetings be prohibited for Berkeley City Councilmember; and

BE IT FURTHER RESOLVED that while communications regarding Council items should be strictly prohibited by cell phones, personal communications between family members and/or care-givers can be taken outside in the case of emergencies; and

BE IT RESOLVED in order to acknowledge differences in learning styles and our of support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on the tablets provided by the City; and

THEREFORE BE IT FINALLY RESOLVED that the Council Rules of Procedure and Order be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate Plastic Bags at Retail and Food Service Establishments

RECOMMENDATION

Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate plastic bags at retail and food service establishments.

BACKGROUND

Californians throw away 123,000 tons of plastic bags each year, and much of it finds its way into regional and international waterways.<sup>1</sup> The situation is only getting worse with 18 billion more pounds of plastic added to the already colossal amount in our seas.<sup>2</sup> Today, there are 100 million tons of trash in the North Pacific Subtropical Gyre;<sup>3</sup> in some parts, plastic outweighs plankton 6 to 1.<sup>4</sup>

Legislative action at the state level has been successful in achieving reductions in plastic bag pollution. According to the 2018 Change the Tide report, restrictions on plastic bags such as that in effect in California have resulted in a “steady drop” in plastic grocery bags found on California beaches. Berkeley has also recently made substantial progress on its restriction of plastic litter in the city through the Single Use Foodware and Litter Reduction ordinance (BMC Chapter 11.64).<sup>5</sup> The ordinance restricts food providers from offering take-out and dine-in food in single-use disposable ware. These items include “containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any

<sup>1</sup> Environment California, “Keep Plastic Out of the Pacific,”

<https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

<sup>2</sup> Division of Boating and Waterways, “The Changing Tide,”

[http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20\(1\).pdf](http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20(1).pdf).

<sup>3</sup> The North Pacific Gyre, also known as the North Pacific Subtropical Gyre, is a system of ocean currents that covers much of the northern Pacific Ocean. It stretches from California to Japan and contains the Great Pacific Trash Patch, or Pacific trash vortex. National Geographic, “Great Pacific Garbage Patch,” <https://www.nationalgeographic.org/encyclopedia/great-pacific-garbage-patch/>.

<sup>4</sup> Environment California, “Keep Plastic Out of the Pacific,”

<https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

<sup>5</sup> Berkeley Municipal Code, Chapter 11.64 Single Use Foodware and Litter Reduction.

other items used to hold, serve, eat, or drink Prepared Food.”<sup>6</sup> Notably, plastic bags do not fall within the purview of the Single Use Foodware and Litter Reduction ordinance.

In order to take a further step in protecting the environment and reaching our zero waste goal, Berkeley must consider more aggressive action to close critical loopholes in state law with regard to plastic bags.

California currently prohibits the sale of plastic bags that fall into several categories, based on composition, intended use and business size and type. The statewide Single-Use Carryout Bag Ban prevents the sale of single-use plastic carryout bags in most large grocery stores, retail stores with a pharmacy, convenience stores, food marts, and liquor stores. Affected stores may offer reusable or recycled paper bags to a customer at the point of sale. Despite these restrictions, the law provides for the sale of plastic bags that are more than 2.25 mils thick in these stores, and exempts a number of key commercial establishments such as restaurants, general retailers, farmers markets, and other smaller businesses. State law also fully exempts plastic bags in grocery stores used for carrying produce from the shelf to the check stand.<sup>7</sup>

This proposed ordinance intends to expand the scope of existing regulation to further reduce plastic waste across these exempt categories, avoiding further destruction of the local, regional and global environment.

### **State Restrictions on Plastic Bags**

California’s legislature decided in 2014 to take a step to limit single-use plastic bag waste. Senate Bill 270 mandates that stores of a certain size and type offer only reusable bags at checkout and sets a minimum price of at least \$0.10.<sup>8</sup> As a result, thin film bags, known as t-shirt bags, are no longer available at larger retail and grocery stores.

The scope of state regulation includes minimum percentage of post-consumer recycled plastics the bag must include and banning plastic bags deemed adequate for only one use. The state defines single-use plastic bags as thin film bags—bags made out of flexible sheets of plastic usually of polyethylene resin. Legislation often distinguishes between single-use film bags and reusable ones based on their thickness, measured in mils—1 thousandth of an inch.

The ban however does not apply to other types of plastic bags deemed reusable or to smaller retailers and restaurants. Many plastic film bags, in particular, are still permitted under SB 270. They are permitted for sale as long as: the bags contain more than 20%

<sup>6</sup> Berkeley Municipal Code Section 11.64.020D.

<sup>7</sup> Ban on Single-Use Carryout Bags (SB 270 / Proposition 67) Frequently Asked Questions, Office of the Attorney General and CalRecycle, April 2017, <https://www.calrecycle.ca.gov/Plastics/CarryOutBags/FAQ/>.

<sup>8</sup> California Legislature, Senate Bill 270,

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140SB270](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB270)

post-consumer recycled material<sup>9</sup>; are recyclable in the state of California; are properly labeled as containing post-consumer recycled material; can carry over 22lb for a minimum of 175ft for at least 125 uses; and are at least 2.25 mils thick.

Despite the assumption of reusability, there is limited evidence to suggest that plastic bags are being repurposed to the degree accounted for by SB 270. Some studies suggest that fewer than 1% of people actually reuse the thicker and thus technically-reusable film bags.<sup>10</sup> This erroneous legislative assumption can be addressed at the local level.

Aside from SB 270, the only other legislation governing plastic bag usage in Berkeley is an Alameda County ordinance implementing SB 270 and local ordinances regulating the type of plastic allowed in food packaging.<sup>11</sup> By not addressing plastic produce bags and defining reusable bags as any film bag exceeding 2.25 mils, current regional and local law shares many of the shortcomings of state legislation.<sup>1213</sup>

### Local Restrictions on Plastic Bags

Contested but upheld in a 2016 ballot measure,<sup>14</sup> SB 270 set a statewide code that has been built upon by numerous local governments, including many in the Bay Area.

Palo Alto is one of the most recent cities to amend its municipal code and take the extra step in limiting the distribution of film bags. By splitting plastic bags into three categories by use—produce bags, checkout bags, and product bags—the city is able to differentiate regulation for each purpose. Its ordinance<sup>15</sup> bans grocery stores and farmers markets from packaging food in film bags, requiring instead the use of compostable plastics. For checkout, Palo Alto mandates that all stores only offer their customers recycled paper bags or reusable bags, a term it defines in accordance with California law as a bag thicker than 2.25 mils.

<sup>9</sup> [In 2020, the percentage required will increase to 40% post-consumer recycled material.](#)

<sup>10</sup> Save Our Shores, “Help Ban Plastic Bags,” <https://saveourshores.org/help-ban-plastic-bags/>

<sup>11</sup> Alameda County Waste Management Authority, “Ordinance Regulating the use of carryout bags and promoting the use of reusable bags,” <http://reusablebagsac.org/acwma-ordinance-2012-2-amended-ordinance-2016-2>.

<sup>12</sup> Berkeley Municipal Code Chapter 11.58 Prohibition of Chlorofluorocarbon-Processed Food Packaging, <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley11/Berkeley1158/Berkeley1158.html>.

<sup>13</sup> Berkeley Municipal Code Chapter 11.60 Polystyrene Foam, Degradable and Recyclable Food Packaging, <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley11/Berkeley1160/Berkeley1160.html>.

<sup>14</sup> Ballotpedia, “California Proposition 67, Plastic Bag Ban Veto Referendum (2016),” [https://ballotpedia.org/California\\_Proposition\\_67,\\_Plastic\\_Bag\\_Ban\\_Veto\\_Referendum\\_\(2016\)](https://ballotpedia.org/California_Proposition_67,_Plastic_Bag_Ban_Veto_Referendum_(2016))

<sup>15</sup> Palo Alto Municipal Code, “Chapter 5.35 Retail and Food Service Establishment Checkout Bag Requirements,” <https://www.cityofpaloalto.org/civicax/filebank/documents/63550>.

San Francisco has similar provisions.<sup>16</sup> It decided in July 2019<sup>17</sup> to both increase the amount of money charged for checkout bags from \$0.10 to \$0.25 and ban what it calls “pre-checkout bags”—defined as a “bag provided to a customer before the customer reaches the point of sale,” nearly identical in definition to Palo Alto’s produce bag language. San Francisco drew inspiration from Monterey, Pacifica, Santa Cruz and Los Altos, all of which charge more than SB270 requires for plastic bags.<sup>18</sup> The ordinance also specifically referenced an Irish law, which increased the price of plastic checkout bags from 15 cents to 22 cents, reducing plastic checkout usage by more than 95 percent, as precedent.<sup>19</sup>

Yet there are some cities that have gone even farther in their restriction of single-use plastics. Although Capitola does not ban produce/pre-checkout bags, it notably redefined the thickness of a reusable bag as equal or exceeding 4 mils, instead of 2.25 mils.<sup>20</sup> This means that any carryout bag provided by a retailer in the city is more durable than those considered multi-use by the state of California.

New York State recently introduced a plastic bag reduction ordinance that provides a number of precedents for a potential Berkeley ordinance. It bans “the provision of plastic carryout bags at any point of sale.”<sup>21</sup> It exempts compostable bag and *non*-film plastic bags and does away with any distinction between reusable and non-reusable film bags based on their thickness. Where the New York ban falls short is in its regulation of non-checkout bags: bags for produce, meat, newspapers, take-out food and garments remain legal.

Given the progress many cities and states have made in regulating plastic bags, Berkeley has many examples to emulate.

### Past Efforts in Berkeley

<sup>16</sup> San Francisco Municipal Code Chapter 17: Plastic Bag Reduction Ordinance, [http://library.amlegal.com/nxt/gateway.dll/California/environment/chapter17plasticbagreductionordinance?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca](http://library.amlegal.com/nxt/gateway.dll/California/environment/chapter17plasticbagreductionordinance?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca).

<sup>17</sup> San Francisco Municipal Code, “Ordinance amending the Environment Code,” <https://sfbos.org/sites/default/files/o0172-19.pdf>.

<sup>18</sup> Isabela Agnus, “San Francisco bumps bag fee up to 25 cents,” <https://www.sfgate.com/news/article/SF-bumps-bag-fee-25-cents-plastic-produce-ban-14102908.php>.

<sup>19</sup> Republic of Ireland Department of Communications, Climate Action & Environment, “Plastic Bags,” <https://www.dccae.gov.ie/en-ie/environment/topics/waste/litter/plastic-bags/Pages/default.aspx>.

<sup>20</sup> Capitola Municipal Code Chapter 8.07: Single-use Plastic and Paper Carryout Bag Reduction, <https://www.codepublishing.com/CA/Capitola/#!/Capitola08/Capitola0807.html#8.07>.

<sup>21</sup> New York State Governor’s Office, “An act to amend the environmental conservation law, in relation to prohibiting plastic carryout bags,” <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/PlasticBagBan.pdf>.



Berkeley attempted to pass its own plastic bag ban in 2010.<sup>22</sup> In the years following councilmembers have pushed for reform, calling for an ordinance to improve upon county and state legislation.<sup>23</sup> Yet the threat of lawsuits<sup>24</sup> and movement on the state and county level appear to have delayed local reform.

### The Proposed Ordinance

This proposed ordinance picks up where prior attempts failed, bringing Berkeley on par with many of its neighbors in tightening restrictions on plastic bag sales. On some points, this ordinance ensures that the City again becomes a leader in environmental regulation. The following details the key changes that close loopholes in state and local law:

- Plastic bag regulations would now apply to a number of retail service establishments previously omitted from the state ban. Restaurants and food vendors would no longer be able to distribute single-use plastic carryout bags. Grocery stores and other retailers selling prepared food would be required to move away from single-use plastic produce bags.
- Retail service establishments of all sizes would be included, closing exemptions for smaller stores.
- Reusable plastic bags would be redefined as non-film plastic bags, adjusting the criteria to more accurately reflect common perceptions of reusability and the tendency for consumers treat all film bags as disposable, regardless of thickness.
- The price per non-plastic bag increases from \$0.10 to \$.25, to avoid a substitution effect.

The most common concern in reducing plastic bag waste is that the alternatives are even less sustainable. Substituting paper bags for plastic could be equally, if not more, hazardous for the environment because of the energy, transport and disposal processes required.<sup>25</sup> Cloth bags are also imperfect options, because of the large amount of energy and water necessary to produce them.<sup>26</sup> The California ban on bags thinner than 2.25

<sup>22</sup> Berkeley City Council, "Berkeley Bag Reduction Ordinance," [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Solid\\_Waste/BagReductionDraftOrdinance.100316.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/BagReductionDraftOrdinance.100316.pdf).

<sup>23</sup> Kriss Worthington, "Adopt Expanded Single Use Plastic Bag Ban/Paper Bag Fee Ordinance," [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2012/01Jan/2012-01-31\\_Item\\_25\\_Adopt\\_Expanded\\_Single\\_Use\\_Plastic\\_Bag.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2012/01Jan/2012-01-31_Item_25_Adopt_Expanded_Single_Use_Plastic_Bag.pdf).

<sup>24</sup> Doug Oakley, "Berkeley's plan for plastic bag ban part of larger movement," <https://www.mercurynews.com/2009/12/23/berkeleys-plan-for-plastic-bag-ban-part-of-larger-movement/>.

<sup>25</sup> The Environmental Literacy Council, "Paper or Plastic?" <https://enviroliteracy.org/environment-society/life-cycle-analysis/paper-or-plastic/>.

<sup>26</sup> Patrick Barkham, "Paper bags or plastic bags: which are best?" <https://www.theguardian.com/environment/shortcuts/2011/dec/20/paper-plastic-bags-which-best>.

mils may also have resulted in a substitution toward thicker and less sustainable film bags.<sup>27</sup> Moreover, international studies confirm that even single-use bags are reused to a limited degree for other household functions, such as garbage disposal or to pick up dog feces.<sup>28</sup> A University of Sydney economist found that garbage bag consumption increased when California placed restrictions on single-use plastic bags, likely because consumers no longer had as many free single-use film bags at hand in which to dispose their waste. Yet that same study also concluded that the benefits of the ban were still significant: Californians consumed 28 million pounds fewer plastic than they did before.<sup>29</sup>

Still, eliminating plastic bags cannot be the only approach to combat the cycle of consumer waste. It must come, as this ordinance would ensure, in combination with higher prices and greater requirements for the percentage of recycled content in paper bags. Any paper bags sold in Berkeley must per this resolution contain no old growth fiber, be 100% recyclable overall and contain a minimum of 40% post-consumer recycled content.

Data from Alameda County as a whole seems to indicate that when the cost of single-use paper bags was set at \$0.10, consumption *decreased* by approximately 40% within three years.<sup>30</sup> The same report revealed that “plastic bags found in storm drains decreased by 44 percent, indicating that the ordinance has been successful in reducing single use plastic bag litter.” Further price increases have been shown to realize even larger benefits.

#### FISCAL IMPLICATIONS

Staff or contractor costs for the launch, for outreach and education, enforcement, administration and analysis.

#### ENVIRONMENTAL SUSTAINABILITY

Reducing the amount of discarded plastic bags—previously classified as multi-use—in the city of Berkeley will result in less over all waste and fewer plastic that makes it into local and regional waterways.

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<sup>27</sup> Christian Britschgi, “California Plastic Bag Bans Spur 120 Percent Increase in Sales of Thicker Plastic Garbage Bags,” <https://reason.com/2019/04/11/california-plastic-bag-bans-spur-120-per/>.

<sup>28</sup> NPR Planet Money, “Are Plastic Bag Bans Garbage?” <https://www.npr.org/sections/money/2019/04/09/711181385/are-plastic-bag-bans-garbage>.

<sup>29</sup> Rebecca L.C. Taylor, “Bag leakage: The effect of disposable carryout bag regulations on unregulated bags,” <https://www.sciencedirect.com/science/article/pii/S0095069618305291>.

<sup>30</sup> Alameda County Waste Management Authority, “Addendum to the Final Environmental Impact Report Mandatory Recycling and Single Use Bag Reduction Ordinances,” <http://reusablebagsac.org/resources/addendum-final-environmental-impact-report-2016>.

Furthermore, a switch toward bags made from polyester or plastics like polypropylene, which are more sustainable than film bags and sold at many grocery stores will lead to greater environmental sustainability.<sup>31</sup>

CONTACT PERSON

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<sup>31</sup> Claire Thompson, "Paper, Plastic or Reusable?" [https://stanfordmag.org/contents/paper-plastic-or-reusable?utm\\_source=npr\\_newsletter&utm\\_medium=email&utm\\_content=20190408&utm\\_campaign=money&utm\\_term=nprnews](https://stanfordmag.org/contents/paper-plastic-or-reusable?utm_source=npr_newsletter&utm_medium=email&utm_content=20190408&utm_campaign=money&utm_term=nprnews).

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.62 TO THE BERKELEY MUNICIPAL CODE TO REGULATE PLASTIC BAGS AT RETAIL AND FOOD SERVICE ESTABLISHMENTS

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

Section 1. That Chapter 11.62 of the Berkeley Municipal Code is added to read as follows:

**Chapter 11.62**

**PLASTIC BAGS - RETAIL AND FOOD SERVICE ESTABLISHMENTS**

**Sections:**

**11.62.010 Findings and Purpose.**

**11.62.020 Definitions.**

**11.62.030 Types of Checkout Bags permitted at Retail Service and Food Service Establishments.**

**11.62.040 Checkout Bag charge for paper or Reusable Checkout Bags at Retail Service establishments.**

**11.62.050 Use of Compostable Produce Bags at Retail Service Establishments.**

**11.62.060 Hardship Exemption**

**11.62.070 Duties, responsibilities and authority of the City of Berkeley.**

**11.62.080 City of Berkeley--purchases prohibited**

**11.62.090 Liability and Enforcement.**

**11.62.100 Severability.**

**11.62.110 Construction.**

**11.62.120 Chapter supersedes existing laws and regulations.**

**11.62.130 Effective Date.**

**11.62.010 Findings and Purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Single-use plastic bags, plastic produce bags, and plastic product bags are a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.
- B. The production, consumption and disposal of plastic based bags contribute significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and present a great harm to global environment.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain plastic bags can also contain microplastics that present a great harm to our seawater and freshwater life, which implicitly presents a threat to human life.
- D. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- E. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of plastic bag waste furthers this goal.
- F. The State of California regulates single-use carryout bags as directed under Senate Bill 270, but numerous local governments, including San Francisco and Palo Alto, have imposed more stringent regulations to reduce the toll plastic bags inflict upon the environment.
- G. Stores often provide customers with plastic pre-checkout bags to package fruits, vegetables, and other loose or bulky items while shopping, before reaching the checkout area. They share many of the same physical qualities as single-use plastic carryout bags no longer permitted in California, and are difficult to recycle or reuse.
- H. SB 270 permits local governments to increase the price of bags provided at the point of sale and leaves open any regulation on pre-checkout bags, such as at meat or vegetable stands within grocery stores.
- I. The City of Berkeley regulates a number of disposable plastic items through the Single-Use Foodware and Litter Reduction Ordinance (Ord. 7639-NS § 1 (part), 2019), but does not impose regulations on bags.
- J. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

**11.62.20 Definitions.**

"Checkout Bag" means a bag provided by a Retail Service Establishment at the checkstand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Checkout Bags do not include Produce Bags or Product Bags.

"Recyclable Paper Checkout Bag" means a paper bag that meets the following criteria:

- 1. Contains no old growth fiber;
- 2. Is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content;
- 3. Displays the word "Recyclable" on the outside of the bag along with the manufacturer, the location (country) where manufactured and the percentage of post-consumer recycled content in an easy-to-read size font;

4. Or is made from alternative material or meets alternative standards approved by the City Manager or their designee.

"Reusable Checkout Bag" means all Checkout Bags defined as reusable under Cal. PRC §42280-42288, such as cloth or other washable woven bags, but do not include film bags considered reusable under Cal. PRC §42280-42288.

"Produce Bag" means a bag provided to a customer to carry produce, meats, bulk food, or other food items to the point of sale inside a store and protects food or merchandise from being damaged or contaminated by other food or merchandise when items are placed together in a Reusable Checkout Bag or Recyclable Paper Checkout Bag.

"Compostable Produce Bags" means paper bags and bags made of plastic-like material if the material meets the ASTM Standard Specifications for compostability D6400 or D6868, or the product is Biodegradable Products Institute (BPI) certified, or is considered acceptable within the City's compost collection program.

"Product Bag" means a bag provided to a customer to protect merchandise from being damaged or contaminated by other merchandise when items are placed together in a Reusable Checkout Bag or Recyclable Paper Checkout Bag; a bag to hold prescription medication dispensed from a pharmacy; or a bag without handles that is designed to be placed over articles of clothing on a hanger.

"Retail Food Establishment" means any establishment, located or providing food within the City, which provides prepared and ready-to-consume food or beverages, for public consumption including but not limited to any Retail Service Establishment, eating and drinking service, takeout service, supermarket, delicatessen, restaurant, food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, cart or other sidewalk or outdoor vendor or caterer which provides prepared and ready-to-consume food or beverages, for public consumption, whether open to the general public or limited to certain members of the public (e.g., company cafeteria for employees).

"Retail Service Establishment" means a for-profit or not-for-profit business that where goods, wares or merchandise or services are sold for any purpose other than resale in the regular course of business (BMC Chapter 9.04.135).

#### **11.62.030 Types of Checkout Bags permitted at Retail Service and Food Service Establishments.**

- A. Retail Service Establishments and Food Service Establishments shall provide or make available to a customer only Reusable Checkout Bags, Compostable Produce Bags, or Recyclable Paper Checkout Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter.
  1. Exception: Single-use plastic bags exempt from the Chapter include those integral to the packaging of the product, Product Bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.
- B. Effective [ ], 2020, farmers markets shall only provide Compostable Produce Bags to hold produce, meats, bulk food or other food items. Single-use Plastic Checkout Bags, Produce Bags or Product Bags shall not be provided by farmers markets for produce or meat.

- C. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the establishment themselves or from carrying away goods that are not placed in a bag at point of sale, in lieu of using bags provided by the establishment.

**11.62.040 Checkout Bag charge for paper or Reusable Checkout Bags at Retail Service Establishments.**

- A. Effective [ ], 2020, no Retail Service Establishment shall provide a Compostable Produce Bag, Recyclable Paper Checkout Bag or Reusable Checkout Bag to a customer at the point of sale, unless the store charges the customer a Checkout Bag charge of at least twenty-five cents (\$0.25) per bag to cover the costs of compliance with the Chapter, the actual costs of providing Recyclable Paper Checkout Bags, educational materials or other costs of promoting the use of Reusable Checkout Bags.
- B. Retail Service Establishments shall establish a system for informing the customer of the charge required under this section prior to completing the transaction. This system can include store clerks inquiring whether customers who do not present their own Reusable Checkout Bag at point of checkout want to purchase a Checkout Bag.
- C. The Checkout Bag charge shall be separately stated on the receipt provided to the customer at the time of sale and shall be identified as the Checkout Bag charge. Any other transaction fee charged by the Retail Service Establishment in relation to providing a Checkout Bag shall be identified separately from the checkout bag charge. The Checkout Bag charge may be completely retained by the Retail Service Establishment and used for public education and administrative enforcement costs.
- D. Retail services establishments shall keep complete and accurate records of the number and dollar amount collected from Recyclable Paper Checkout Bags and Reusable Checkout Bags sold each month and provide specifications demonstrating that paper and reusable bags meet the standards set forth in Section 11.62.030 using either the electronic or paper reporting format required by the city. This information is required to be made available to city staff upon request up to three times annually and must be provided within seven days of request. Reporting false information, including information derived from incomplete or inaccurate records or documents, shall be a violation of the Chapter. Records submitted to the city must be signed by a responsible agent or officer of the establishment attesting that the information provided on the form is accurate and complete.

**11.62.050 Use of Compostable Produce Bags at Retail Service Establishments.**

Effective [ ], 2020, Retail Service Establishments shall only provide Compostable Produce Bags to carry produce, meats, bulk food, or other food items to point of sale within the store.

**11.62.060 Hardship Exemption.**

- A. Undue hardship. The City Manager, or their designee, may exempt a retail service or food service establishment from the requirements of this Chapter for a period of up to one year, upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. An undue hardship request must be submitted in writing to the city. The phrase "undue hardship" may include, but is not limited to, the following:
  - 1. Situations where there are no acceptable alternatives to single-use plastic Checkout Bags for reasons which are unique to the Retail Service Establishment or Food Service Establishment.

2. Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.
- B. Retail Service Establishments shall not enforce the ten cent (\$0.25) store charge for customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, or in CalFresh, or in the Supplemental Nutrition Assistance Program (SNAP).

**11.62.070 Duties, responsibilities and authority of the City of Berkeley.**

The City Manager or their designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this Chapter including, but not limited to, inspecting any Retail Service Establishment's premises to verify compliance.

**11.62.080 City of Berkeley—purchases prohibited.**

The City of Berkeley shall not purchase any Foodware or Bag that is not Compostable, Recyclable or Reusable under Disposable Foodware and Bag Standards in Section 11.64.080, nor shall any City-sponsored event utilize non-compliant Disposable Foodware and Bag.

**11.62.090 Liability and Enforcement.**

- A. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this Chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.62.100 Severability.**

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

**11.62.110 Construction.**

This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

**11.62.120 Chapter supersedes existing laws and regulations.**

The provisions of this Chapter shall supersede any conflicting law or regulations.



**11.62.130 Effective Date.**

The provisions in this ordinance are effective [ ], 2020.

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





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Adopt a Resolution Establishing a Default Greenhouse Gas Emissions-Free Electricity Plan for Residential and Commercial Customers and Renewable Plan for Municipal Accounts

POLICY COMMITTEE

Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee

RECOMMENDATION

Adopt a Resolution:

- a. enrolling all eligible Berkeley residential and commercial East Bay Community Energy accounts to the *Brilliant 100* (100% greenhouse gas-free<sup>1</sup>) electricity service plan, effective [1]. Customers will not lose the option of changing their plan or opting out of EBCE entirely;
- b. enrolling municipal East Bay Community Energy accounts to *Renewable 100* (100% renewable and 100% greenhouse gas-free) electricity service, effective [1] and refer the estimated increased cost of \$100,040 to the June 2020 budget process; and,
- c. providing for yearly Council review of the City's default residential, commercial and municipal plans.

BACKGROUND

**A. Plan Options**

Community Choice Aggregators (CCAs) like East Bay Community Energy ("EBCE") were authorized by Assembly Bill 117) and Senate Bill 790.<sup>2</sup> The legislation gives local

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<sup>1</sup> For example, large hydroelectric facilities are greenhouse gas-free but are not considered renewable under state law.

<sup>2</sup> Migden, Chapter 838, Statutes of 2002; Leno, Chapter 599, Statutes 2011.

government agencies: (1) authority to purchase power for their communities from non-utility suppliers with the goal of procuring less carbon intensive energy at competitive prices and (2) an opportunity for elected municipal leaders to oversee procurement instead of private shareholders.

By joining EBCE in 2018, the City has already realized substantial greenhouse gas emission reductions. To fully realize the benefits of CCAs and meet the City's climate action goals, climate emergency and fossil free goals, Berkeley has to continue to reducing the carbon content of its electricity supply greenhouse gasses (GHGs) and electrify at an emergency pace.

This resolution establishes EBCE's *Brilliant 100* (100% carbon-free) electricity service plan as the default for all residential and commercial customers.<sup>3</sup> *Brilliant 100*, already selected by the cities of Hayward and Albany, costs the same as the standard PG&E rate and does not contain any energy products that create greenhouse gasses.<sup>4</sup> The current city-wide default is EBCE's *Bright Choice*, featuring 85% GHG-free electricity at a price discounted from Pacific Gas & Electric's ("PG&E") rates.<sup>5</sup>

The City could move closer towards eliminating all of its electricity-based GHG inventory<sup>6</sup> by upgrading residents to a carbon-free plan.<sup>7</sup> This brings the City closer to its goal in the Climate Action Plan of reducing emissions by 33% by 2020. Residential and commercial electricity accounts for a respective 3% and 7% of 2016 city-wide emissions. These percentages have likely contracted since 2016 following the adoption of *Bright Choice* as the default in 2018. In 2016, the Pacific Gas and Electric (PG&E) company offered 69% carbon-free electricity.

According to EBCE data concerning prices and power mix, the average price increase for a residential customer due to the upgrade is estimated to be \$0.63/month and for a

<sup>3</sup> See East Bay Community Energy, Rates, <https://ebce.org/residents/>.

<sup>4</sup> Carbon- and GHG-free energy sources are those that do not emit carbon/GHG emissions, such as solar, wind, geothermal, hydropower and nuclear. However, not all GHG-free sources are renewable (e.g., hydroelectric) or safe (e.g., nuclear). Renewable energy is relatively reliable and inexhaustible and can be produced locally without the environmental impact of large hydroelectric and nuclear generation. In addition, renewable energy offers substantial economic benefits to workers and communities. For these reasons, state governments often prioritize renewable production.

<sup>5</sup> *Id.*

<sup>6</sup> The latest available City of Berkeley data is from 2016. See 2018 Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 6, 2018, [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/12\\_Dec/Documents/2018-12-06\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx).

<sup>7</sup> *Bright Choice* features 85% GHG-free content and PG&E's standard rate featured 69% GHG-free content in 2016. See 2016 PG&E Power Content Label, [https://www.energy.ca.gov/pcl/labels/2016\\_labels/Pacific\\_Gas\\_\\_and\\_\\_Electric.pdf](https://www.energy.ca.gov/pcl/labels/2016_labels/Pacific_Gas__and__Electric.pdf); See also Figure 1.

small business \$2.63/month.<sup>8</sup> Customers enrolled in low-income programs like CARE, FERA<sup>9</sup> and Medical Baseline<sup>10</sup> would continue to receive percentage-based discounts on PG&E's transmission and distribution bill while being enrolled in the greener plan.

In addition, this legislation would upgrade Berkeley's municipal accounts to *Renewable 100*, which contains only renewable sources of energy, from *Brilliant 100* for a relatively small premium. By doing so, the city will be supporting California's burgeoning solar and wind energy sector, which has the potential to further offset and eventually substitute electricity generated from natural gas and nuclear throughout the state.

Beyond moving closer towards eliminating all electricity-related emissions, upgrading to cleaner energy positions in Berkeley will help realize significant, future long-term benefits, including mitigating the impact of increased electricity consumption as the community transitions towards all-electric buildings and vehicle charging infrastructure.<sup>11</sup> In other words, maximizing the climate benefits of building, vehicle and other mobility transportation electrification requires the cleanest possible electric supply.

EBCE customers have had the option to voluntarily enroll in greener plans but to date very few have done so. As of spring 2019 only 740 Berkeley residents out of a total of 45,447 eligible customers upgraded from *Bright Choice*.<sup>12</sup> Upgrading all residential customers while allowing people to opt back down and retaining protections for price sensitive groups will yield substantially more benefits than the best marketing campaign aimed at encouraging customers to opt-up individually.

**Market-based solutions to the climate emergency have and will likely continue to fail to deliver the necessary emergency reductions.** Direct local government intervention is imperative in order to halt Berkeley's ongoing contribution to global emissions.

## B. The Climate Emergency

Fossil fuel extraction and combustion is the primary cause of the present climate emergency threatening the well-being of all living things. According to scientists and

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<sup>8</sup> See Figure 4.

<sup>9</sup> CARE and FERA are state discount programs administered by PG&E that help eligible customers pay their energy bills. PG&E eligibility requirements for CARE and FERA shown in the Appendix, p. 15.

<sup>10</sup> The Medical Baseline Program assists residential customers who have special energy needs due to qualifying medical conditions. The program includes a lower rate on monthly energy bills and extra notifications in advance of a Public Safety Power Shutoff. See PG&E Medical Baseline Program overview, [https://www.pge.com/en\\_US/residential/save-energy-money/help-paying-your-bill/longer-term-assistance/medical-condition-related/medical-baseline-allowance/medical-baseline-allowance.page](https://www.pge.com/en_US/residential/save-energy-money/help-paying-your-bill/longer-term-assistance/medical-condition-related/medical-baseline-allowance/medical-baseline-allowance.page).

<sup>11</sup> 2018 Berkeley Climate Action Plan Update, p. 10.

<sup>12</sup> See Figure 6.

engineers, transitioning society to less greenhouse gas (GHG) intensive, cleaner forms of energy is fundamental to decarbonization.<sup>13</sup>

Fortunately, in the last decade electricity generation in California has become much less GHG intensive. Evolving political and market-based developments suggest that the carbon content of electric energy will continue to drop in coming years.<sup>14</sup>

The City of Berkeley is working to achieve its Climate Action Plan goals of reducing greenhouse gas (GHG) emissions 33% below 2000 levels by 2020 and 80% by 2050. According to the Berkeley Office of Energy and Sustainable Development, the latest and best available data suggest that Berkeley’s 2016 community-wide GHG emissions, including emissions from transportation, building energy use, and solid waste disposal, are approximately 15% below 2000 baseline levels. Therefore the City is approximately 18% behind its 2020 goal.<sup>15</sup>

Figure 1: 2016 Community GHG Emissions Inventory

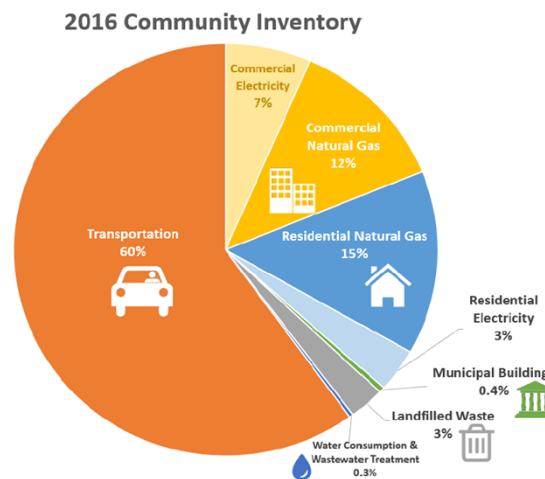


Figure 1: Pie chart of 2016 community-wide GHG emissions inventory, broken down by sector and fuel.

As can be seen in Figure 2, without accelerated efforts, the OESD reports that the City will continue to be below its target. Current state and local programs will not result in

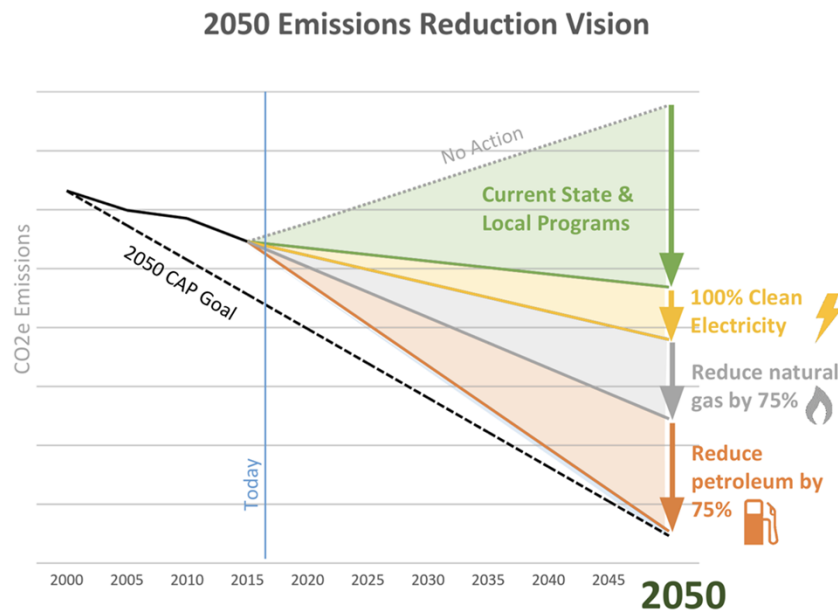
<sup>13</sup> IPCC Press Release, Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by Governments, 8 October 2018, [http://www.ipcc.ch/pdf/session48/pr\\_181008\\_P48\\_spm\\_en.pdf](http://www.ipcc.ch/pdf/session48/pr_181008_P48_spm_en.pdf)

<sup>14</sup> See SB-100 California Renewables Portfolio Standard Program: emissions of greenhouse gases, 2018, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB100](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB100).

<sup>15</sup> In part, this is due to an 18% increase in population in that same time period.

80% GHG reduction by 2050. To reach the 80% goal, 100% GHG-free electricity, along with 75% reductions in natural gas and petroleum usage are needed.

**Figure 2: City of Berkeley Strategies to Achieve 80% GHG reduction by 2050 (2017)<sup>16</sup>**



### C. EBCE Overview

This resolution builds upon existing City initiatives by positioning customers to take advantage of electricity service with the lowest emissions and best environmental profile. This will ensure that residential and commercial buildings and e-vehicles are powered with zero-carbon electricity service.

Until June 2018, the default procurer of electricity in Berkeley was Pacific Gas and Electric Company (PG&E). The City then joined neighboring jurisdictions in establishing and designating the community choice aggregator known as EBCE as the default residential and commercial provider of electricity in Berkeley.<sup>17</sup> In other words, EBCE, instead of PG&E, buys the energy on the market on behalf of customers. However, EBCE still relies on PG&E to transmit and deliver its energy over the grid to customers.

<sup>16</sup> 2017 Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 7, 2017, [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/12\\_Dec/Documents/2017-12-07\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/12_Dec/Documents/2017-12-07_WS_Item_01_Climate_Action_Plan_Update.aspx);

<sup>17</sup> A third category of electric service customer (primarily commercial) known as Direct Access are exempted from both PG&E and EBCE entirely.

Therefore, customers receive bills with separate charges that include EBCE procurement and PG&E transmission, delivery and other fees.

Berkeley and other Alameda County jurisdictions helped form EBCE<sup>18</sup> because the new agency offered significant advantages, including oversight by local jurisdictions instead of private shareholders, and delivery of less carbon intensive energy at competitive prices. EBCE can reinvest profits into expanding carbon-free options for Alameda County including through the Local Business Development Plan, which allocates funds for local renewable capacity expansion and electrification.<sup>19</sup>

Customers retain the option to rejoin PG&E at any time by opting out of EBCE entirely. The City of Berkeley currently boasts an impressive opt out rate of under 2% across accounts, meaning fewer than 2% of Berkeley customers have returned to PG&E.

EBCE offers customers three plan options: *Bright Choice* (85% carbon-free), *Brilliant 100* (100% carbon-free) and *Renewable 100* (100% renewable and carbon-free). By comparison, PG&E's standard rate is 78% carbon-free and includes a significant amount of nuclear power; as PG&E continues to lose customers and curtail its natural gas usage, nuclear energy will become a larger percentage of their total generation.

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<sup>18</sup> Only Alameda, Newark, and Pleasanton do not participate in EBCE.

<sup>19</sup> East Bay Community Energy, Local Business Development Plan, <https://ebce.org/local-development-business-plan/>.



Figure 3: Comparison of EBCE v. PG&E Service Options and Respective Power Content\*

Specific Purchases	Percent of Total Retail Sales (kWh)				
	East Bay Community Energy			PG&E Standard Rate	PG&E Solar Choice
	Bright Choice	Brilliant 100	Renewable 100		
Renewable	38%	40%	100%	33%	100%
Biomass/ Biowaste	0%	0%	0%	4%	0%
Geothermal	0%	0%	0%	5%	0%
Eligible hydroelectric	0%	0%	0%	3%	0%
Solar electric	19%	20%	50%	13%	100%
Wind	19%	20%	50%	8%	0%
Large Hydroelectric	24%	60%	0%	18%	0%
Natural Gas	0%	0%	0%	20%	0%
Nuclear	0%	0%	0%	27%	0%
Unspecified Sources of Power **	38%	0%	0%	2%	0%
Total	100%	100%	100%	100%	100%

\* As reported to the California Energy Commission's Power Source Disclosure Program for PG&E's 2017 Power Mix. EBCE's generation data is a forecast for 2018. Actual 2018 generation data will be reported to the California Energy Commission in 2019.

\*\*Unspecified sources are not traceable to a specific facility, such as electricity traded through open market transactions. Unspecified sources of power are typically a mix of all types, and may include renewables. For Bright Choice, EBCE is forecasting that 23% of its generation mix will come from the BC Hydrosystem, which is carbon-free large hydroelectric power.

*Bright Choice* is priced 1.5% below PG&E's standard rate; *Brilliant 100* is priced at parity with PG&E's standard rate, and *Renewable 100* is an additional penny per kWh.

**Figure 4: Marginal Cost of Upgrading EBCE Default Service from *Bright Choice***

	<i>Bright Choice</i>		<i>Brilliant 100</i>			<i>Renewable 100</i>		
	Total Electricity Cost (\$/kWh)	Average Monthly Bill (\$)	Marginal Electricity Cost over <i>Bright Choice</i> (\$/kWh)	Average Monthly Bill (\$)	Marginal Monthly Cost over <i>Bright Choice</i> (\$)	Marginal Electricity Cost over <i>Bright Choice</i> (\$/kWh)	Average Monthly Bill (\$)	Marginal Monthly Cost cover <i>Bright Choice</i> (\$)
<b>Residential<sup>20</sup></b>	0.24005	88.58	0.00162	89.21	<b>0.63</b>	0.01176	92.80	<b>4.22</b>
<b>Commercial (typical small business A1X)</b>	0.24749	375.79	0.00173	378.42	<b>2.63</b>	0.01173	393.49	<b>17.7</b>

The default plan is the plan into which all EBCE customers are automatically enrolled unless they decide to opt up to another EBCE plan, or opt out of the EBCE program entirely. In 2018 the EBCE Board of Directors, composed of elected officials from each of the participating jurisdictions, established *Bright Choice* as the default product for residential and commercial customers. However, the cities of Piedmont, Hayward and Albany decided to establish alternative defaults for their residents.<sup>21</sup> The Berkeley City Council, working in coordination with EBCE staff and the EBCE Board, may revise this default at any time. A change in the default does not bind customers; customers retain the choice to opt back down at any time.

<sup>20</sup> See East Bay Community Energy, Rates.

<sup>21</sup> East Bay Community Energy Board of Directors, Item 4 Approval of Minutes from February 7, 2018, February 20, 2018, [https://ebce.org/wp-content/uploads/Item-4-EBCE\\_BOD\\_Draft-minutes\\_2\\_7\\_18-1.pdf](https://ebce.org/wp-content/uploads/Item-4-EBCE_BOD_Draft-minutes_2_7_18-1.pdf); Hayward decided to keep their CARE and FERA customers at *Bright Choice*, while Albany and Piedmont decided to opt their CARE and FERA customers to *Brilliant 100*.

Figure 5: Default Enrollment Service for Jurisdictions Participating in EBCE

Jurisdiction	Residential Customers	Commercial Customers	Customers in FERA, and Medical Baseline Allowance Programs
Albany	Brilliant 100	Brilliant 100	Brilliant 100
Hayward	Brilliant 100	Brilliant 100	Bright Choice
Piedmont	Renewable 100	Bright Choice	Brilliant 100
All other jurisdictions, including Berkeley	Bright Choice	Bright Choice	Bright Choice

**D. Current Berkeley Electricity Usage and GHG Impact**

As of spring 2019, total residential Berkeley load (electricity demand), excluding customers with net-metering solar plans, was 156,130,054 kWh. The overwhelming majority of Berkeley’s residential EBCE customers are currently *Bright Choice* customers.

Figure 6: Current Distribution of Berkeley EBCE Residential Service Plans (excluding Net Metering Customers)

	# of Residential Customers	% of total
<b>Bright Choice</b>	44,707	98.37%
<b>Brilliant 100</b>	105	0.23%
<b>Renewable 100</b>	635	1.4%
Total Customers	45,447	100%

As seen in Figure 7, residential *Bright Choice* participation results in approximately 10,056 metric tons of carbon dioxide emissions each year. These emissions are equivalent to 2,135 passenger vehicles driven for one year and would require 11,835

acres of forests to sequester.<sup>22</sup> These 11,835 acres of forest are equivalent to 1.7 times Berkeley’s land area.

Figure 7: Carbon impact of Bright Choice Residential Use in Berkeley

Carbon Dioxide ratio of <i>Bright Choice</i>	Total CO <sub>2</sub>
142 lbs / MWh	10,056 metric tons

Data on total commercial load is not available at this time, but the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee will have an opportunity to further consult with City and EBCE staff.

**E. EBCE vs. Regional CCAs**

The vast majority of county-wide EBCE customers are also *Bright Choice* customers. As compared to the Clean Power Alliance CCA in Southern California, EBCE has fewer customers on 100% GHG-free service plans. However, EBCE has a much higher percentage of 100% GHG-free service customers and a much lower opt out rate than the first CCA in the state, Marin Clean Energy. Silicon Valley only has the two greener plans, with no equivalent to EBCE’s *Bright Choice*. A transition across EBCE’s service area to 100% GHG-free energy will support regional efforts to reduce emissions. *Brilliant 100* features 60% large hydroelectric power and 40% renewable sources.

<sup>22</sup> U.S. Environmental Protection Agency, Greenhouse Gas Equivalencies Calculator, <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.

Figure 8: Comparison of CCAs

	Service Plans as Percentage of Accounts and Costs						Opt Out % of total eligible res. accounts	Minimum Renewable Portfolio Standards Eligible Power <sup>23</sup>
	Tier 1		Tier 2		Tier 3			
	Mixed Carbon and Carbon-free		100% Carbon- Free		100% Renewable			
	% of total res. accoun ts	Price for E- 1 (\$/kWh)	% of total res. account s	Price for E-1 (\$/kWh)	% of total res. accounts	Price for E-1 (\$/kWh)		
<b>EBCE</b>	91%	\$0.24675 <sup>24</sup>	8%	\$0.24851	1%	\$0.25851	3.92%	38%
<b>Clean Power Alliance</b>	29%	\$0.19880 <sup>25</sup>	54%	\$0.20051	17%	\$0.21506	3.8%	36%
<b>Marin Clean Energy</b>	98%	\$0.23997 <sup>26</sup>	N/A	N/A	2%	\$0.24997	14%	60%

**F. The Impact of Enrolling Residential and Commercial Accounts in *Brilliant 100*: GHG-free Electricity Priced at PG&E’s Standard Rate**

The result of adopting this Resolution, will be that residential customers that decide to stay with the new default plan will pay an additional \$0.00162 per kilowatt hour, or an average of an additional \$0.63 per average monthly bill compared to the current *Bright Choice* default.<sup>27</sup> For small business customers, the average increase is estimated at \$2.63/month. Customers will pay the *same rate* as they would for PG&E generation service, but would benefit from 15% percent less carbon-intensive energy with no nuclear or natural gas.

<sup>23</sup> CalCCA, CCA: Power in Numbers, <https://cal-cca.org/cca-impact/>.

<sup>24</sup> See East Bay Community Energy, Rates.

<sup>25</sup> Clean Power Alliance, SCE and CPA Joint rate comparisons, [https://cleanpoweralliance.org/wp-content/uploads/2019/05/SCE\\_CPA\\_JRC\\_Combined-JRC-030119-FINAL.pdf](https://cleanpoweralliance.org/wp-content/uploads/2019/05/SCE_CPA_JRC_Combined-JRC-030119-FINAL.pdf).

<sup>26</sup> Marin Clean Energy, PG&E Joint Rate Comparisons, [https://www.pge.com/pge\\_global/common/pdfs/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/mce\\_rateclasscomparison.pdf](https://www.pge.com/pge_global/common/pdfs/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/mce_rateclasscomparison.pdf).

<sup>27</sup> EBCE monthly bill data figures represent an average; some customers will fall below and some above the mean figure depending on their monthly energy usage.

As a result of the Resolution, customers receiving subsidies through the California Alternate Rates for Energy Program (CARE), Family Electric Rate Assistance (FERA), and Medical Baseline Allowance Programs will continue to receive their monthly discounts through PG&E. This discount is absorbed by PG&E on the transmission bill.

Small business commercial customers that decide to stay with the new default plan will pay an additional \$ 0.00173 per kilowatt hour, or an average of an additional \$2.63 per average monthly bill compared to the current *Bright Choice* default.<sup>28</sup> Customers will pay the *same rate* as they would for PG&E generation service, but would benefit from 15% percent less carbon-intensive energy with no nuclear or natural gas.

Upon the effective date of the policy outlined in the Resolution, all eligible customers will be automatically enrolled in *Brilliant 100*. However, customers may stay in *Brilliant 100* or opt out at any time.

#### **G. Municipal Renewable 100: 100% Renewable Electricity at a Small Premium Above PG&E's Standard Rate**

Berkeley's municipal accounts represent about 2% of city-wide electricity usage.<sup>29</sup> The City's municipal accounts are enrolled in carbon-free energy through *Brilliant 100*. Short of directly building the generation facilities with City resources, the most effective way for Berkeley to support carbon-free energy is to opt its municipal accounts to those sources poised for dramatic growth in the Bay Area and California: solar and wind. The City of Berkeley is well positioned to pay the 4% premium for *Renewable 100*, estimated at \$100,040 per year.

Economic and environmental advantages to investing in exclusively renewable electricity through *Renewable 100* include:

- *Renewable 100* represents an important investment in new green energy and enrolling the municipal accounts in this plan represents an important commitment to combatting climate change.

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<sup>28</sup> EBCE monthly bill data figures represent an average; some customers will fall below and some above the mean figure depending on their monthly energy usage.

<sup>29</sup> 11,834,276 kWh in 2018. See Fosterra, 100% Renewable Default Option Study for EBCE Communities, February 2018, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/EC2018-2-28\\_Item%205b\\_EBCE%20100%20GHG%20Opt%20In%20Study.docx.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/EC2018-2-28_Item%205b_EBCE%20100%20GHG%20Opt%20In%20Study.docx.pdf).

- The cost to the City is minimal. Other such cities, such as 1/3 of those in Los Angeles County have opted their municipal accounts to the greenest plan.
- The construction of new renewable energy provides an opportunity for significant new well-paid green jobs, including new jobs across California and potentially within Alameda County. Alameda County is well positioned for construction of new solar generation, but not hydroelectric.
- An investment in the renewable sector will contribute to critical research and investment in advanced battery technology that can even the playing field between variable renewables and natural gas, nuclear and hydroelectric.<sup>30</sup>

### Alternatives Considered

Enrolling residential and commercial customers in *Brilliant 100* represents the most reasonable, equitable and therefore the most immediate step towards reducing residential GHG emissions. Setting the default at *Renewable 100*, a plan that is on average \$4.22 (4%) per month more expensive than PG&E basic residential rate for residential customers and \$17.70 more expensive for the average small business, without sustained public outreach and engagement, would represent an undue burden and would not further reduce greenhouse gas emissions (although it would move generation away from hydro-electric). In addition, there is uncertainty about ongoing California Public Utility Commission regulatory proceedings to determine potential increases to fees PG&E can charge to customers who have left PG&E, including those in EBCE, to pay for long-term contracts already entered into by PG&E.<sup>31</sup> An unfavorable CPUC decision could lead to inequitable rate hikes, particularly for those enrolled in the more expensive *Renewable 100*, especially low-income residents, and in significant increase in the EBCE opt down and opt out rates.

However, because the energy sector, including the renewable industry, is rapidly evolving and as EBCE increases its capital reserves the Board may decide to modify rate structures, this item also calls for yearly Council review of the default plan in order to determine whether further adjustment of the default is warranted.

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<sup>30</sup> Lauren Sommer, "Why 100 Percent Clean Energy in California is Gonna Be Tricky," KQED, September 10, 2018, <https://www.kqed.org/science/1930972/why-100-percent-clean-energy-in-california-is-gonna-be-tricky>; See also, Emma Foehringer Merchant, "IRENA: Global Renewable Energy Prices Will Be Competitive With Fossil Fuels by 2020," Green Tech Media, January 16, 2018, <https://www.greentechmedia.com/articles/read/irena-renewable-energy-competitive-fossil-fuels-2020>.

<sup>31</sup> Known as the Power Charge Indifference Adjustment (PCIA) fee.

### FINANCIAL IMPLICATIONS

Using 2016 data, upgrading Berkeley municipal accounts to *Renewable 100* will cost the City approximately \$100,040 more annually.

Residential customers keeping the new *Brilliant 100* default service plan, will see a \$0.63 per average monthly bill increase compared to the current *Bright Choice* default.

Small business commercial customers keeping the new *Brilliant 100* default service plan, will see a \$2.63 per average monthly bill increase compared to the current *Bright Choice* default.

### ENVIRONMENTAL SUSTAINABILITY

Reducing carbon emissions at an emergency and equitable pace is directly in line with the goals of the Climate Action Plan and the Berkeley Energy Commission's Fossil Free Report.

### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

### ATTACHMENTS

1. Appendix: 2019-2020 CARE and FERA Income Eligibility
2. Resolution



2019-2020 CARE and FERA Income Eligibility<sup>32</sup>

**CARE Income Guidelines**

(good until May 31, 2020)

Number of People in Household	Total Gross Annual Household Income*
1-2	\$33,820 or less
3	\$42,660 or less
4	\$51,500 or less
5	\$60,340 or less
6	\$69,180 or less
7	\$78,020 or less
8	\$86,860 or less
Each Additional Person, add	\$8,840

**FERA Income Guidelines**

(good until May 31, 2020)

Number of People in Household	Total Gross Annual Household Income*
1-2	Not Eligible
3	\$42,661-\$53,325
4	\$51,501-\$64,375
5	\$60,341-\$75,425
6	\$69,181-\$86,475
7	\$78,021-\$97,525
8	\$86,861-\$108,575
Each Additional Person, add	\$8,840-\$11,050

<sup>32</sup> PG&E, CARE (California Alternate Rates For Energy), [https://www.pge.com/en\\_US/residential/save-energy-money/help-paying-your-bill/longer-term-assistance/care/care.page](https://www.pge.com/en_US/residential/save-energy-money/help-paying-your-bill/longer-term-assistance/care/care.page).

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

ESTABLISHING EAST BAY COMMUNITY ENERGY'S BRILLIANT 100 AS DEFAULT ELECTRICITY SERVICE PLAN FOR RESIDENTIAL AND COMMERCIAL ACCOUNTS AND RENEWABLE 100 FOR MUNICIPAL ACCOUNTS

WHEREAS, Fossil fuel extraction and combustion is a primary cause of the present climate emergency that threatens the well-being of all living things; and

WHEREAS, according to scientists and engineers, transitioning society to less greenhouse gas (GHG) intensive forms of energy, namely cleaner electricity, is fundamental to decarbonization; and

WHEREAS, according to City data from 2016, Berkeley's residential electricity sector accounts for 3% of city-wide emissions, the commercial electricity sector accounts for 7% of city-wide emissions, and another 27% and 60% of emissions are attributed respectively to natural gas appliances and fossil fuel-powered transportation that can be phased out through electrification fueled by 100% GHG-free electricity; and

WHEREAS, the City of Berkeley has committed to a policy of decarbonization, including through Measure G (Resolution No. 63,518-N.S.) in 2006, calling for the City to reduce greenhouse gas emissions by 33% below 2000 levels by 2020, and 80% by 2050, the 2009 Berkeley Climate Action Plan (Resolution No. 64,480-N.S.), the Berkeley Climate Emergency Declaration (Resolution No. 68,486-N.S.), and the Fossil Free Referral; and

WHEREAS, Berkeley's Climate Action Plan identifies Community Choice Aggregation (CCA) agencies such as East Bay Community Energy (EBCE), which procure cleaner electric power from low-carbon sources on behalf of electricity customers, as a key strategy to meet local clean energy goals and greenhouse gas reduction targets; and

WHEREAS, on November 1, 2016, the City of Berkeley City Council adopted Resolution No. 67,730-N.S. authorizing Berkeley's participation in Alameda County's Community Choice Aggregation program known as East Bay Community Energy (EBCE) and subsequently appointed representatives to its Board of Directors; and

WHEREAS, on February 7, 2018, the EBCE Board of Directors established a default 85% carbon free default service plan known as Bright Choice for the City of Berkeley and other participating jurisdictions; and

WHEREAS, on April 24, 2018, the City Council adopted Resolution No. 68,404-N.S., selecting the *Brilliant 100* (100% GHG-free) electric service plan for all municipal accounts; and

WHEREAS, Cities have the authority to designate greenhouse gas-free default electric service plans as the default plan for eligible residential and commercial customers and the City Councils of other EBCE participating jurisdictions such as Albany, Piedmont

and Hayward selected default service plans featuring 100% GHG-free electricity for their customers; and

WHEREAS, EBCE's *Brilliant 100* service plan costs the same as the standard Pacific Gas & Electric rate and features 100% GHG-free electricity; and

WHEREAS, given the present climate emergency and the fact that the City of Berkeley is behind its Climate Action Plan targets, establishing a new default for residential and commercial customers while retaining protections for price sensitive groups to cost-effective GHG-free default electric services will likely yield substantially more GHG savings than the best marketing campaign aimed at encouraging customers to opt-up individually; and

WHEREAS, it is in the public interest to position city-wide residential and commercial customers to take advantage of electricity service with the lowest emissions factor, best environmental profile and least cost by replacing *Bright Choice* with *Brilliant 100* as the default service plan; and

WHEREAS, as a result of the new default, customers receiving subsidies through the California Alternate Rates for Energy Program, Family Electric Rate Assistance, and Medical Baseline Allowance Programs will continue to receive their monthly discounts through the PG&E portion of their bill; and

WHEREAS, residential and commercial customers may opt out of *Brilliant 100* default at any time; and

WHEREAS, because the energy sector, including the renewable industry, is rapidly evolving and the EBCE Board may decide to modify rate structures, it is prudent for the Berkeley City Council to reassess the default rate at regular intervals; and

WHEREAS, EBCE's *Renewable 100* service plan is priced at a 4% premium to the standard Pacific Gas & Electric rate and features 100% GHG-free and 100% renewable electricity; and

WHEREAS, while Berkeley's municipal sector electricity is already 100% carbon-free, it is in the public interest to upgrade municipal accounts from *Brilliant 100* to *Renewable 100* in recognition of the importance of supporting California's expanding solar and wind energy sector, which has the potential to overtime offset electricity generated from natural gas and nuclear, for a relatively small premium.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby selects *Brilliant 100* as the default electricity product for residential and commercial accounts, effective [ ], and establishes yearly Council review of the default plan in order to determine whether further adjustment of the residential and commercial defaults are appropriate.

BE IT FURTHER RESOLVED that the City Council authorizes and directs the City Manager to select *Renewable 100* as the electricity product for the City of Berkeley's municipal accounts, effective [ ].



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ACTION CALENDAR  
December 10, 2019

To: Honorable Members of the City Council  
From: Councilmember Sophie Hahn  
Subject: Bright Streets Initiative

RECOMMENDATION

1. Refer to the City Manager to paint all crosswalks, midlines, bike lanes, and other street markings, clarify and/or improve traffic signage, and paint curbs along collector and arterial streets throughout the City of Berkeley, and within a three-block radius of all Berkeley public schools, to improve safety and support Vision Zero goals. Streets, signage, and curbs that have been redone in the past three years and remain in very good condition need not be repainted and/or replaced.
2. Such work to be completed prior to commencement of the 2020-21 Berkeley Public School Year.

BACKGROUND

In November 2011, the City Auditor provided an analysis of the conditions of Berkeley's 216 miles of streets that showed widespread disrepair resulting from years of underfunding. The impact of the many years of underfunding is compounded by the exponential increase in cost to refurbish streets that have reached "at risk" or "failed" status.

Although funds available for paving and street rehabilitation have increased since 2011, thanks in large part to voter-approved measures, they remain inadequate to maintain the street and road conditions necessary to ensure safety in the City of Berkeley.

In light of the City's limited paving budget, and the urgent need to move forward on the Berkeley Vision Zero Program's strategy to eliminate traffic fatalities and injuries, while increasing safe, healthy, equitable mobility for all, this item provides a rapid and less expensive, relatively easy-to-implement, measure to improve visibility of street markings and signage to guide vehicles, bicyclists, and pedestrians to promote orderliness and safety.

ENVIRONMENTAL SUSTAINABILITY

Improved street markings and signage leads to better fuel efficiency, and encourages people to walk or ride a bicycle rather than drive, and therefore will result in less greenhouse gas emissions from vehicles.

FISCAL IMPACTS

Funding for painting of crosswalks and curbs, and posting of signage, has already been allocated.

CONTACT INFORMATION

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



CONSENT CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Rigel Robinson and Sophie Hahn  
Subject: Referral: Compulsory Composting and Edible Food Recovery

### RECOMMENDATION

Refer to the Zero Waste Commission to develop a plan, in consultation with the public and key stakeholders, to achieve timely compliance with Senate Bill 1383 (Lara, 2016) including:

1. An ordinance making composting compulsory for all businesses and residences in the City of Berkeley. The Commission should also consider the inclusion of compulsory recycling.
2. An edible food recovery program for all Tier 1 and 2 commercial edible food generators.

### CURRENT SITUATION

Recycling and composting in Berkeley is currently governed by the 2012 Alameda County mandatory recycling ordinance, of which the City of Berkeley is a covered jurisdiction. Under the ordinance, all businesses must have recycling service and businesses that generate 20 or more gallons of organics must have composting service. All multi-family properties (5+ units) are required to provide composting and recycling service. Businesses and property owners are also required to inform their tenants, employees, and contractors of proper composting and recycling technique at least once a year, and provide tenants with additional reminders during move-in and move-out.<sup>1</sup>

The ordinance is enforced through surprise routine inspections. If a business or multi-family property is issued two official violation notices, they may receive an administrative citation. While citations and fines are issued for non-compliance, multi-family property owners and managers are not liable for tenants who improperly sort their waste.<sup>2</sup>

### BACKGROUND

In 2009, San Francisco successfully implemented compulsory composting for all businesses and residences, allowing them to achieve an 80 percent landfill diversion rate in 2012 that remains the highest in the country.<sup>3</sup> This successful policy laid the

<sup>1</sup> <http://www.recyclingrulesac.org/ordinance-overview/>

<sup>2</sup> <http://www.recyclingrulesac.org/my-recycling-rules/>

<sup>3</sup> <https://www.epa.gov/transforming-waste-tool/zero-waste-case-study-san-francisco>

groundwork for the State of California and other cities across the nation to follow suit and introduce legislation to increase composting rates.

California Senate Bill 1383 was introduced by Senator Ricardo Lara and signed into law by Governor Jerry Brown in 2016. The legislation establishes a target of a 50 percent reduction in statewide organic waste disposal by 2020 and a 75 percent reduction by 2025, in addition to a 20 percent increase in edible food recovery by 2025.<sup>4</sup> SB 1383 imposes two main requirements onto local jurisdictions: the provision of organic waste collection services to all residents and businesses, and the development of an edible food recovery program for all Tier 1 and 2 commercial edible food generators.<sup>5</sup>

As defined in SB 1383, Tier 1 commercial edible food generators are 1) supermarkets, 2) grocery stores with a total facility size equal to or greater than 7,500 square feet, 3) food service distributors, and 4) wholesale food markets. Tier 2 commercial edible food generators are 1) restaurants with 250 or more seats or a total facility size equal to or greater than 5,000 square feet, 2) hotels with an onsite food facility and 200 or more rooms, 3) health facilities with an onsite food facility and 100 or more beds, 4) large venues, 5) large events, 6) state agencies with a cafeteria with 250 or more seats or total cafeteria size equal to or greater than 5,000 square feet, and 7) local education agency facilities with an onsite food facility.<sup>6</sup>

California's climate change initiatives are primarily governed by AB 32 (2006), Executive Order B-30-15 (2015), and Executive Order S-3-05 (2005), which establish targets for reducing greenhouse gas emissions. The state's current goals are to reduce emissions to 1990 levels by 2020, 40 percent below 1990 levels by 2030, and 80 percent below 1990 levels by 2050.<sup>7</sup>

Improving landfill diversion rates is an important part of the solution. Organic waste that is improperly disposed of produces methane, a greenhouse gas which has 28 to 36 times the Global Warming Potential (GWP) of carbon dioxide over a 100-year period.<sup>8</sup> By diverting organic waste from the landfill, SB 1383 will reduce at least 4 million metric tons of statewide greenhouse gas emissions annually by 2030.

CalRecycle conducted an informal rulemaking process for SB 1383 from February 2017 to December 2018, and is expected to conclude the year-long formal rulemaking process by the end of 2019.<sup>9</sup> The City of Berkeley's Zero Waste Department submitted two rounds of formal comments on the draft regulations in July and October 2019.

Pursuant to the new regulations, local jurisdictions must have their composting and edible food recovery programs in place by January 1, 2022, when CalRecycle is authorized to begin enforcement actions. The enforcement mechanism is similar to the

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<sup>4</sup> [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1383](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1383)

<sup>5</sup> <https://www.calrecycle.ca.gov/organics/slcp/education>

<sup>6</sup> [http://ncrarecycles.org/wp-content/uploads/2018/10/SB1383\\_Final-May-Draft-Edible-Regs-Only.pdf](http://ncrarecycles.org/wp-content/uploads/2018/10/SB1383_Final-May-Draft-Edible-Regs-Only.pdf)

<sup>7</sup> <https://ww3.arb.ca.gov/cc/cc.htm>

<sup>8</sup> <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>

<sup>9</sup> <https://www.calrecycle.ca.gov/laws/rulemaking/slcp>



enforcement of other solid waste and recycling regulations, in which cities and counties can be issued a violation and be subject to enforcement for failure to comply with any individual aspect of the regulation. CalRecycle has discretion to determine the level of penalty necessary to remedy a violation.

In order to achieve compliance with state law by 2022, it is imperative that the City of Berkeley begin planning as soon as possible. According to CalRecycle’s SB 1383 guide for local governments, City Councils and Boards of Supervisors across California must “adopt an ordinance or similarly enforceable mechanism that is consistent with these regulatory requirements prior to 2022...planning in 2019 will be critical to meet the deadline.”

Implementing the compulsory composting component of SB 1383 will require the City to adopt an ordinance that builds on the existing Alameda County ordinance, adding composting requirements for residences with 1-4 units and businesses that generate fewer than 20 gallons of organic waste. The edible food recovery program component necessitates work to ensure that our existing food recovery organizations have enough capacity to meet statewide goals, including the consideration of providing additional funding for this purpose.

With the opening of a new warehouse in September 2019, Berkeley Food Network is working to establish a food sourcing and distribution hub which will include a food recovery program that reduces the amount of edible food sent to landfill. As BFN is already a valuable partner to the City and is in the process of forming partnerships with food recovery organizations, the Commission should explore ways the City can partner with them to meet SB 1383 requirements and further support them in their work.<sup>10</sup>

#### FINANCIAL IMPLICATIONS

Staff time and an undetermined amount of funding, contingent on the Commission’s recommendations, to bring the City into compliance with state law.

#### ENVIRONMENTAL SUSTAINABILITY

This proposal aligns with the City of Berkeley’s Climate Action Plan, which calls for a reduction in greenhouse gas emissions by 80 percent below 2000 levels by 2050. As a means to achieve this goal, Chapter 5 of the Plan recommends measures to “enhance recycling, composting, and source reduction services for residential and non-residential buildings.”<sup>11</sup>

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

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<sup>10</sup> <https://berkeleyfoodnetwork.org/about/our-work/>

<sup>11</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/BCAP%20Exec%20Summary4.9.09.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/BCAP%20Exec%20Summary4.9.09.pdf)

Attachments:

1: CalRecycle Education and Outreach Resources: An Overview of SB 1383's Organic Waste Reduction Requirements

2: San Francisco Mandatory Recycling and Composting Ordinance

[https://sfenvironment.org/sites/default/files/policy/sfe\\_zw\\_sf\\_mandatory\\_recycling\\_composting\\_ord\\_100-09.pdf](https://sfenvironment.org/sites/default/files/policy/sfe_zw_sf_mandatory_recycling_composting_ord_100-09.pdf)

3: Recycling Rules Alameda County

<http://www.recyclingrulesac.org/enforcement-overview/>

# SB 1383

## Reducing Short-Lived Climate Pollutants in California

### An Overview of SB 1383's Organic Waste Reduction Requirements



*Note to presenter: This slide presentation was developed for local jurisdiction staff by CalRecycle staff to educate city council members city board members, city and county staff, decision-makers, and other impacted colleagues. The slides include suggested talking points. We have also provided a handful of slides with artwork, images, and icons that you can use to build new content if needed. Please view this presentation in slideshow mode before presenting to familiarize yourself with the animations. If you have any questions, you can contact Christina Files in the CalRecycle Office of Public Affairs: [christina.files@calrecycle.ca.gov](mailto:christina.files@calrecycle.ca.gov).*

### Presentation Introduction

- SB 1383 (Lara, Chapter 395, Statutes of 2016) is the most significant waste reduction mandate to be adopted in California in the last 30 years.
- SB 1383 requires the state to reduce organic waste [food waste, green waste, paper products, etc.] disposal by 75% by 2025. In other words, the state must reduce organic waste disposal by more than 20 million tons annually by 2025.
- The law also requires the state to increase edible food recovery by 20 percent by 2025.
- This has significant policy and legal implications for the state and local governments.
  1. SB 1383 establishes a statewide target and not a jurisdiction organic waste recycling target.
  2. Given that it is a statewide target and there are not jurisdiction targets, the regulation requires a more prescriptive approach (this is different than AB 939).
    - A. CalRecycle must adopt regulations that impose requirements necessary to achieve the statewide targets.
    - B. This makes the regulation more similar to other environmental quality regulations where regulated entities, i.e., jurisdictions, are required to implement specific actions, rather than achieve unique targets.

- a. For example AB 32 established GHG reduction targets for the state, and the implementing Cap-and-Trade regulations require businesses to take specific actions.
  - i. The individual businesses are not required to achieve a specific target.
  - ii. They are required to take actions prescribed by the date.

### Overview of Presentation

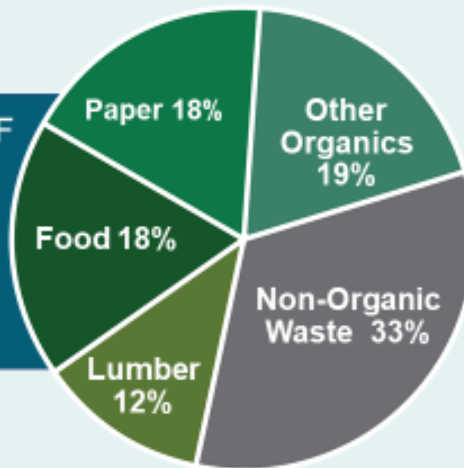
- Background and Context of SB 1383: Why California passed this law
- SB 1383 Requirements: A big picture look at the law's requirements and objectives
- Jurisdiction Responsibilities: What SB 1383 requires of local governments
  - Provide organic waste collection to all residents and businesses
  - Establish an edible food recovery program that recovers edible food from the waste stream
  - Conduct outreach and education to all affected parties, including generators, haulers, facilities, edible food recovery organizations, and city/county departments
  - Capacity Planning: Evaluating your jurisdiction's readiness to implement SB 1383
  - Procure recycled organic waste products like compost, mulch, and renewable natural gas (RNG)
  - Inspect and enforce compliance with SB 1383
  - Maintain accurate and timely records of SB 1383 compliance
- CalRecycle Oversight Responsibilities
- SB 1383 Key Implementation Dates
- SB 1383 Key Jurisdiction Dates

### Additional Resources

- CalRecycle's Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions webpage has more information: <https://www.calrecycle.ca.gov/Climate/SLCP/>
- CalRecycle's SB 1383 Rulemaking webpage as more information about the status of 1383 regulations: <https://www.calrecycle.ca.gov/laws/rulemaking/slcp>

## Organic Waste Is the Largest Waste Stream in California

CALIFORNIA DISPOSED OF APPROXIMATELY **27 MILLION TONS** OF ORGANIC WASTE IN 2017



California's Waste Stream

IN CALIFORNIA, MILLIONS ARE  
**FOOD INSECURE**

1 IN 8 CALIFORNIANS  
1 IN 5 CHILDREN



CALIFORNIA THROWS AWAY  
**MORE THAN 6 MILLION TONS**  
OF FOOD WASTE EVERY YEAR!

CalRecycle 

- When we are talking about organic waste for the purposes of SB 1383 we are talking about green waste, wood waste, food waste, but also fibers, such as paper and cardboard.
- Organic waste comprises two-thirds of our waste stream.
- Food waste alone is the largest waste stream in California.
  - According to CalRecycle's last waste characterization study in 2014, food waste comprised 18 percent of what we disposed.
- SB 1383 also requires California to recover 20 percent of currently disposed edible food.
  - We currently don't know how much of the food waste stream is edible.
  - CalRecycle is conducting a new waste characterization study in 2018/19 that is taking a closer look at our food waste stream.
  - The results of this study will help determine how much edible food waste is landfilled on average throughout the state.
- Here's what we do know:
  - 1 in 5 children go hungry every night in California – redirecting perfectly edible food that is currently being disposed to feed those in need can help alleviate this.
  - For every 2 ½ tons of food rescued, that's the equivalent of taking 1 car off the road for a year. (<https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>)

# CLIMATE CHANGE NEGATIVELY IMPACTS CALIFORNIA

Landfilled Organic Waste Emits  
**Methane Gas—**  
**A Super Pollutant**  
 More Powerful than CO<sub>2</sub>

Methane Gas Contributes to  
 Climate Change in California



**CALIFORNIA**  
 is already experiencing  
 the impacts of  
**CLIMATE CHANGE**

IN 2015 THE DROUGHT COST THE  
 AGRICULTURE INDUSTRY IN THE  
 CENTRAL VALLEY AN ESTIMATED  
**\$2.7 BILLION & 20,000 JOBS**

CalRecycle 

- Landfilling organic waste leads to the anaerobic breakdown of that material, which creates methane.
- Landfills are responsible for 21% of the state's methane emissions. **Landfills are the third largest producer of methane.**
- Methane is 72 times more potent than Carbon Dioxide (CO<sub>2</sub>) over a 20-year horizon.
- Climate change may seem like a distant problem, but there are other more localized environmental impacts associated with landfill disposal of organic waste that **have immediate negative impacts on our community now.**
  - Landfilling organic waste is a significant source of local air quality pollutants (NOX and PM<sub>2.5</sub>).
  - These pollutants have an immediate negative impact on the air our community and it can cause respiratory issues and hospitalizations.
  - Diverting organic waste to recycling can significantly reduce these local air quality emissions and the associated negative impacts.


We are starting to see the effects of climate change in cities and counties throughout California.

- Longer droughts and warmer temperatures are drying our forest and contributing to the ever increasing number of wildfires in CA (which also impact air quality).
- Cyclical droughts
- Bigger storms
- Coastal erosion due to rising sea levels
- We should not underestimate the cost of these climate change impacts.
  - The state and communities are spending billions fighting wildfires, removing debris and rebuilding homes.
  - That means we are paying for the effects of climate change today.

- The financial and public health impacts are here and **we need to take action to mitigate climate change now**
- That is why the state enacted SB 1383, which is designed to reduce the global warming gasses like methane, which are the most potent and are “short-lived”
- Reducing this gas now, through actions like organic waste recycling will significantly reduce emissions, and will reduce the impacts of climate change in our life time.

## SB 1383 Requirements

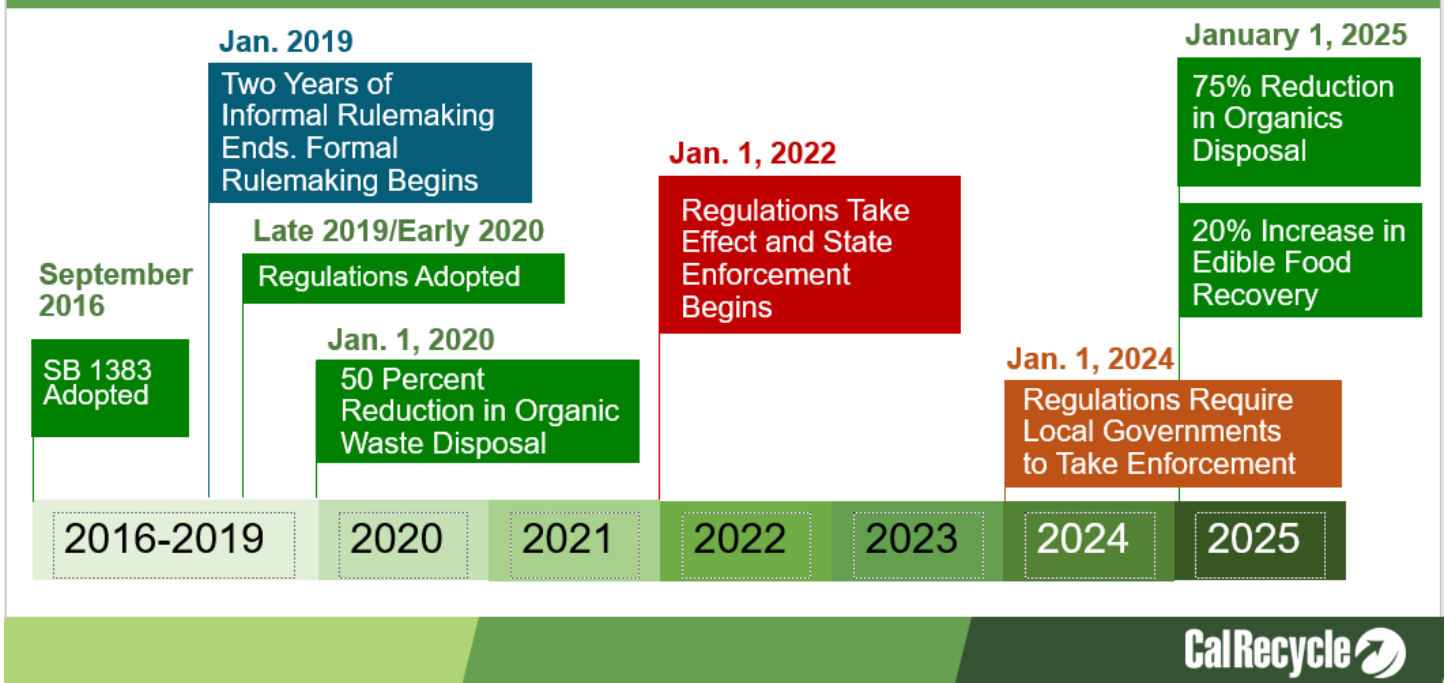
2020	50 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (11.5 Million Tons Allowed Organic Waste Disposal)
2022	REGULATIONS TAKE EFFECT
2025	75 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (5.7 Million Tons Allowed Organic Waste Disposal)
2025	20 PERCENT INCREASE IN RECOVERY OF CURRENTLY DISPOSED EDIBLE FOOD



### Overview of SB 1383:

- SB 1383 establishes aggressive organic waste reduction targets.
- SB 1383 also builds upon Mandatory Commercial Organics Recycling law. Our jurisdiction has been implementing this law since 2016.
- SB 1383 requires Californians to reduce organic waste disposal by 50% by 2020 and 75% by 2025.
  - These targets use the 2014 Waste Characterization Study measurements when 23 million tons of organic waste were disposed.
  - These disposal reductions will reduce at least 4 million metric tons of greenhouse gas emissions annually by 2030.
- Additionally as a part of the disposal reduction targets the Legislature directed CalRecycle to increase edible food recovery by 20 percent by 2025.
  - The food recovery goal is unique.

# SB 1383 Key Implementation Dates



Highlighted here on the slide are the key dates for SB 1383 implementation and milestones.

1. This law, the targets, and the requirements for CalRecycle to adopt regulations were adopted in September 2016
2. CalRecycle conducted two years of informal hearings with local governments and stakeholders to develop regulatory concepts.

## Formal Rulemaking

1. CalRecycle started the formal regulation rulemaking January 18, 2019, this is expected to conclude by the end of 2019.

## Regulations Take Effect

1. The regulations will become enforceable in 2022.
  - a. **Jurisdictions must have their programs in place on January 1, 2022.**

## Jurisdictions Must Initiate Enforcement

1. **In 2024 Jurisdictions will be required to take enforcement against noncompliant entities.**
2. Finally, in 2025 the state must achieve the 75 percent reduction and 20 food recovery targets.
3. To meet the deadline of January 1, 2022, **CalRecycle expects that jurisdictions will be planning and making programmatic and budgetary decisions regarding the requirements in advance of the deadline.**
4. CalRecycle can begin enforcement actions on jurisdictions and other entities starting on Jan. 1, 2022.
5. **The enforcement process on jurisdictions is different than under AB 939:**
  - a. Like many solid waste and recycling regulations, a regulated entity (such as a city or county) can be issued a violation and be subject to enforcement for failure to comply with any individual aspect of the regulation. This is different from the unique AB 939 enforcement structure where a jurisdiction's overall efforts to achieve specific target are reviewed in arrears



- b. Like most regulatory enforcement programs, the enforcing agency (CalRecycle) will have discretion to determine the level of penalty necessary to remedy any given violation. E.g. A reporting violation may be considered less severe than a failure to provide collection services to all generators.
  - c. CalRecycle will consider certain mitigating factors which are specifically enumerated in the regulation. This is not the same as good faith effort but includes similar considerations. The specific nuances regarding requirements for state and local enforcement will be discussed in the later slides.
- **These timelines mean that we need to start planning now.**

## SB 1383 Key Jurisdiction Dates

2022



Provide Organics Collection Service to All Residents and Businesses



Establish Edible Food Recovery Program



Conduct Education and Outreach



Procurement



Capacity Planning

2024



Starting January 1, 2024 Jurisdictions must take action against non-compliant entities

1. To meet the deadline of January 1, 2022, **CalRecycle expects that jurisdictions will be planning and making programmatic and budgetary decisions regarding the requirements in advance of the deadline.**
  - a. CalRecycle can begin enforcement actions on jurisdictions and other entities starting on Jan. 1, 2022.
2. This slide outlines the major programmatic activities for jurisdictions and the following slides will cover more details.
3. In 2024 Jurisdictions will be required to take enforcement against noncompliant entities.
  - a. There are additional details in the draft regulations regarding the enforcement requirements
4. CalRecycle has some funding through competitive grant programs, as well as a loan program, for establishing the infrastructure for recycling organic waste and recovering edible food. However, for the programmatic activities, such as enforcement, inspections, education, collection we will need to plan for budgetary changes to address these.

- a. In early 2020 CalRecycle will have a number of tools that we can begin utilizing, such as a model enforcement ordinance, franchise agreement models, and education materials. Using the 2018 and 2020 Statewide Waste Characterization Studies, jurisdictions will have data needed to conduct some of the capacity planning requirements.
- b. Although the regulations are not finalized the major components are not expected to change.
- c. We need to **start planning now** to have the programmatic and budgetary changes in place by January 1, 2022.

## JURISDICTION RESPONSIBILITIES

**Provide Organics  
Collection Services to All  
Residents and Businesses**



**Conduct Education  
and Outreach to  
Community**



**Secure Access to  
Recycling and Edible  
Food Recovery Capacity**



**Establish Edible  
Food Recovery  
Program**



**Procure Recyclable  
and Recovered  
Organic Products**



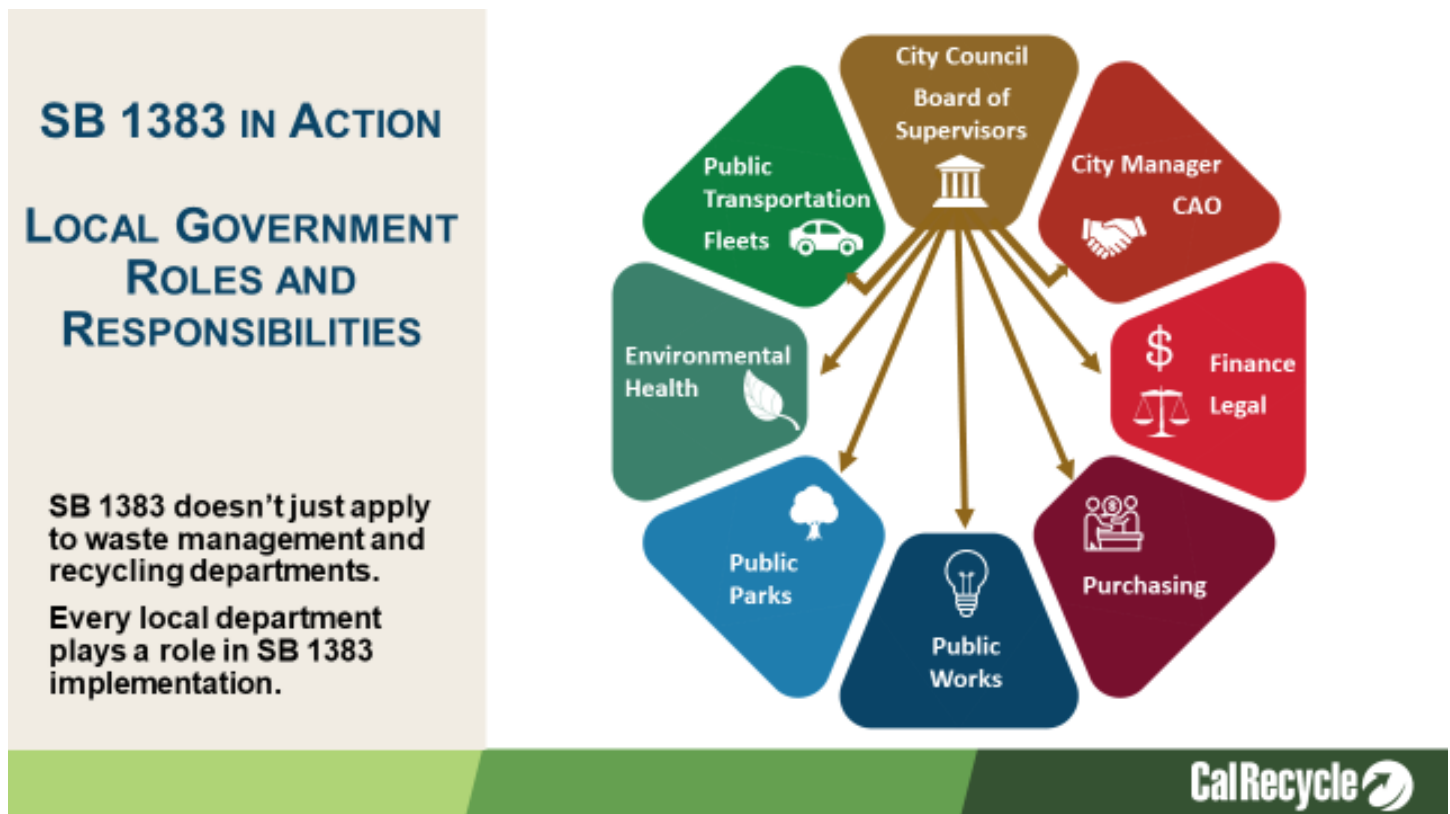
**Monitor Compliance  
and Conduct  
Enforcement**

**CalRecycle**

Jurisdictions will be required to adequately resource these programs:

1. **Provide organic waste collection services to all residents and businesses.**
  - A. This means for all organic waste, including green waste, wood waste, food waste, manure, fibers, etc.
  - B. Containers have prescribed colors (any shade of grey or black for trash, green for organic waste and blue containers for traditional recyclables)
  - C. There are container labeling and contamination monitoring requirements
  - D. We need to assess our current collection programs and determine what may need to be, expanded, or changed
2. **Establish edible food recovery program for all Tier 1 and 2 commercial edible food generators**
  - A. This means ensuring that there are edible food recovery organizations that have enough capacity
  - B. This may entail providing funding to ensure there is adequate capacity and collection services
3. **Conduct education and outreach to all generators**

- A. This will require education to be provided to all generators, and when applicable education may need to be provided in Spanish and other languages.
4. **Our jurisdiction will be required to procure certain levels of compost, renewable gas used for transportation fuels, electricity, heating applications, or pipeline injection, or electricity from biomass conversion produced from organic waste.**
5. **Plan and secure access for recycling and edible food recovery capacity.**
6. **We will be required to monitor compliance and conduct enforcement**
  - A. **Monitoring and education must begin in 2022**
  - B. **Enforcement actions must start Jan 1, 2024**
7. **We will need to adopt an ordinance, or similarly enforceable mechanism that is consistent with these regulatory requirements prior to 2022.**
8. **Planning in 2019 will be critical to meet the deadline.**



1. Jurisdictions should start planning now to get ready for SB 1383 implementation.
2. This **law extends beyond directing waste management and recycling operations and staff.**
  - a. **Each department will need to understand how SB 1383 impacts their work.**
  - b. **Recordkeeping and reporting requirements extend to all of these departments,** and jurisdiction leaders will play a vital role in ensuring compliance with SB 1383.
- **City Councils and Boards of Supervisors** will need to pass local enforcement ordinances to require all residents and businesses to subscribe to these services.
- **City Managers and Chief Administrative Officers** will be involved in capacity planning, directing procurement of recycled organic products like compost and renewable natural gas, and establishing edible food recovery programs.

- **Finance and Legal staff** will be involved in local enforcement ordinances, new collection fees, and ensuring programs are adequately resourced.
- **Purchasing staff** will be central to procuring recycled organic products, including paper.
  - Procure does not necessarily mean purchase, but this department is likely aware of current compost, mulch, RNG, and paper product purchases for the jurisdiction.
- **Public Works staff** are involved with hauler agreements, local waste management processing facilities, and organic waste recycling facilities (like compost and anaerobic digestion facilities). They may also be involved in civil engineering activities where compost may be utilized (as in erosion control along city streets and embankments).
- **Public Parks staff** may be involved with assessing the need for local compost application to parks and city landscaped areas.
- **Environmental Health staff** may be tasked with enforcement duties, including inspecting commercial food generators for compliance with edible food recovery requirements.
- **Public Transportation and Fleet departments** could be involved in procuring renewable natural gas for city and county owned vehicles.

## SB 1383 IN ACTION

### JURISDICTION REQUIREMENTS






**Provide organics collection service to all residents and businesses**

## Organic Waste Collection Services



**Three-Container “source separated” Collection Service**

- Organics prohibited from black container
- All organic waste segregated for collection and recycling



**Two-Container Collection Service**

- One container for collection of segregated organic waste
- One container for collection of mixed waste (subject to 75% organic content recovery standard)



**One-Container Collection Service**

- One container for collection of mixed waste (subject to 75% organic content recovery standard)

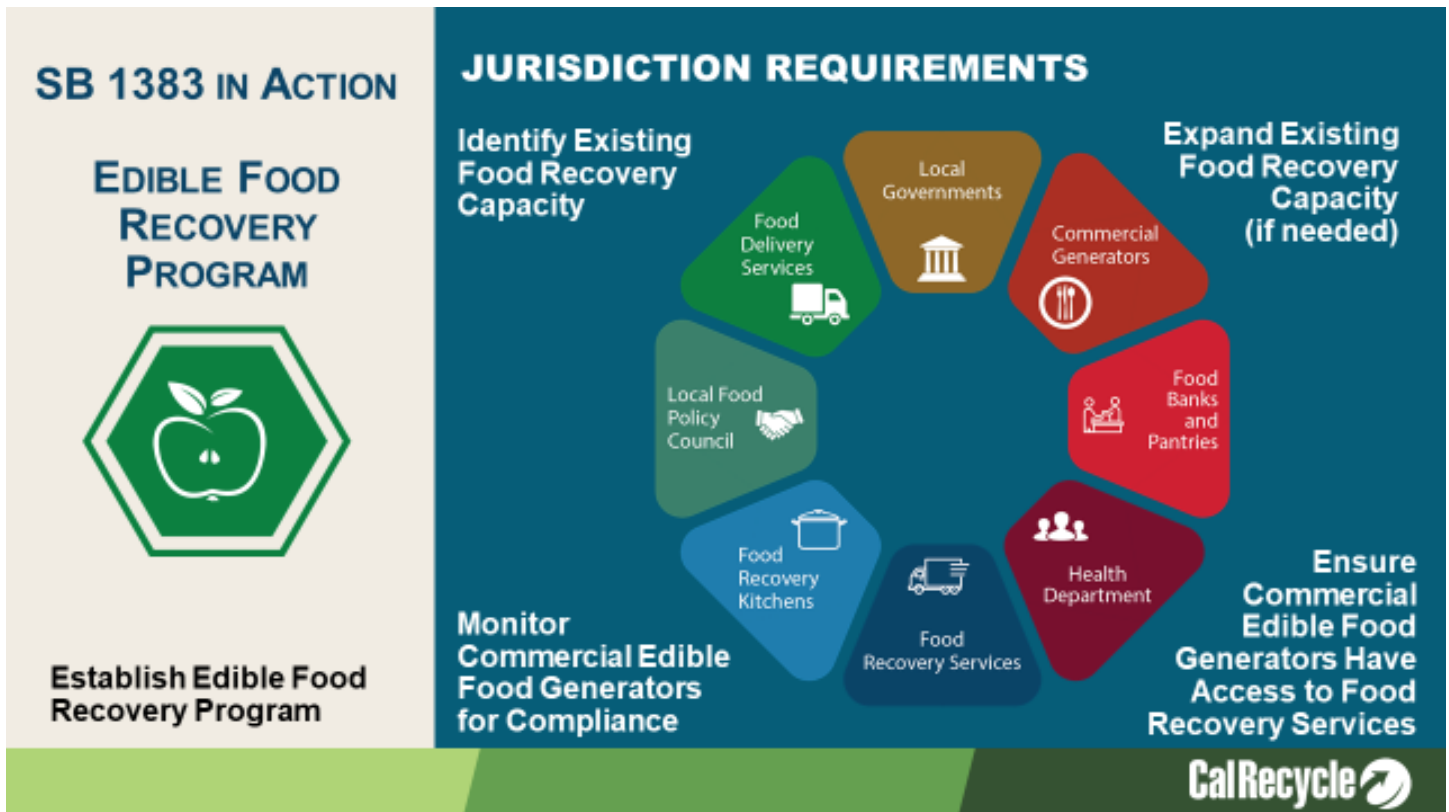
- Minimum contamination monitoring and reduction requirements
- Collection waivers authorized for certain documented circumstances



*(Note to presenter: You might customize this slide to reflect the collection system for residential and commercial recycling programs. Remember this law/regulation is about all organic waste so that means the fibers, foodwaste, greenwaste, manure, etc.)*

- The most basic element of the regulation is that jurisdictions are **required to provide an organic waste collection service to each of their residents and businesses.**
- The regulations also **require all residents and businesses to use an organic waste recycling service that meets the regulatory requirements.**
- Jurisdictions must have enforceable requirements on its haulers that collect organic waste in the jurisdiction, and also for commercial and residential generators and self-haulers.

- There is a lot of detail regarding the types of allowable collection programs (several pages of regulatory text dedicated just to this). These are the high level requirements.
  - **Each resident and business**, must subscribe to an organic waste collection service that either “source-separates” the waste (e.g. separate bins), or transports all unsegregated waste to a facility that recovers 75 percent of the organic content collected from the system.
  - The regulations allow for a menu of collection options.
    - A one-can system – you’ll be responsible for ensuring that all contents are transported to a facility that recovers 75% of organic content
    - A two-can system – at least one of the containers (whichever includes organic waste and garbage) must be transported to a facility that recovers 75% of organic content
    - A three-can system – organic waste is required to be source separated (paper in blue, food and yard in green). No recovery rate
    - The three-can option also allows additional separation at the hauler/generators discretion... For example some jurisdictions provided separate containers for yard (green) and food (brown) waste so they can be managed separately
- The same rules will apply to entities not subject to local control, and CalRecycle will oversee State Agencies, UCs, CSUs, Community Colleges, K-12 schools and other entities not subject to local oversight.



*(Note to presenter: You may want to customize the speaking points depending on how much your community is already doing to implement edible food recovery programs)*

SB 1383 requires that we strengthen our existing infrastructure for edible food recovery and food distribution.

**Jurisdictions** – are responsible to implement Edible Food Recovery Programs in their communities. Even in communities where existing infrastructure already exists, there are new recordkeeping and inspection tasks that will need to be implemented.

- **Assess Capacity of Existing Food Recovery**
- **Establish Food Recovery Program (And Expand Existing Infrastructure if necessary)**
- **Inspect Commercial Generators for Compliance**
- **Education and Outreach**

Jurisdictions should get a **head start on 1383 implementation by assessing the infrastructure that currently exists within your community.** Jurisdictions need to assess the following:

- How many commercial generators do you have? How much edible food could they donate?
- How many food recovery organizations exist, and what is their capacity to receive this available food?
- What gaps do we have in our current infrastructure and what do we need to do to close them?
- How can we fund the expansion of edible food recovery organizations? (Grants, partnerships, sponsorships, etc.)
- What partnerships currently exist and what new partnerships need to be established?
  - CalRecycle will be developing some tools to assist jurisdictions with this assessment.

**SB 1383 IN ACTION**

**EDUCATION REQUIREMENTS**

**JURISDICTION REQUIREMENTS**

Annually educate all organic waste generators, commercial edible food generators, and self-haulers about relevant requirements

Jurisdictions must provide print or electronic communication.

Jurisdictions May Supplement with Direct Communication.

Appropriate educational material must be provided to linguistically isolated households

Conduct Education and Outreach to Community

CalRecycle


Jurisdictions must conduct education and outreach to:

1. **All businesses and residents** regarding collection service requirements, contamination standards, self-haul requirements, and overall compliance with 1383
2. **Commercial edible food generators** regarding edible food donation requirements, and available edible food recovery organizations

Educational material must be linguistically accessible to our non-English speaking residents.

## SB 1383 IN ACTION

### PROCUREMENT REQUIREMENTS



**Procure Recycled and Recovered Organic Products**


## JURISDICTION REQUIREMENTS


### COMPOST, RNG & ELECTRICITY

- Minimum Procurement

### PAPER PROCUREMENT REQUIREMENTS

- Recycled Content
- Recyclability





- Each jurisdiction will have a minimum procurement target that is linked to its population. CalRecycle will notify jurisdictions of their target Prior to January 1, 2022
  - The jurisdiction can decide what mix of compost, mulch, biomass derived electricity, or renewable gas they want to use to meet their target.
  - CalRecycle will provide a calculator with the conversion factors for compost/renewable gas/electricity from biomass conversion made from organic waste for a jurisdiction to use to calculate progress towards meeting their target.
- **Procurement doesn't necessarily mean purchase.**
  - A jurisdiction that produces its own compost, mulch, renewable gas, or electricity from biomass conversion can use that toward the procurement target. Same goes for the jurisdiction's direct service providers (for example, its haulers).
    - A jurisdiction can use compost or mulch for erosion control, soil amendment, soil cover, parks/open spaces, giveaways.
    - A jurisdiction can use renewable gas to fuel their fleets, or a jurisdiction's waste hauler could use renewable gas to fuel their trucks. Renewable gas can be used for transportation fuels, electricity, or heating applications.
- SB 1383 also **requires that jurisdictions procure recycled-content paper when it is available at the same price or less than virgin material.**
- Finally procured paper products must meet FTC recyclability guidelines (essentially products we purchase must be recyclable).

# Construction & Landscaping Requirements



Recycling organic waste commingled with C&D debris, to meet CalGreen 65% requirement for C&D recycling in both residential and non-residential projects

Model Water Efficient Landscape Ordinance (MWELo) requirements for compost and mulch application.



*(Note to presenter: If your Jurisdiction already enforces CalGreen and MWELo, then you would address that this would not be a new requirement, or this slide could be eliminated.)*

**Jurisdictions will have to adopt an ordinance or other enforceable requirement that requires compliance with CalGreen and Water Efficient Landscape Ordinance requirements (California Code of Regulations Title 24, Part 11):**

- Providing readily accessible areas for recycling containers in commercial and multi-family units
- Recycling organic waste commingled with C&D debris, to meet CalGreen 65% requirement for C&D recycling in both residential and non-residential projects
- Require new construction and landscaping projects to meet Water Efficient Landscape requirements for compost and mulch application.



## ORGANIC WASTE RECYCLING INFRASTRUCTURE



SB 1383 Requires 50-100  
New or Expanded  
Organic Waste Recycling Facilities



*(Note to presenter: You might customize this slide if you have already secured adequate capacity for your organic recyclables.)*

In California today we have about 180 compost facilities with 34 of them accepting food waste.

- We have 14 AD facilities accepting solid waste.
- There is also a significant number of Waste Water Treatment Plants that could be leveraged to use for co-digestion of food waste.
- It will take a significant number of new facilities to recycle an additional 20-25 million tons of organic waste annually. CalRecycle estimates we will need 50-100 new or expanded facilities (depending on the size of each new facility this number could fluctuate).

## SB 1383 IN ACTION

### CAPACITY PLANNING



Evaluating Current  
Infrastructure and Planning  
New Compost and AD Facilities  
and Edible Food Recovery

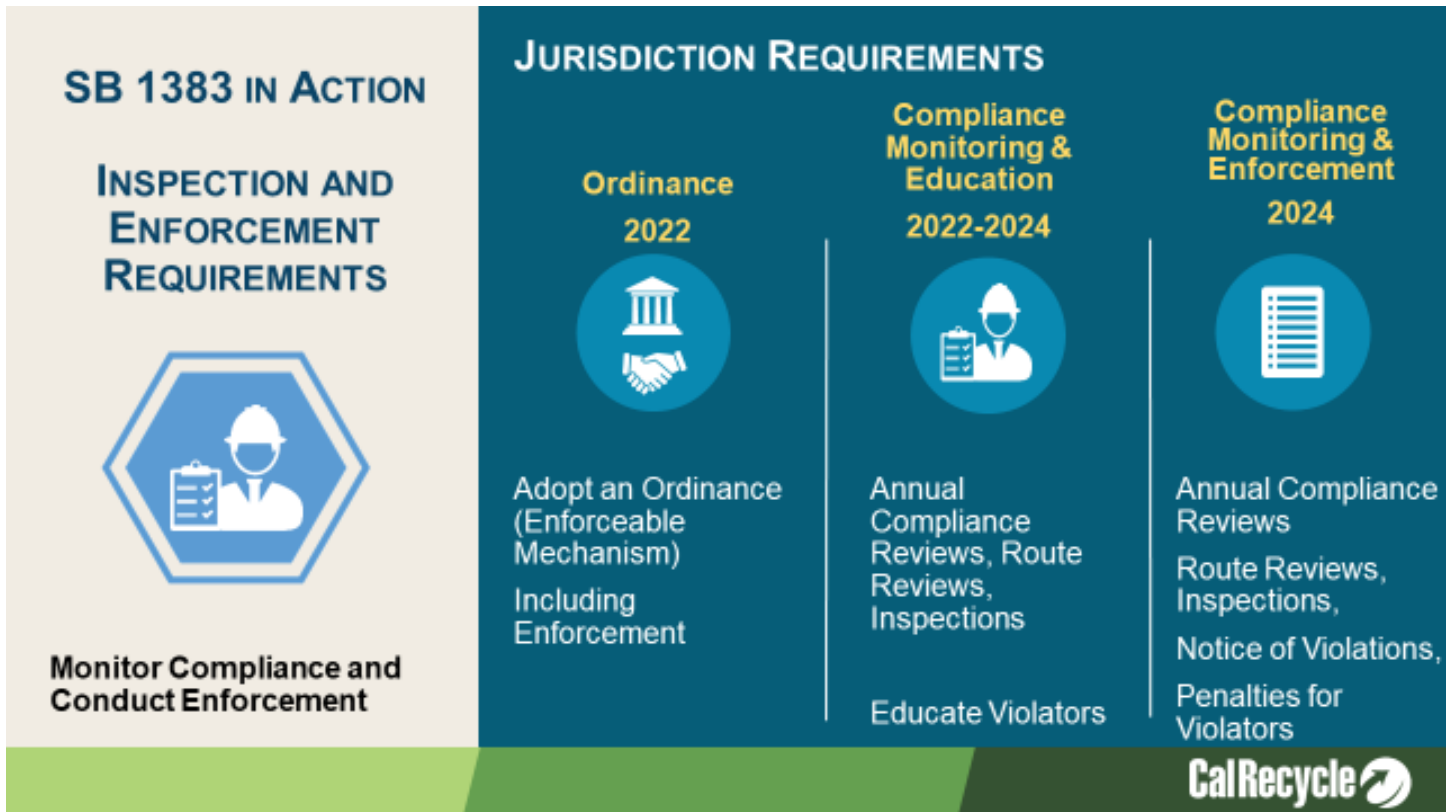


CalRecycle 

#### Key Points:

1. **Each jurisdiction must plan for adequate capacity for recycling organic waste and for edible food recovery**
  - A. For edible food recovery capacity each jurisdiction must plan to recover 20 percent of the edible food for human consumption, must identify Tier 1 and 2 commercial edible food generators, and funding for edible food recovery infrastructure
2. Each county will lead this effort by coordinating with the cities in the county to estimate existing, new and/or expanded capacity.
3. Counties and cities must demonstrate that they have access to recycling capacity through existing contracts, franchise agreements, or other documented arrangements.
4. There are requirements for each jurisdiction to consult with specified entities to determine organic waste recycling capacity, such as the Local Enforcement Agency, Local Task Force, owners/operators of facilities, community composting operations, and from citizens, such as disadvantaged communities, i.e., to discuss the benefits and impacts associated with expansions/new facilities.
5. For edible food recovery the county and city must contact edible food recovery organizations that serve the jurisdiction to determine how much existing, new and/or planned capacity if available.
6. If capacity cannot be guaranteed, then each jurisdiction within the county that lacks capacity must submit an implementation schedule to CalRecycle that includes specified timelines and milestones, including funding for the necessary recycling or edible food recovery facilities.
7. The County must collect data from the cities on a specified schedule and report to CalRecycle. Cities are required to provide the required data to the County within 120 days.

- A. **Start year for planning and reporting is 2022 – that report must cover 2022-2025.**
- B. Subsequent reports will be due every 5 years, and will plan for a 10-year horizon



- **By January 1, 2022**, Jurisdictions are required to have:
  - An enforcement mechanism or ordinance in place, yet they are not required to enforce until 2024.
- **Between Jan 2022 and Dec 2023**, jurisdictions need to:
  - Identify businesses in violation and provide educational material to those generators
    - **The focus during the first 2 years is on educating generators.**
    - **The goal is to make sure every generator has an opportunity to comply before mandatory jurisdiction enforcement comes into effect in 2024.**
    - **The regulations allow 2 years for education and compliance.**
- **After January 2024**, jurisdictions shall take progressive enforcement against organic waste generators that are not in compliance.
  - The progressive approach allows for notification to the generator and provides ample time for the generator to comply before penalties are required to be issued by the jurisdiction.
  - CalRecycle sets a maximum timeframe that a jurisdiction has to issue a Notice of Violation and issue penalties to a generator.
  - The jurisdiction has the flexibility to develop its own enforcement process within these parameters.
    - When a Jurisdiction determines a violation occurred the jurisdiction is required to, at a minimum:

- Issue a Notice of Violation within 60 days of determining a violation.
- If the generator still has not complied within 150 days from the issuance of the Notice of Violation, then the jurisdiction is responsible to issue penalties
  - The 150 days, between the Notice and Violation and the penalty phase, allows the jurisdiction to use other methods to achieve compliance prior to being required to issue penalties. Therefore, only the most recalcitrant violators will need to be fined.
  - The regulations allow a generator to be out of compliance for a total 210 days, before penalties must be issued.
- The regulations set a minimum penalty amount of at least \$50 for the first offense within one year and can go up to \$500 a day for multiple offenses occurring within one year.
- **An early robust education program will minimize the amount of future enforcement action needed**

**JURISDICTION ENFORCEMENT REQUIREMENTS**

**Must Have Enforcement and Inspection Program that Includes:**

- **Annual Compliance Review**
  - Commercial Businesses that Generate  $\geq 2$  Cubic Yards/week
  - Verify Businesses are:
    - Subscribed to Service or Self-hauling
- **2 or 3 Container Collection Service: Route Reviews of Commercial/Residential Areas to Verify Service and Inspect for Contamination**
- **Single Unsegregated Collection Service: Verify Businesses are subscribed to a service that is Transporting Contents to a High Diversion Organic Waste Processing Facility**

Requirements Harmonize with AB 1826 and Don't Establish a Minimum Quantity of Physical Inspections

CalRecycle

*(Note to Presenter: If needed, customize the next couple of slides to fit the type of collection service that your City has/will have for residential and commercial. You may have residential on 3-container, multifamily on single or 2-container and businesses having all three depending on the business.)*

- If a Jurisdiction is using a 3- or 2-bin organic waste collection service they are required to do:
  - **Annual compliance review of commercial businesses just as we should be doing now with AB 1826 Mandatory Commercial Recycling**
    - Commercial businesses that generate 2 CY or more per week of solid waste (trash, recycling, organics),

- Note: commercial businesses include multi-family dwellings of five units or more
- This can be a desk audit to review reports from our haulers to verify that service is provided or that they are complying through self-hauling or backhauling
- **2- or 3-Collection Service:**
  - **Route reviews:** We are supposed to conduct route reviews of commercial businesses and residential areas. The route reviews check for:
    - Verifying subscription (validating the desk review)
      - This entails seeing that the business has the appropriate external containers.
      - If a business does not use the hauler's service, then verifying the business is self-hauling would be necessary. As noted earlier this is same type of action that AB 1826 already requires
      - Note: This random inspection of routes does not require going inside a business to verify that the business has appropriate containers/labels inside of the business.
  - **Monitoring for contamination on**
    - Randomly selected containers, and ensuring all collection routes are reviewed annually and that contamination is being monitored in the collection containers and education is provided if there is an issue
  - OR
  - A jurisdiction has the option of conducting waste composition studies every six months to identify if there are prohibited container contaminants. If there is more than 25 percent prohibited container contaminants, then additional education must be provided
- The Route Reviews can be done by our hauler(s)
- **Single Unsegregated Collection Service:** Same as the 2- or 3-bin service except:
  - We will need to verify with our hauler(s) that the contents are transported to a high diversion organic waste processing facility and that the facility is meeting the requirements of the organic content recovery rate
    - Note: The department will be identifying in the future what facilities are high diversion organic waste processing facilities as the facilities will be reporting to CalRecycle.
  - There are no route reviews required

## JURISDICTION ENFORCEMENT REQUIREMENTS ON COMMERCIAL FOOD GENERATORS



## Must Have Enforcement and Inspection Program that Includes:

- Inspections to verify:
  - Edible food Recovery arrangements
- Tier 1 Commercial Edible Food Generators by 2022
- Tier 2 Commercial Edible Food Generators by 2024

Commercial Edible Food Generator Inspections Can Be Combined with Existing Mandatory Inspections



*(Note to Presenter: If your jurisdiction is already implementing an edible food recovery program and conducting inspections, such as through the Health Department you will want to revise the talking points.)*

### Edible Food Recovery Program

- These types of inspections will be new for our jurisdiction.
- We will need to plan resources to conduct these inspections.
  - We might consider partnering with Health Inspectors that are already visiting food generators.
- Inspections on Tier One edible food generators in 2022 and Tier Two in 2024
  - Verify they have arrangements with a food recovery organization
  - Verify that the food generators are not intentionally spoiling food that can be recovered

**SB 1383 IN ACTION**  
**JURISDICTION REQUIREMENTS**



**Maintain Records and Report to CalRecycle**

**Recordkeeping Requirements:**

 Organic Collection Services	 Hauler Program	 Contamination Minimization	 Waivers	 Education & Outreach
 Edible Food Recovery Program	 Recycled Organic Waste Procurement	 Recycled Paper Procurement	 Commercial Edible Food Generators	 Jurisdiction Inspection & Enforcement



- Our jurisdiction will have to maintain all information in an Implementation Record.
  - Many sections require a minimum level of recordkeeping such as “ordinances, contracts, and franchise agreements”.
  - This graphic is a snapshot of items to be kept in the Implementation Record.
  - CalRecycle staff may review the implementation record as part of an audit of our program.
- The Implementation Record needs to be stored in one central location
  - It can be kept as a physical or electronic record
  - It needs to be accessible to CalRecycle staff within ten business days
  - It needs to be retained for five years

The infographic is divided into two main sections. The left section, on a light beige background, features a circular icon of a classical building with columns, labeled 'STATE ENFORCEMENT', and the CalRecycle logo below it. The right section, on a dark blue background, is titled 'CALRECYCLE OVERSIGHT (BEGINS IN 2022)' and is organized into three vertical columns, each with a circular icon at the top: a clipboard with checkmarks, a person wearing a hard hat and safety vest, and a document with lines of text.

STATE ENFORCEMENT	Authorize Waivers	Oversee and Monitor for Compliance	If Violations
	<ul style="list-style-type: none"> <li>• Low Population</li> <li>• Rural Areas</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct joint inspections with jurisdictions</li> <li>• Review Implementation Record</li> </ul>	<ul style="list-style-type: none"> <li>• Issue Notices of Violation</li> <li>• May Authorize Corrective Action Plan</li> <li>• Allows up to 24 months to address barriers outside of a jurisdiction's control</li> </ul>
	<p><b>Emergency Circumstances</b></p> <p><b>Oversee and Monitor</b></p> <ul style="list-style-type: none"> <li>• State Agencies and Facilities</li> <li>• Local Education Agencies</li> </ul>	<p><b>Jurisdiction Review</b></p>	

Enforcement – CalRecycle will authorize low population and rural area waivers. In the case of entities such as public universities, which may be exempt from local solid waste oversight, CalRecycle will be directly responsible for ensuring compliance. This will be monitored through CalRecycle’s existing state agency monitoring process.

**CalRecycle will be evaluating a Jurisdiction’s Compliance.**

For example:

- Verifying that all organic waste generators have service
- Jurisdictions are providing education
- Issuing Notices of Violation within the correct timeline

**SB 1383 is a Statewide target and not a jurisdiction organic waste diversion target.** Unlike with AB 939 where there was a specified target for each jurisdiction, SB 1383 prohibits a jurisdiction target. Due to this structure:

- The regulations require a more prescriptive approach, and establishes state minimum standards.
- Jurisdictions will have to demonstrate compliance with each of the prescriptive standards **rather than the determination of a Good Faith Effort**, which uses a suite of indicators to determine if a jurisdiction is actively trying to implement programs and achieve targets

**Under the SB 1383 regulations** if CalRecycle determines a jurisdiction is violating one or more of the requirements,

- A jurisdiction will be noticed and will have 90 days to correct.
- Most violations should be able to be corrected in this timeframe. For cases where the jurisdiction may need a little additional time, the timeframe can be expanded to 180 days



- **For violations that are due to barriers outside the jurisdictions control and which may take more time to correct, the** regulations allow for the jurisdiction to be placed on a Corrective Action Plan (CAP), allowing up to 24 months to comply. In these cases, it must be apparent that the jurisdiction has taken substantial effort to comply but cannot due to extenuating circumstances (such as a lack of capacity, disaster).
- An initial corrective action plan issued due to inadequate capacity of organic waste recovery facilities may be extended for a period of up to 12 months if the jurisdiction meets the requirements and timelines of its CAP and has demonstrated substantial effort to CalRecycle.

The Corrective Action Plan [or CAP] is modeled off of the Notice and Order Process that is used for noncompliance at solid waste facilities, where a number of steps or milestones must be taken by the solid waste facility operator prior to being able to fully comply.

Regarding eligibility for a CAP failure of a governing body to adopt an ordinance, or adequately fund/resource a program IS NOT *considered substantial effort or an Extenuating Circumstance* and will not allow a violation to be subject to a Corrective Action Plan.



The graphic features the CalRecycle logo on the left, which includes a green circular icon with a white arrow pointing up and to the right, followed by the text "CalRecycle" in blue and "STAY ENGAGED" in green. To the right are three green elements: a circular icon with an envelope and a list, a circular icon with a laptop, and a circular icon with two speech bubbles. Each icon is followed by a green rounded rectangle containing text: "https://www2.calrecycle.ca.gov/Listservs/Subscribe/152", "https://www.calrecycle.ca.gov/organics/slcp", and "Presenter's Contact Info". The bottom of the graphic has a green bar with the CalRecycle logo on the right.

*(Note to presenter: If you have been participating in the regulatory workshops you might customize this slide. If you haven't been participating you might consider using this slide to discuss next steps with your elected officials and executive management.)*

**Jurisdictions are encouraged to participate in the 1383 regulatory process.**



INFORMATION CALENDAR

December 10, 2019

**To:** Honorable Mayor and Members of the City Council  
**From:** Jenny Wong, City Auditor *zw*  
**Subject:** Recommendation Follow Up Report, December 2019

CURRENT SITUATION AND ITS EFFECTS

Since our last report in February 2019, City management has fully addressed 53 of over 100 outstanding audit recommendations. In addition, seven audits are now closed and seven were reported to City Council during this time. Action taken includes Finance implementing collections activities based on our audit of business license taxes yielding \$1.3 million from delinquent accounts. While significant progress has been made on those recommendations, there has been no progress made on two audits. The Leases Audit is over 10 years old and the Grants Management Audit has not been reported to City Council since its release in July 2009.

The intent of this report is to keep City Council informed about the implementation status of recommendations made by the City Auditor. We welcome suggestions or recommendations for improving this report to enhance your ability to monitor the effective implementation of City Auditor recommendations.

BACKGROUND

Audit follow-up activities are conducted for every audit to assess whether City management implemented the agreed-upon audit recommendations. The Auditor's Office issues follow-up audit reports to City Council on the status of our recommendations. Our office measures the audit recommendation implementation rate as an indicator of the degree to which the City is using information provided by our audit reports to mitigate identified risks and to enhance efficiency and effectiveness of operations.

City Municipal Code allows the City Auditor to request periodic status reports from auditees regarding actions taken to address reported deficiencies and audit recommendations every six months. These status reports establish the Auditor's ability to determine the adequacy, effectiveness, and timeliness of management's actions to correct reported issues and recommendations.

FISCAL IMPACTS

Our audits identify a variety of risks, including financial loss to the city. Addressing our recommendations can result in financial revenues, as in the case of establishing a process of collections for business license taxes, which yielded \$1.3 million. We identified financial loss as one of the top risks associated with our outstanding audit recommendations.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

1: Recommendation Follow Up Report, December 2019

# Recommendation Follow Up Report

December 2019



BERKELEY CITY AUDITOR

Promoting transparency and accountability in Berkeley government

## Recommendations Follow Up Report Highlights

December 2019

### Accomplishments

Taking action on our audit recommendations leads to increased revenues and operational improvements. Several departments took action to close out all our open audit recommendations or made headway by implementing some of them. The **Finance Department** took action to increase collections by designing processes based on our audit recommendations. The Finance Revenue Collection team actively reviews delinquent accounts and successfully recouped \$1.3 million in delinquent Business License Tax accounts as of October 2019. The **City Manager’s Office** implemented an ethics hotline that allows employees to bring forward their concerns.

### Statistics

This report reflects the status of all the Berkeley City Auditor open audit recommendations. During this reporting cycle, we verified that departments and related entities fully addressed 53 recommendations of the 108 (49 percent) based on our reporting in February 2019.

**Figure 1: City Management Fully Addressed 53 Audit Recommendations Since December 2018**

Number of Recommendations	Status of Recommendations
53	Implemented/Closed
22	Partially Implemented
33	Not Implemented
<b>108</b>	<b>Total</b>

Note: The City has implemented or partially implemented 38 of the 71 “Not Implemented” recommendations reported in February 2019.

Source: Auditor’s analysis

We added 25 new recommendations from our 911 Dispatcher and Fire Inspection Prevention audits that were published in the Spring.

### Major Risks

We assigned each of the open audit recommendations to one of five risk categories—financial loss, safety/health, reputational, compliance, and misinformation. The majority of the open recommendations fall under the financial loss and safety/health risk categories.

Our Leases Audit was released in June 2009 with recommendations aimed at improving the City’s facility lease oversight. Seven recommendations remain not implemented after 10 years and the financial loss risk associated with them has not been addressed.

Our Grants Management Audit was released in July 2016 with 15 recommendations aimed at improving the City’s grant management process to prevent the loss of grant revenue and provide management and staff with accurate and timely information. In the three years since the audit release, City management has never reported to Council on the status of these recommendations.

## Open Audits as of December 10, 2019

Report Title	Date Issued	Department	# of Rec's made	Implemented/ Open	Not Implemented	Partially Implemented	Implemented/ Closed
<a href="#">Leases Audit: Conflicting Directives Hinder Contract Oversight</a>	6/2/2009	City Manager	24*	7	-	-	16
<a href="#">Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal</a>	7/1/2014	Public Works	15*	6	5	-	3
<a href="#">Most Contracts Executed Timely But Contract Project Managers Could Use Better Tools and Guidance</a>	10/6/2015	Finance	5	1	-	-	4
<a href="#">Citywide Grants Management (formerly Public Works Grant Follow Up)</a>	7/19/2016	City Manager	15	14	-	-	1
<a href="#">Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity</a>	9/20/2016	Public Works	12	1	5	-	6
<a href="#">City at Crossroads as Long-Standing Need for Structured Approach to Line of Business Experts Function Intersects with ERP Implementation</a>	1/24/2017	City Manager & Information Technology	5	-	3	-	2
<a href="#">Berkeley's Ethical Climate Rate Strong Overall and Management Working to Make it Better</a>	3/14/2017	City Manager & Human Resources	6	2	3	-	1
<a href="#">Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight</a>	6/26/2018	City Manager & City Council	12	1	6	-	5
<a href="#">Credit Card Use: Clearer Guidance Needed</a>	6/26/2018	Finance	3	1	-	-	2
<a href="#">911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale</a>	4/25/2019	Police	14	14	-	-	-
<a href="#">Fire Prevention Inspections: Insufficient Resources Strain Code Compliance</a>	5/9/2019	Fire	11	11	-	-	-
<b>Total</b>			<b>122</b>	<b>58</b>	<b>22</b>	<b>40</b>	

\* The auditee decided they would not implement one of our recommendations. They accepted the risk to the city that the recommendation was meant to address and is unable or unwilling to implement the recommendation.

## Table of Contents

Summary of Results.....	5
Accomplishments .....	6
Five Areas of Risk to the City .....	9
Audits Closed Since Last Report.....	10
Recommendations Open More Than Two Years .....	12
Audits Not Reported to Council .....	13
Implementation Status of Open Recommendations .....	14
Leases Audit: Conflicting Directives Hinder Contract Oversight .....	14
Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal.....	17
Most Contracts Executed Timely But Contract Project Managers Could Use Better Tools and Guidance .....	22
Citywide Grants Management.....	24
Unified Vision of Zero Waste Activities Will Help Align Services Levels with Billing and Ensure Customer Equity .....	30
City at Crossroads as Long-Standing Need for Structured Approach to Line of Business Experts Function Intersects with ERP Implementation .....	33
Berkeley’s Ethical Climate Rated Strong Overall and Management Working to Make it Better .....	35
Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight .....	38
Credit Card Use: Clearer Guidance Needed .....	42
911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale ..	43
Fire Prevention Inspections: Insufficient Resources Strain Code Compliance .....	48



## Summary of Results

The Berkeley City Auditor’s Office conducts audits and makes recommendations to strengthen accountability and improve the efficiency and effectiveness of City programs. The Office monitors progress toward implementing recommendations and periodically reports on the status of all open audit recommendations.

This report reflects the status of all the Berkeley City Auditor open audit recommendations. We contacted departments directly to gather recommendation status information, reviewed all outstanding recommendations, and placed the recommendations into the following status categories:

<b>Implemented/Closed</b>	Auditee has completely implemented or closed the recommendation
<b>Partially Implemented</b>	Auditee has implemented 50 percent or more of the recommendation
<b>Not Implemented</b>	Auditee has not yet taken action to implement the recommendation
<b>Will Not Implement</b>	The auditee has accepted the risk to the City that the recommendation is meant to address and is unable or unwilling to implement the recommendation

City management has continued to make significant progress toward implementing open audit recommendations. As of our last recommendation follow up report for the period ending December 2018, there were 107 open recommendations. One recommendation moved from implemented to partially implemented, bringing the total to 108. Since then, we have issued two performance audits that added 25 new recommendations.

During this reporting cycle, we verified that departments and related entities had fully addressed 53 recommendations out of the 108 (49 percent) since our last report. The results of our review for this reporting cycle are as follows:

**Figure 2: City Management Fully Addressed 53 Audit Recommendations Since December 2018**

Number of Recommendations	Status of Recommendations
53	Implemented/Closed
22	Partially Implemented
33	Not Implemented
<b>108</b>	<b>Total</b>

Note: The City has implemented or partially implemented 38 of the 71 “Not Implemented” recommendations reported in February 2019.

Source: Auditor’s analysis

## Accomplishments

Taking action on our audit recommendations leads to increased revenues and operational improvements. Several departments took action to close out all our open audit recommendations or made headway by implementing some of them. The following outlines accomplishments made as a direct result of our audits:

### Business License Taxes: Providing Better Guidance and Customer Service Will Increase Revenues

The **Finance Department** took action to increase collections by designing processes based on our audit recommendations. The Finance Revenue Collection team actively reviews delinquent accounts and successfully recouped \$1.3 million in delinquent Business License Tax accounts as of October 2019.

### Construction Permits: Monitor Performance and Fee Assessments to Ensure Excellent and Equitable Customer Service

The **Planning and Development Department** is set to install a new state-of-the-art queuing solution for the Permit Service Center and to procure a new digital permitting system. This will improve the customer service experience by reducing customer wait times and monitoring activity for process improvement needs.

### Berkeley Fire Department Ambulance Billing Follow Up Audit

The **Berkeley Fire Department** selected a new billing service provider who will actively reach out to individuals who are delinquent on paying for their ambulance service, including identifying insurance companies who could pay. Our office was instrumental in compelling the Department to fully implement this recommendation after hesitation from management. The vendor will work with individuals who are having difficulty making payments and offer payment extensions or payment plans, including a no payment option. This is expected to increase revenue needed for emergency response services.

### City at Crossroads as Long-Standing Need for Structured Approach to Line of Business Experts Function Intersects with ERP Implementation

The **Information Technology Department** defined the roles and responsibilities of those who support information systems and clarified their charges to other departments to accurately reflect the cost of service Information Technology provides to each department. This included creating service level agreements that serve as excellent models for all city departments to use in defining how they provide for and charge for services to other city departments. The agreements improve city operations through continued, consistent, and adequate support from Information Technology.

## Berkeley's Ethical Climate Rated Strong Overall and Management Working to Make it Better

The **City Manager's Office** implemented an ethics hotline that allows employees to bring forward their concerns. The City Manager's Office also created an ethics committee comprised of management personnel that serves as the lead body in supporting the citywide implementation of initiatives to build a transparent, equitable, and ethical workplace. These actions will help build a positive and supportive workplace that, in turn, will result in better public service.

## Parks, Recreation, and Waterfront On-Call Program: Ensure Equity by Developing Procedures for Charging for Services, and Improve Monitoring Practices and Communication

The **Parks, Recreation, and Waterfront Department** improved their cost-accounting practices by establishing a new system for allocating on-call charges. This action provides transparency in costs and links services to the appropriate fund. The department has also improved operations through monitoring activities and establishing guidelines for triaging after-hours calls so that staff respond to only urgent needs.

## Stronger Oversight Necessary to Ensure Continued Assistance for Severely Physically Disabled Persons

The **Health, Housing, and Community Services Department (HHCS)** incorporated the remaining open audit recommendations into the City's contract granting Easy Does It (EDI) city funding for their services. Doing so provides a mechanism by which to hold EDI accountable for addressing the risks associated with our findings and recommendations. Our office worked closely with HHCS during this audit and will continue to offer our support as they follow up on these recommendations through the contract monitoring process.

## \$52,000 Theft: More Can Be Expected Without Citywide Changes in Culture and Procedures

The **Finance Department** included a new cashiering system in the contract for enterprise resource planning software and implementation. Finance has also been doing more surprise cash counts as a deterrent to fraud and misuse, and to check on compliance with city procedures.

## Examination of Department Directors Transition Procedures Follow Up Audit

The **City Manager's Office** successfully completed property checklists for all department directors as a means for ensuring property is retrieved during director transitions, and the **Information Technology Department** clarified its guidance for issuing and retrieving communications equipment.

## Credit Card Use: Clearer Guidance Needed

The **Finance Department** improved guidance by issuing a new administrative regulation clarifying when food and beverage purchases are allowable. The policy clarifies that food purchases are limited to situations that benefit the city and requires employees to submit itemized receipts to support their purchases. Finance also issued a memo to credit-card holders that clarifies how they are to use their cards consistent with the city's various purchasing policies.

## Five Areas of Risk to the City

We have assigned each of the open audit recommendations to the five risk categories below:



**Financial loss:** fraud/misuse; reduced revenues; and similar



**Safety/health:** both to City staff and the public



**Reputational:** lack of public faith in city operations



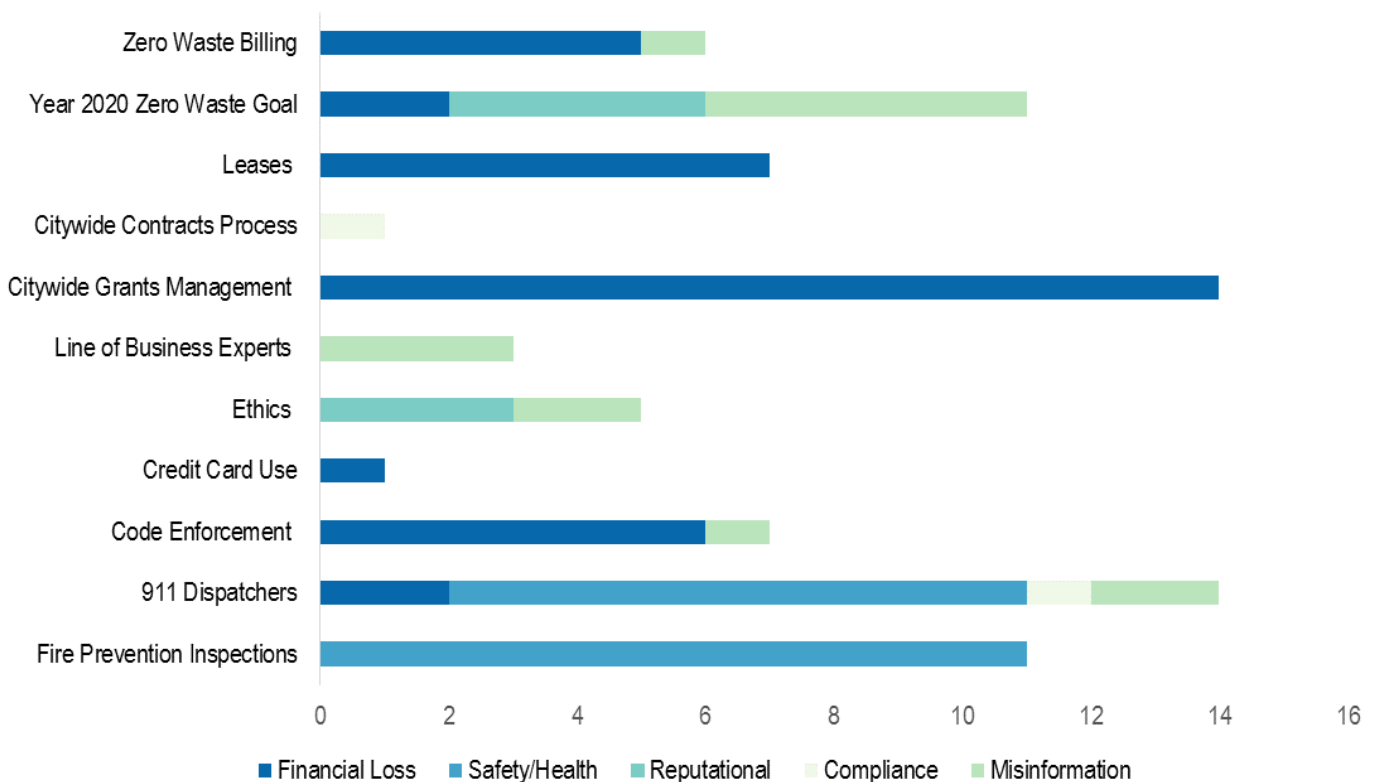
**Compliance:** failure to comply with legal requirements



**Misinformation:** management using poor/inaccurate information for budget and operational decisions

Each recommendation was categorized under one of the risk categories as shown in Figure 3. We recognize some recommendations can fall under more than one category. These additional risks can be found on the audit specific pages of this report. The chart below shows the breakdown of risks in recommendations that the City has not yet fully implemented.

**Figure 3: The Majority of Recommendations Fall Under the Financial Loss and Safety/Health Risk Categories**



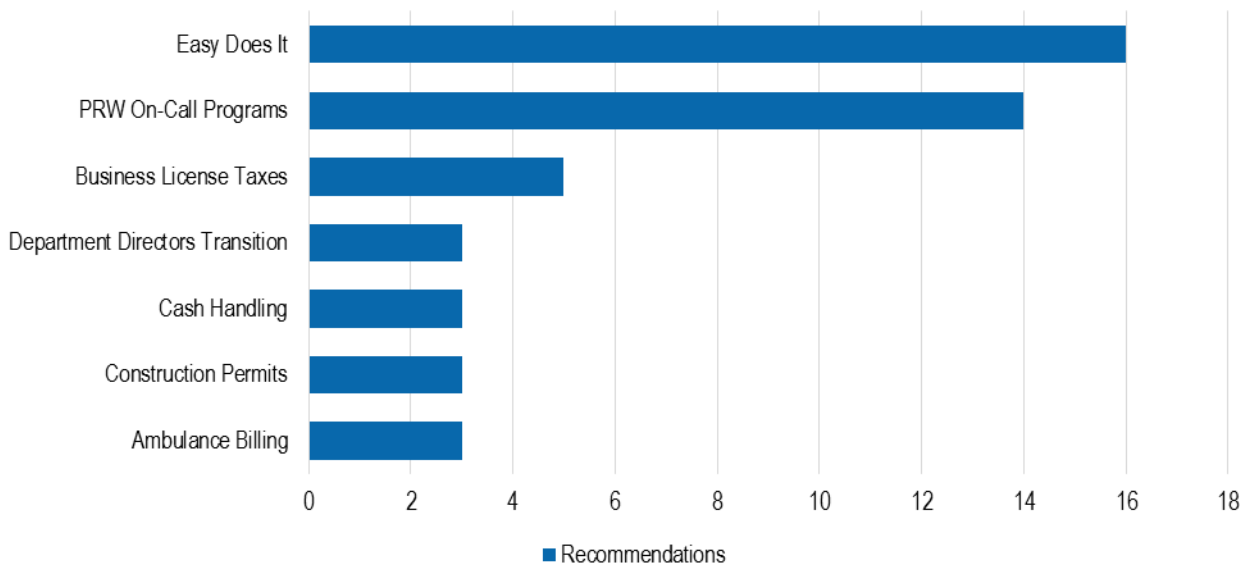
Source: Auditor's analysis

## Audits Closed Since Last Report

As of our last recommendation follow-up report for the period ending December 31, 2018, there were 16 open audit reports. An open audit report is any report that has one or more recommendations that have not been fully addressed. Since that time, seven audits have been closed. Below are the audits that were determined closed during the reporting period:

1. Stronger Oversight Necessary to Ensure Continued Assistance for Severely Physically Disabled Persons (Easy Does It) - *Health, Housing, & Community Services*
2. PRW On-Call Program: Ensure Equity by Developing Procedures for Charging for Services, and Improve Monitoring Practices and Communication - *Parks, Recreation, & Waterfront*
3. Business License Taxes: Providing Better Guidance and Customer Service Will Increase Revenues - *Finance*
4. Construction Permits: Monitor Performance and Fee Assessments to Ensure Excellent and Equitable Customer Service - *Planning*
5. Berkeley Fire Department Ambulance Billing Follow Up Audit - *Fire*
6. Examination of Department Directors Transition Procedures Follow Up Audit - *City Manager*
7. \$52,000 Theft: More Can Be Expected Without Citywide Changes in Culture and Procedures - *Finance*

**Figure 4: Seven Audits Related to 47 Recommendations Closed During Reporting Period**



Source: Auditors Analysis

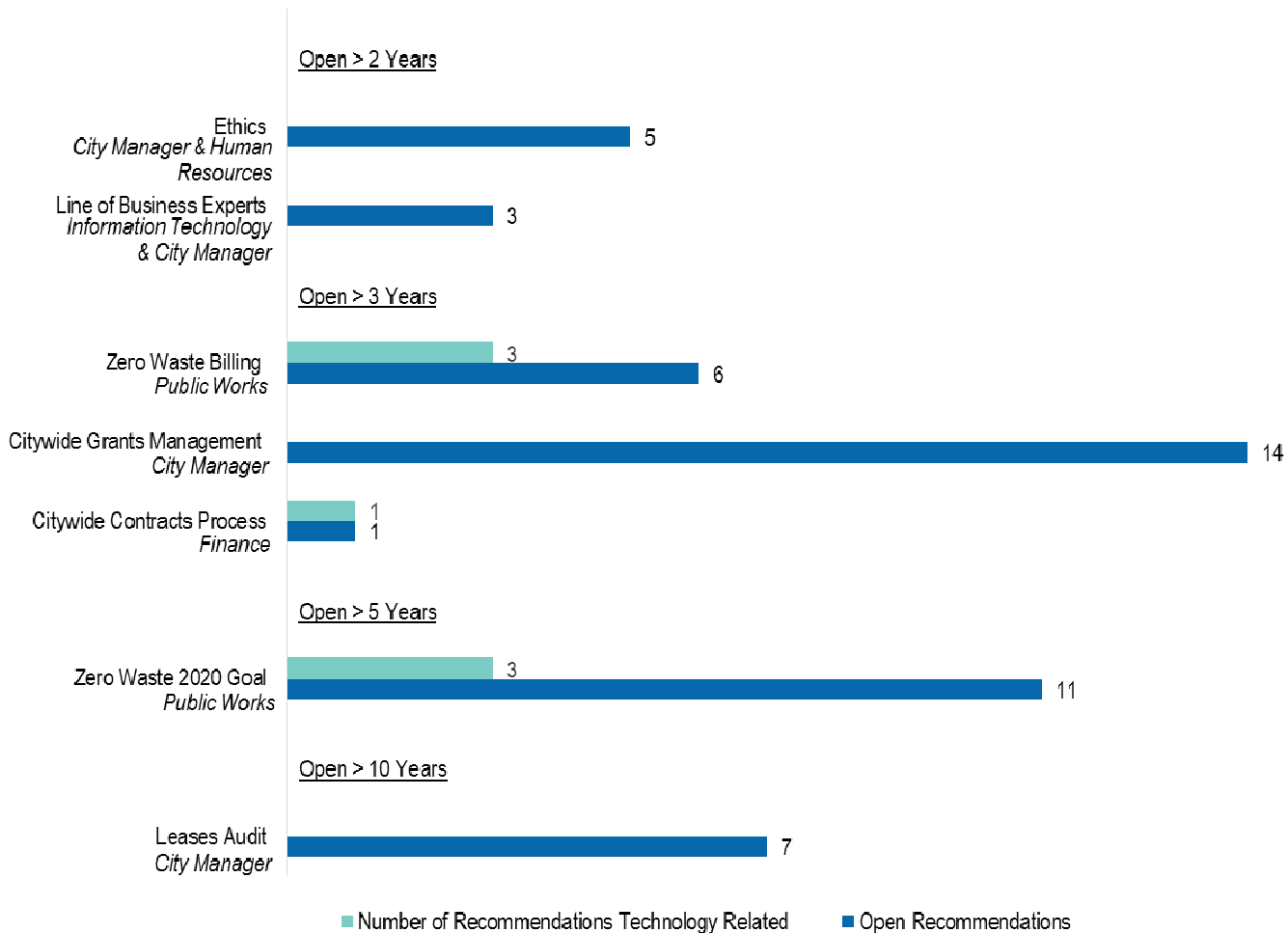
In addition to the audits closed, management reported on the progress of the seven following audits and associated recommendations:

1. **Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal - *Public Works***
2. **Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity - *Public Works***
3. **City at Crossroads as Long-Standing Need for Structured Approach to Ling of Business Experts Function Intersects with ERP Implementation - *City Manager and Information Technology***
4. **Berkeley's Ethical Climate Rate Strong Overall and Management Working to Make it Better - *City Manager and Human Resources***
5. **Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight - *City Manager***
6. **Most Contracts Executed Timely but Contract Project Managers Could Use Better Tools and Guidance - *Finance***
7. **Credit Card Use: Clearer Guidance Needed - *Finance***

## Recommendations Open More Than Two Years

The chart below shows 47 recommendations that have been open for more than two years. Of these recommendations, seven are related to technology improvements. A typical standard among performance auditors is that recommendations will be fully implemented within two years of a report issuance. We expect that technology improvements may take longer than two years to implement, but all recommendations should be implemented within a five year period.

**Figure 5: 47 Recommendations Open More Than Two Years, Only Seven Related to Technology Improvements**



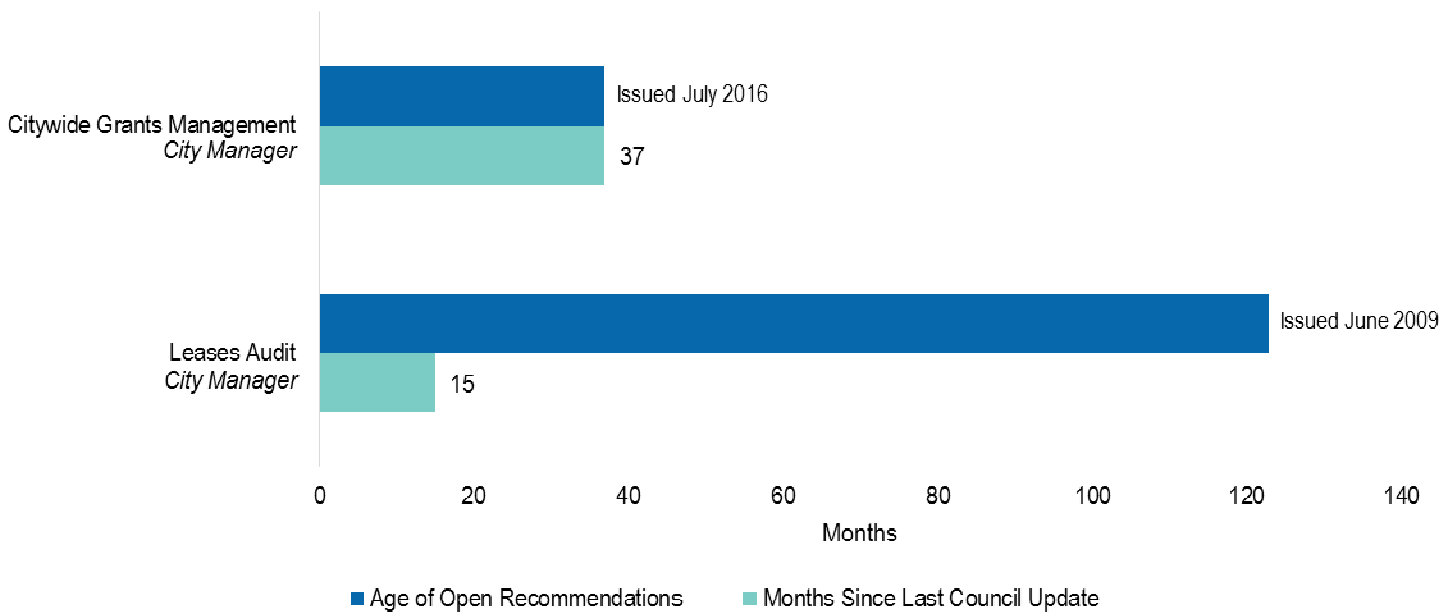
Source: Auditor's analysis



## Audits Not Reported to Council

In the last year, management reported to Council on the status of seven audit reports, however, they failed to report on the status of two audit reports with 21 open recommendations (26 percent of remaining open recommendations). Berkeley City Municipal Code allows the City Auditor to request periodic status reports from auditees regarding actions taken to address reported deficiencies and audit recommendations every six months. These status reports establish the Auditor’s ability to determine the adequacy, effectiveness, and timeliness of management’s actions to correct reported issues. Below is a chart that shows the audits that are past due for a status report to Council, including how many months since the last time reported to Council and the age of the open recommendations.

**Figure 6: Two Audits Past Due for Updates to Council**



Source: Auditor’s analysis

## Implementation Status of Open Recommendations

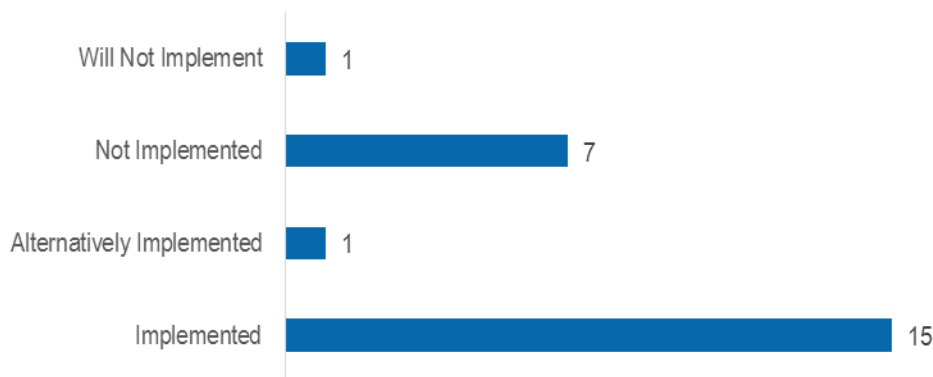
The next section of this report is broken down by open audits. Each audit page details the recommendations that are still open and what the City has done so far to implement the recommendations.

### Leases Audit: Conflicting Directives Hinder Contract Oversight

The Leases Audit contains nine findings and 24 recommendations aimed at improving the City’s facility lease oversight. Finance decided they will not implement our recommendation to establish lease performance expectations for the departments and provide a written report to the Director of Public Works on a quarterly basis. The audit was released in June 2009.

Since the audit’s release, the department has implemented 16 recommendations. Public Works created a central repository file with entries for relevant lease information. The department has also updated the lease contract review form and Administrative Regulation 6.6. Due to the length of time since we issued this report, staff turnover, and what we have learned recently about lease oversight, we do not know for certain if the previously implemented recommendations are still relevant. We only looked into open recommendations as part of this follow up report. Management has made progress towards implementing seven other recommendations. The progress for these recommendations is detailed below.

Figure 7: Seven Recommendations Need to Be Implemented to Close the Audit



Source: Auditor’s review of audit progress

#### Summary of Audit

The objective for this audit was to determine the effectiveness of the City’s facility lease oversight. Deficiencies were identified in lease oversight in particular and contracts in general. Oversight of the City’s leases has not been effective. Clear, formalized expectations regarding lease management are lacking. There is a striking disconnect between the City Manager’s Office lease management policies and procedures and actual staff practice citywide. There are weak controls and missing information, as well as apparent inefficiencies.

**Finding 1: The City’s 2002 plan to centralize property and facility lease management has not been implemented.**

1.1 The City Manager should formalize and approve the division of responsibilities between the Public Works department and other departments regarding lease management.

**Not Implemented.** The City Manager’s Office is in the process of identifying an alternative citywide approach to lease management.



Risk Category: Financial

1.2 The Public Works department should determine and formally define the role of the real property administration staff given available resources.

**Not Implemented.** The City Manager’s Office is in the process of identifying an alternative citywide approach to lease management.



Risk Category: Financial

1.3 Develop and finalize a property management plan that documents the specific responsibilities of Public Works and of other departments for lease management.

**Not Implemented.** The City Manager’s Office is in the process of identifying an alternative citywide approach to lease management.



Risk Category: Financial

1.4 The property management plan should be coordinated with affected City departments, including the Contract Administrator in Finance/Purchasing, before finalizing.

**Not Implemented.** The City Manager’s Office is in the process of identifying an alternative citywide approach to lease management.



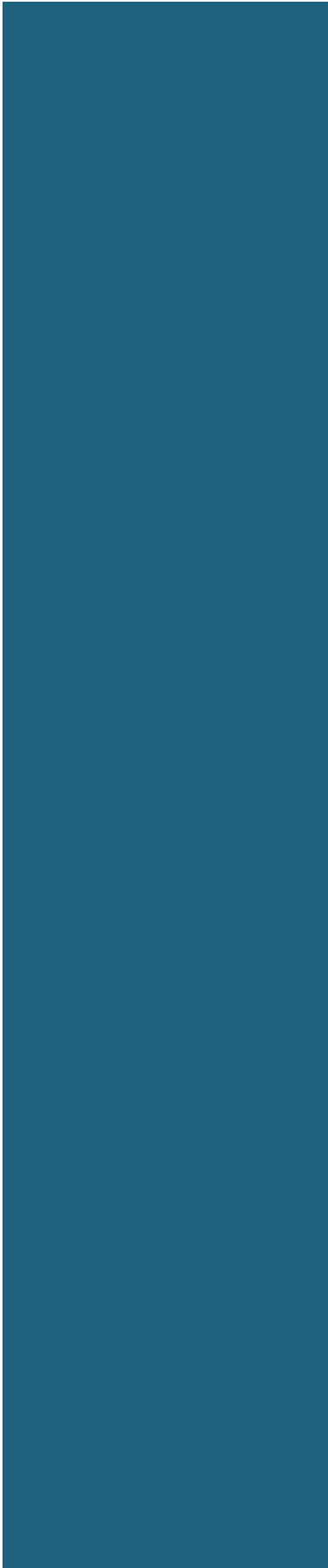
Risk Category: Financial

1.5 Formally communicate the plan with all affected City departments.

**Not Implemented.** The City Manager’s Office is in the process of identifying an alternative citywide approach to lease management.



Risk Category: Financial



**Finding 2: City Staff did not comply with City rules and regulations because the City lacks clear guidelines and simple tools for effective lease negotiations, review, approval, and oversight.**

2.1 Administrative Regulation 6.6 and Contracts Online should be updated to give clear direction to City staff regarding administration and execution of lease agreements.

**Not Implemented.** The City Manager's Office is in the process of identifying an alternative citywide approach to lease management.



Risk Category: Financial

**Finding 3: There are no performance measures to document expectations of and performance by the Real Property Administrators or departmental lease managers.**

3.3 Public Works should update the City's real property administration policies and procedures to align with management's expectations.

**Not Implemented.** The City Manager's Office is in the process of identifying an alternative citywide approach to lease management.



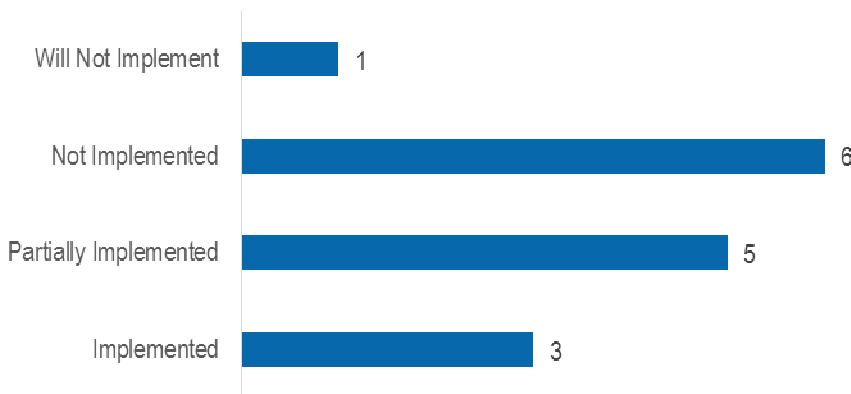
Risk Category: Financial

## Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal

The 2020 Zero Waste Goal Audit contains two findings and 15 recommendations aimed at improving Public Work’s ability to achieve zero waste by 2020. The Department is not on track to meet the City’s goal. Public Works decided they will not implement our recommendation to obtain permission to collect garbage biweekly instead of weekly. The audit was released in July 2014.

Since the audit’s release, the Public Works department has implemented three recommendations. The department has improved their public education by updating the city website and distributing press releases to educate the public about the Zero Waste Program. The Zero Waste Division also meets monthly with other departments in order to address operational and reporting needs, and has automated their Customer Relation Management system to ensure all cases undergo appropriate reviews before a case can be closed. Public Works has made progress towards implementing five other recommendation and has not implemented six. The progress for these recommendations is detailed below.

Figure 8: 11 Recommendations Need to Be Implemented to Close the Audit



Source: Auditor’s review of audit progress

### Finding 1: Insufficient data and resources (for planning, strategy, or execution) dedicated to Berkeley’s zero waste by 2020 resolution

1.1 Request the City Council to redefine and then reaffirm its commitment to zero waste (i.e., the percentage that the Council considers to be success), and to ensure sufficient resources to fund appropriate staffing and the

#### Summary of Audit

The objective of this audit was to assess the progress made toward achieving the City’s goal of zero waste by 2020 and to identify ways that data can inform management decisions. The City is at risk of not meeting Council’s goal to achieve zero waste by 2020. The City defines zero waste as reducing solid waste by reusing, recycling, and composting as well as avoiding waste as much as possible. Council has not allocated sufficient funding for reaching its zero waste goal. Public Works needs more resources to develop a comprehensive, written strategic plan that clearly defines the roles and responsibilities for those managing the zero waste program, and that assigns sufficient resources for public education and outreach. Without a clear plan, Public Works cannot properly ensure the City’s compliance with state, county, and city regulations related to zero waste objectives.

necessary infrastructure to achieve stated goals by 2020.

**Partially Implemented.** The Zero Waste Division (ZWD) has developed an RFP to: 1) develop a Zero Waste Strategic Plan to delineate terminology, 2) define and clarify what the City’s Zero Waste Goal will be, and 3) develop a plan for the division to implement to attain that goal. The RFP is in administrative review.

 Risk Category: Reputational

1.2 Draft and obtain Council approval of a written strategic plan to achieve zero waste by 2020, including annual or biennial interim waste diversion goals. Topics that the strategic plan should discuss include:

- Objectives and long-term and interim goals
- Actions to be taken
- Responsible parties
- Expected cost and impact of implementation
- Performance measures
- External factors affecting performance and progress

**Partially Implemented.** ZWD has developed an RFP to: 1) develop a Zero Waste Strategic Plan to delineate terminology, 2) define and clarify what the City’s Zero Waste Goal will be, and 3) develop plan for the division to implement to attain that goal. The RFP is in administrative review.

 Risk Category: Reputational

1.3 Prepare detailed annual work plans that contain:

- Objectives
- Annual/biennial (short-term) goals
- Actions to be taken
- Budget allocated for the actions
- Timeline for completion
- Lead staff responsible for task completion
- Full-time equivalent employees assigned to the tasks
- Performance measures

**Partially Implemented.** Public Works is drafting an RFP for a Zero Waste Strategic plan to guide the City’s policy and decision making and paths of implementation to the goal of Zero Waste. IT and the

ZWD are in the process of selecting a vendor to implement an entirely new Zero Waste software solution that includes routing, billing, and work orders. Once the new software system is in place and the Strategic Plan has been completed, a more accurate work plan could be created that would include performance measures.

 Risk Category: Reputational

1.4 Regularly communicate zero-waste goals and achievements to City staff and the Council, and offer training to staff on how they can help Berkeley achieve zero waste. This includes sharing strategic and annual work plan goals and regular updates regarding progress and completion.

**Partially Implemented.** City staff have been encouraged to participate in the visioning sessions for the Transfer Station redesign in January 2019. Also, the Zero Waste Division has developed an RFP to develop a Zero Waste Strategic Plan. Once the strategic plan is completed, it will be shared with City staff.

 Risk Category: Reputational

1.5 Determine if additional funds are needed for the education, outreach, compliance, and enforcement necessary to reach zero-waste goals. If sufficient funds are not available, propose to Council a separate fee to cover those costs for the City's zero-waste program, such as a regulatory fee as allowed under Proposition 218.

**Partially Implemented.** Public Works has determined through the internal budget process that Zero Waste needs two additional full time staff members to oversee the education, outreach, compliance, and enforcement necessary to reach zero-waste goals. The Zero Waste Division will be determining additional funding beyond staffing needed to increase education, outreach, compliance, and enforcement during the strategic planning process.

 Risk Category: Financial

## Finding 2: Limited use of available technologies affects operational efficiencies

2.1 Work with the Department of Information Technology to configure the CRM system with a required field that auto populates valid route information based on address and service delivery type so that

route-specific data can be collected on a going-forward basis.

**Not Implemented.** IT released an RFP on behalf of Public Works for Zero Waste Management software in October 2018. The new system will require route optimization and will have an onboard system for drivers containing route information based on address and service delivery type so that route-specific data can be collected on a going-forward basis. The details of this system will be evaluated and developed as part of implementation.



Risk Category: Misinformation

2.2 Work with the Department of Information Technology to create a link between RouteSmart and the CRM system (or the software implementation of Recommendation 2.5 below).

**Not Implemented.** Working with RouteSmart for further integration was deemed not worthwhile as that system does not integrate with ArcGIS, which is the City's primary system for spatial data. IT released an RFP on behalf of Public Works for Zero Waste Management software in October 2018.



Risk Category: Misinformation

2.4 Designate a business-line expert within the Zero Waste Division and require that expert to develop internal capacity to configure optimal collection routes and produce standardized reports for route-specific reporting using existing software (or the software implementation of Recommendation 2.5 below). The reports developed should allow measurement of the performance metrics developed in Recommendation 1.2 and 1.3 above.

**Not Implemented.** Additional staffing positions have been proposed as part of the budget process with both the Senior Solid Waste Supervisor and an Associate Management Analyst being tasked with route optimization once new software has been identified and implemented. An RFP process for this software is currently underway.



Risk Category: Misinformation



2.5 Assess the benefits of using mobile technologies that would allow drivers to enter information directly into the CRM system while on their routes, take pictures of why pickups were skipped, and implement electronic route books and other mobile field reporting. Include in the assessment changes to job responsibilities that might require a meet and confer with union representatives. Purchase the software and hardware if cost beneficial.

**Not Implemented.** The new software system will utilize onboard mobile hardware. In addition, this system will integrate with the new GPS solution which will integrate with the Zero Waste solution to allow for real time decision making and route information.

 Risk Category: Misinformation

2.7 Use the reports developed from implementing recommendation 2.4 to monitor customer complaints and determine what impact the annual bid process has on customer service. If the information demonstrates the annual bid process significantly affects customer service, meet and confer with union representatives to discuss the elimination the annual route bidding process to help reduce customer complaints and improve service delivery. Implement change if agreement is reached.

**Not Implemented.** The Zero Waste Division is now in a position to numerically determine if the annual bid system is affecting customer service. When this information for the bid process is analyzed, Zero Waste will have the information to meet and confer with the Union.

 Risk Category: Misinformation

2.8 Create a method for community members to track the status of their cases online, which will reduce the call volume to the 311 Call Center.

**Not Implemented.** The City is in the process to replacing Zero Waste and Customer Service software. One of the objectives of these new systems is to provide customers the ability to track their requests.

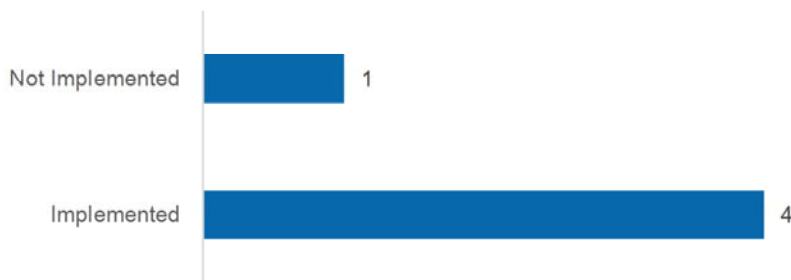
 Risk Category: Financial

## Most Contracts Executed Timely but Contract Project Managers Could Use Better Tools and Guidance

The Contracts Audit contains one finding and five recommendations aimed at improving the City’s contracting process and ensure that contracts are fully executed before work is performed. The audit was released in October 2015.

Since the audit’s release, the department has implemented four recommendations. Finance has improved contract planning resources by providing training and contract preparation timelines for project managers. The City has also included contract management needs as part of the City’s Enterprise Resource Planning. Finance has not implemented one recommendation. The progress for the recommendation is detailed below.

Figure 9: One Recommendation Needs to Be Implemented to Close the Audit



Source: Auditor’s review of audit progress

### Finding 1: The City vastly improved its performance in securing fully executed agreements before contract work commences, but barriers to full compliance must be addressed

1.5 Require departments to document their specific procedures for contract preparation, oversight, and management. Procedures should include:

- planning for department specific actions, e.g., obtaining management’s approval
- tracking contract status and funding needs
- attending City training courses when offered, e.g., contract preparation and FUNDS 101
- describing shared contract management responsibilities between project managers and support staff
- requiring project managers to coordinate with and respond to support staff’s needs for contract administration

#### Summary of Audit

The objective of this audit was to determine whether the City had allowed vendors to perform work without a fully executed contract in place. Our review of 226 expenditure contracts entered into in fiscal year 2014 determined that the City did not have fully executed contracts in place prior to commencement of services in 15 of those contracts, or 7 percent. In total, the City incurred costs in the amount of \$80,498 for vendor services provided without fully executed contracts in place. The primary obstacles preventing the City from executing all of its contracts in a timely manner are (1) the lack of an effective contract management system; (2) inadequate training and procedural guidance for staff assigned as project managers; and (3) inadequate planning for contracts.

- requesting contract extensions
- aligning contract needs with department work plans
- using Finance's contract process timelines and On Demand report of expiring contracts for contract planning (also see recommendations 1.1 and 1.2)
- minimum level of documentation needed to effectively manage contracts

**Not Implemented.** Finance is planning to alternatively implement this recommendation. The department is going to revamp Contracts Online and will include a section that identifies departments responsibilities based on the recommendation.

Risk Category: Compliance

## Citywide Grants Management (formerly titled Public Works Grants Follow-up Audit FY16)

The Citywide Grants Audit contains one finding and 15 recommendations aimed at improving the City’s grant management process to prevent the loss of grant revenue and provide management and staff with accurate and timely information. The audit was released in July 2016. Our office changed that audit title to clarify that the changes are needed on a citywide level and not just in the Public Works Department (PW).

Since the audit’s release, the department has implemented one recommendation. The City Manager’s Office updated the Administrative Regulations related to grants and Finance added language to contracts online clarifying that all grants must be packaged in accordance with Contracts Online procedures. Management has not made progress towards implementing the 14 remaining recommendations. Details regarding these recommendations are below.

Figure 10: 14 Recommendations Need to Be Implemented to Close the Audit



Source: Auditor’s review of audit progress

### Finding 1: Of our six original recommendations, only one is currently implemented, two are partially implemented, and three are unimplemented

1.1 Issue an internal policy assigning the division responsible for overall grants accounting (e.g., billing and monitoring receivables) and reporting. Make it clear to project managers that they are responsible for providing information on the grants they manage to the appointed division to assist with grants accounting.

**Not Implemented.** PW gave no information on its plan to implement at the time of issue, however, the City Manager’s Office is looking into how to address the issue because it is citywide. The City Manager’s Office has not yet identified an action plan. Council needs

### Summary of Audit

The objective of this audit was to follow up on the status of our previous audit recommendation to determine whether management’s action plans are still in place, and, if not, examine why they became unimplemented. Though management previously reported all six of our recommendations as implemented, only one is currently implemented, two are partially implemented, and three are unimplemented. There is a lack of clear procedural guidance and well-defined roles and responsibilities. The absence of these vital internal control components has created confusion among staff as to who or what department is responsible for procedures.

an update on actual actions management took to address our recommendation.



Risk Category: Financial

1.2 Create a work team of Public Works staff who administer and manage grants. Team members should include the position responsible for overall grants accounting and reporting, and staff from the divisions that manage grants (e.g., Engineering and Transportation). The team should work collectively to evaluate their respective functions and their interrelated roles and responsibilities for grants management, billing, and accounting; and work towards developing an effective workflow that provides for accurate and timely grants accounting and reporting.

**Not Implemented.** PW gave no information on its plan to implement at the time of issue, however, the City Manager's Office is looking into how to address the issue because it is citywide. The City Manager's Office has not yet identified an action plan. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

1.3 Require the grants team to work collectively to develop a written procedures manual that clearly explains roles, responsibilities, and workflows. The manual should:

- provide guidance on the overall grant application, approval, and monitoring process within the department
- refer to other applicable policies and procedures such as City Administrative Regulation 1.17 and Contracts Online
- describe the specific tasks performed within divisions and/or by job classification
- identify the forms and data sheets that staff are to use for recording, tracking, and monitoring grants (also see Recommendations 5.1 and 6.2)
- describe coordinating efforts needed between divisions and with the grant coordinator in Finance
- identify timelines and requirements for reporting, performing

reconciliations, and providing information to the Finance grant coordinator (also see Recommendation 2.2)

- provide enough detail to more easily train new hires or staff with new responsibilities

**Not Implemented.** PW gave no information on its plan to implement at the time of issue, however, the City Manager's Office is looking into how to address the issue because it is citywide. The City Manager's Office has not yet identified an action plan. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

1.4 Require the grants work team to have regular meetings to share information and discuss workflows between their divisions. These meetings may need to be more frequent at first, e.g., quarterly, and less frequent over time, e.g., annually. The team should invite the Finance grant coordinator to their meetings to ensure the coordinator is receiving the necessary information for recording grants to the central repository and issuing grants receivables reports.

**Not Implemented.** PW gave no information on its plan to implement at the time of issue, however, the City Manager's Office is looking into how to address the issue because it is citywide. The City Manager's Office has not yet identified an action plan. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

2.1 Provide the Finance grant coordinator with a list of personnel who are responsible for grants management, accounting, and reporting so that they can be notified when the grant coordinator posts the grants reports to the City's shared drive.

**Not Implemented.** PW gave no information on its plan to implement at the time of issue, however, the City Manager's Office is looking into how to address the issue because it is citywide. The City Manager's Office has not yet identified an action plan. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

2.2 Require the division responsible for grants accounting and reporting to use Finance's grant reports to:

- reconcile Public Works' grant financial records with FUNDS to ensure that the department is recording expenditures and payments to the correct accounts
- work with Finance to make any necessary corrections to FUNDS financial data when they identify discrepancies and errors

**Not Implemented.** PW gave no information on its plan to implement at the time of issue, however, the City Manager's Office is looking into how to address the issue because it is citywide. The City Manager's Office has not yet identified an action plan. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

3.1 Take ownership of City Administrative Regulation 1.16 and:

- review and update the regulation so that it is consistent with City practices and procedures, and cross reference the regulation to other guidance and policies, e.g., Contracts Online and City Administrative Regulation 1.17
- reissue the updated guidance to all City staff with emphasis on ensuring that project managers and those responsible for identifying and applying for grant funding are notified of the update

**Not Implemented.** PW gave no information on its plan to implement at the time of issue, however, the City Manager's Office is looking into how to address the issue because it is citywide. The City Manager's Office has not yet identified an action plan. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

4.1 Request that all department directors notify their grant management and accounting staff of City Administrative Regulation 1.17, and their expectations that staff adhere to the guidance.

**Not Implemented.** PW gave no information on its plan to implement at the time of issue, however, the City Manager's Office is looking into how to address the issue because it is citywide. The City Manager's Office has not yet identified an action plan. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

5.1 Require those responsible for grant accounting use the summary of charges sheet and work with project managers and the Finance grant coordinator to obtain the data they need to populate the sheet (also see Recommendations 1.3 and 1.4).

**Not Implemented.** PW gave no information on its plan to implement at the time of issue, however, the City Manager's Office is looking into how to address the issue because it is citywide. The City Manager's Office has not yet identified an action plan. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

6.1 Require that all department directors ensure that their staff with grants management and fiscal responsibilities receive the following training:

- City Administrative Regulation 1.17: Pre-Award Authorization and Post-Award Grant Requirements
- Contracts Online, in particular, the revenue contract requirements

**Not Implemented.** City Manager said office will coordinate training sessions. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

6.2 Require all departments that receive financial assistance from a third-party to ensure that their written procedures clarify that all such awards are consider grants and must be packaged in accordance with



Contracts Online, and to follow City Administrative Regulation 1.17 to ensure that the grant coordinator receives the grant accounting data sheet (also see Recommendation 1.3).

**Not Implemented.** City Manager said office will coordinate training sessions. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

6.3 Notify department directors when the grant coordinator finds that project managers and administrative staff are not providing grant information in accordance with City policy. Request that the department directors refer their staff to City Administrative Regulation 1.17, Contracts Online, and departmental procedures for guidance on ensuring they adhere to required grant policies and procedures.

**Not Implemented.** Finance said they will draft correspondence. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

6.5 Survey project managers and administrative staff who are responsible for grants management, reporting, and accounting to identify ways to improve the current grant database and reporting so that data are current and accurate, and reports are more user-friendly.

**Not Implemented.** Finance said they will survey project managers. Council needs update on actual actions management took to address our recommendation.



Risk Category: Financial

6.6 Use the information learned from surveying project managers and administrative staff (Recommendation 6.5) to identify critical business needs for the purchase of a comprehensive grants management system. Provide this information to the Department of Information Technology to use as part of Enterprise Resource Planning.

**Not Implemented.** Finance said they will survey project managers. Council needs update on actual actions management took to address our recommendation.



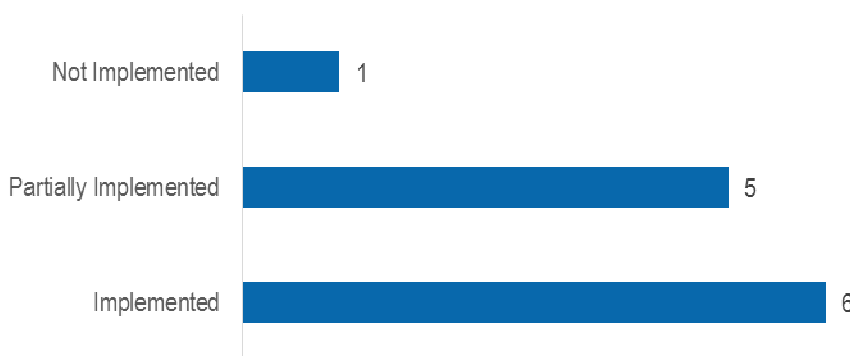
Risk Category: Financial

## Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity

The Zero Waste Billing Audit contains one finding and made 12 recommendations aimed at improving the City’s Zero Waste activities to minimize billing errors, improve customer account management, and provide management with data to analyze its zero waste strategies. The audit was released in September 2016.

Since the audit’s release, Public Works has implemented six recommendations. The department has implemented a cross-departmental Zero Waste Team that meets monthly to discuss operational issues and has hired a Zero Waste Division Operational Manager with cross-functional responsibilities with other departments associated with Zero Waste. The department has made progress toward implementing five out of twelve recommendations. During this reporting period, one recommendation moved from implemented to partially implemented.

Figure 11: Six Recommendations Need to Be Implemented to Close the Audit



Source: Auditor’s review of audit progress

### Finding 1: Integrated thinking about zero waste operations will help ensure accurate billings and customer equity

1.3 Require the zero waste team formed in response to recommendation 1.2 to develop written procedures that clearly support cross-departmental strategies and help staff perform their work, as well as understand how their work contributes to success. Include information that helps promote the unified view of zero waste operations, while also explaining the individual tasks that take place within the departments and how those connect. Examples include, but are not limited to, describing the process for routing

#### Summary of Audit

The objectives of this audit were to assess whether the City is correctly billing customers based on their actual refuse collection service levels; whether all Berkeley residents are signed up to receive refuse services as required by the BMC; and whether there are opportunities for improving both refuse and service delivery operations. Berkeley’s overall information systems architecture for zero waste activities results in inefficient use of staff time, billing and service delivery errors, and barriers to effective account management. Currently, staff are burdened by manual workflows. This is arduous work that takes staff away from other service delivery and revenue collection needs and led to rate adjustment, billing, and service level errors:

- 347 customer accounts were not accurately updated with the new 2015 zero waste rates, leading to approximately \$38,000 in underbillings and \$29,000 in overbillings for the City’s first billing cycle of the new fiscal year.
- Four percent of customer service-level changes did not result in the necessary updates in the zero waste billing system.
- 21 percent of customer service-level changes did not make it into RouteSmart.

customer cases from 311 calls, and detailing in layman's terms the monthly updates that take place to align the CX and RouteSmart systems. Also see recommendation 1.2.

**Partially Implemented.** IT released an RFP on behalf of Public Works for Zero Waste Management software in October 2018. The RFP was for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System and a Route Optimization System.



Risk Category: Financial

1.5 In collaboration with Information Technology and as part of Enterprise Resource Planning, budget for, select, and install an account management system designed for zero waste activities. Use information from the zero waste team evaluation (recommendation 1.2) and zero waste strategy analysis (recommendation 1.8) to identify the critical business needs that should be included in the purchase of new zero waste account management system, or that should be considered when determining whether sufficient middleware options exist to fully integrate existing systems with the new account management software. Also see recommendations 1.2 and 1.8.

**Partially Implemented.** IT released an RFP on behalf of Public Works for Zero Waste Management software in October 2018.



Risk Category: Financial

1.8 Request that Information Technology use the CX module data extracts, such as the one used for this audit, to provide Public Works staff with the data they need to analyze zero waste strategies. Use the data extracts to further identify the critical business needs for new zero waste account management software. Also see recommendation 1.5.

**Partially Implemented.** IT released an RFP on behalf of Public Works for Zero Waste Management software in October 2018.



Risk Category: Misinformation

1.9 Perform, or contract for, a fully comprehensive route audit to align service delivery with billing rates. Use the route audit to:

- Make CX module and/or RouteSmart system updates to ensure

customers are billed correctly for their City provided services.

- Ensure that all residential accounts are receiving required services.
- Ensure that the commercial accounts that the City is responsible for receive and pay for the zero waste services required by City policy.
- Verify that roll-off bin customers serviced by the Zero Waste Division are accurately billed.

**Partially Implemented.** IT released an RFP on behalf of Public Works for Zero Waste Management software in October 2018.



Risk Category: Financial

1.11 When drafting the new franchise hauler agreements:

- Clearly define the fee calculation requirements.
- Clearly define the type of financial data and reports that the haulers must submit to support their fee calculations.
- Create and enforce the use of standardized forms for the franchise haulers to use when remitting their fees to facilitate Public Works staff's review.

**Not Implemented.** Zero Waste does not anticipate issuing new Franchise Agreements but will work with the three existing Franchisees during the next Franchise Agreement renewal process in 2020 to enhance reporting requirements.



Risk Category: Financial

1.12 Continue to investigate whether the franchise hauler erroneously removed recyclables from its fee calculations and, if so, back bill as allowable, per state law and city code.

**Partially Implemented.** Beginning in March 2018, the Zero Waste Division began collecting commercial waste in house, except for roll-off and compactor services. Written procedures that describe the correct calculations are in progress in concurrence with the implementation the City's new financial system.



Risk Category: Financial

## City at Crossroads as Long-Standing Need for Structured Approach to Line of Business Experts Function Intersects with ERP Implementation

The Line of Business Experts Audit contains one finding and five recommendations aimed at preparing for the City’s Enterprise Resource Planning implementation. The audit was released in January 2017.

Since the audit’s release, the Department of Information Technology (IT) has implemented two recommendations. IT developed Service Level Agreements that include the description of services, and presented cost allocations to all appropriate departments. IT has made progress towards implementing the remaining three recommendations. Details regarding these recommendations are below.

Figure 12: Three Recommendations Need to Be Implemented to Close the Audit



Source: Auditor’s review of audit progress

### Finding 1: Underdeveloped line of business experts function poses risks for City’s ERP implementation

1.1 Clearly define the purpose, responsibilities, minimum qualifications, and training requirements for the line of business experts function.

**Partially Implemented.** The Department of IT is working to define templates for roles and responsibilities for the projects as the new systems are implemented.

 Risk Category: Misinformation

1.2 Work with Information Technology to establish written policies and procedures for the line of business experts function at the appropriate organizational level based on the guiding principles established in Recommendation 1.1.

#### Summary of Audit

The objective of this audit was to determine if the City had developed a structured approach to its line of business experts function that defines the purpose and function; establishes minimum qualifications and training requirements; delineates the roles and responsibilities of all parties involved; and clearly documents these elements in service level agreements between IT and its client departments. We found that the City had not addressed the long-standing need for a structured approach to its line of business experts function. The frustration caused by the lack of a structured approach was reflected in many of the responses to our survey of the City’s 38 line of business experts. Approximately 57 percent of participants surveyed said they had some level of difficulty in getting information about their roles and responsibilities, and half of them expressed some frustration with the lack of clarity of information provided. Three respondents were unaware of their designation as line of business experts. Only 38 percent felt they were adequately prepared for the job.

**Partially Implemented.** With ERMA implementation, new information is being collected that would identify roles and responsibilities of the line of business experts.



Risk Category: Misinformation

1.5 Work with Human Resources to revise the job classification used for the portfolio coordinator position. Minimum qualification factors might include, but are not limited to:

- IT Governance/Portfolio Management experience;
- Project Management Professional certification;
- Project coordination experience; and
- Excellent verbal and written communication skills.

**Partially Implemented.** IT is working with Human Resources Department to release an RFP to complete classification studies.



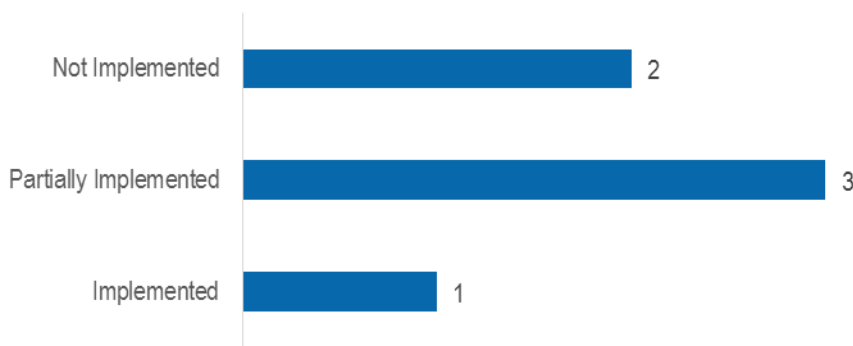
Risk Category: Misinformation

## Berkeley's Ethical Climate Rated Strong Overall and Management Working to Make it Better

The Ethics Audit contains one finding and six recommendations aimed at strengthening the City's ethical climate. The audit was released in March 2017.

Since the audit's release, Human Resources (HR) has implemented one recommendation. The City Manager's Office issued a new code of ethics, created a formal ethics committee, and implemented an ethics hotline. HR has made progress towards implementing three other recommendations and has not implemented two recommendations. Details regarding these recommendations is below.

Figure 13: Five Recommendations Need to Be Implemented to Close the Audit



Source: Auditor's review of audit progress

### Finding 1: The City can improve service delivery, employee morale, and public trust by further strengthening its ethical climate

#### 1.2 Promote ethical standards to employees and the public by:

- 1) Including the City's ethics statement in the new employee packet and discussing the City's commitment to ethical standards in new employee orientation
- 2) Providing all employees with training covering the City's ethics related policies and incorporating key aspects of the Fair Political Practices Commission ethics training
- 3) Providing a variety of ways to access ethics information and resources for employees, including those with no regular computer access at work, such as:

#### Summary of Audit

The objective of this audit was to determine whether Berkeley's workplace ethical climate promotes trust, positive leadership, and doing the right thing, and, if not, identify the problem areas and what can be done to address them. We surveyed Berkeley employees to learn whether they believe their workplace promotes honesty, fairness, respect, trust, and good stewardship of public resources. Overall, employees rated Berkeley as having a strong ethical climate. Support staff gave the City's ethical climate lower ratings than management when asked about rewarding employees based on performance; being encouraged to speak up about ethically questionable situations; and understanding where to turn for ethics advice.

- Posters and wallet cards
- Centralized, intranet based ethics resource center
- Periodic inclusion of ethics statement in Berkeley Matters

4) Emphasizing the City's commitment to workplace ethics during formal meetings, informal staff discussions, and regular communications with outside parties

5) Making the code of ethics available to the public, such as including the ethics code and related material in a centralized location on the City's public internet

**Partially Implemented.** New code of ethics is discussed as part of new employee orientation; city is incorporating ethics in different training modules, including supervisors and managers training; and new ethics committee is identifying new channels to promote code of ethics.

 Risk Category: Reputational

1.3 Provide supervisors and midlevel management with written guidance and training on how to:

- Initiate and encourage discussions of ethical issues to help dispel misconceptions and alert management to actual problems
- Report concerns or complaints to management or an external resource, and conduct investigations of ethics related complaints according to the City's procedures

**Partially Implemented.** The Human Resources department provides a New Supervisor training to all new supervisors/managers and supervisors/managers who are new-to-the-city. This training includes guidance on the ethical expectations for public employees and city policies relating to ethics.

 Risk Category: Reputational

1.4 Develop a system for tracking, analyzing, and reporting on suspected misconduct, including written guidance and forms (or similar) to assist employees in making reports.

**Not Implemented.** Currently, the City relies on Microsoft Excel to track reports of suspected misconduct. The Human Resources



department is working with the IT department to identify and procure a modern case management system.

 Risk Category: Misinformation

1.5 Provide employees and the City Council with summary reports about investigation and resolution of employee ethics complaints, such as the reports already provided about EEO complaints, taking care to protect confidential and identifying information.

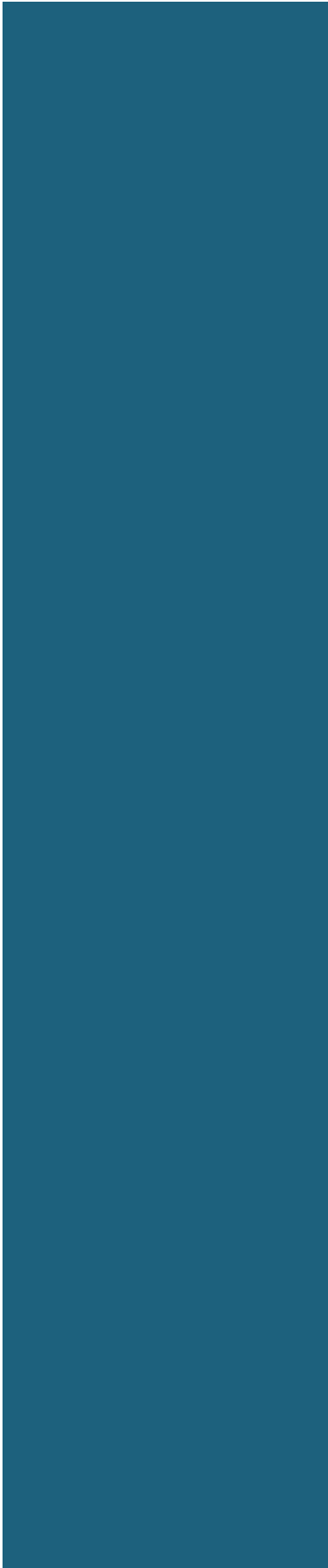
**Not Implemented.** No Progress.

 Risk Category: Reputational

1.6 Monitor and regularly evaluate the effectiveness of the ethics program and make improvements based on results.

**Partially Implemented.** The HR department is working with IT to identify and procure a modern case management system which will aide in analysis and evaluation efforts.

 Risk Category: Misinformation

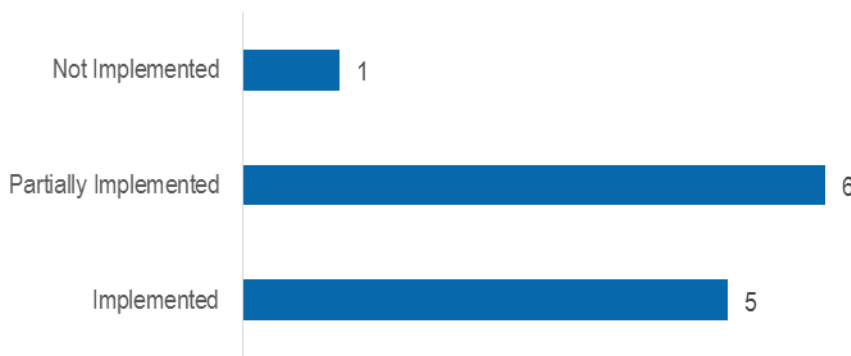


## Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight

The Code Enforcement Audit contains two findings and 12 recommendations aimed at improving the City’s processes for effective code enforcement. The audit was released in June 2018.

Since the audit’s release, the Code Enforcement Unit has implemented five recommendations. Code Enforcement has created a new procedure manual and implemented a complaint matrix that identifies the process workflow and enforcement authority of common complaints. City Council passed Resolution No. 68726-N.S. creating a new Policy Committee structure. The Department has made progress towards implementing five other recommendations and one recommendation remains not implemented. Details regarding these recommendations is below.

Figure 14: Seven Recommendations Need to Be Implemented to Close the Audit



Source: Auditor’s review of audit progress

### Finding 1: Code Enforcement Unit resources are insufficient to meet demand.

1.1 Implement a resource analysis process by which proposed legislation is discussed with City management to evaluate the impact on current City resources and determine the feasibility of making the intended impact. The analysis should take place before the policy is presented to Council for adoption and include considerations of:

- Staff time and other City resource needs, including the fiscal impact of those resource needs
- Opportunity cost, i.e., consideration of other activities that will be deprioritized in order to meet new demands

#### Summary of Audit

The objective of this audit was to determine whether the Code Enforcement Unit has the resources it needs to enforce City codes and whether it has reliable processes for effective enforcement. We found that the Code Enforcement Unit lacks sufficient resources. The unit has been dealing with years of unstable staffing and lacks modern technological solutions to perform its work, yet has experienced an overall workload increase. Code violations captured via Berkeley’s community call center are on the rise and workload expectations continue to expand as the City Council passes more ordinances requiring code enforcement activities. Despite these increases, the CEU has remained budgeted at four full-time equivalents with insufficient attention given to improving processes for more effective use of limited resources. We determined that Council passes some ordinances without fully analyzing the resources needed for enforcement and without understanding current staffing capacity.

- Feasibility impact to determine how best to rollout out new legislation

**Partially Implemented.** City Council adopted Resolution No. 68726-N.S., which included the framework and procedures for standing Policy Committees as part of the City’s legislative process. During the Policy Committee review of resolutions, ordinances, and referrals, staff will undertake a high-level, preliminary analysis of potential costs, timelines and staffing demands associated with the item. Reports leaving a Policy Committee must adequately identify budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.



Risk Category: Financial and Safety/Health

1.3 Conduct a staffing analysis to determine the appropriate staffing level needed for the Code Enforcement Unit to effectively enforce City codes. In conducting the analysis, include an assessment of the workload impact created by the codes for which the CEU is solely responsible as well as those created by the codes for which CEU shares responsibility with other enforcement units.

**Partially Implemented.** Staff released an RFP for a staffing analysis. The RFP did not generate any proposals and will be reposted.



Risk Category: Financial and Safety/Health

1.4 Use the staffing analysis performed in response to Recommendation 1.3 to:

- Quantify the full burden cost of additional staff
- Determine if sufficient budgetary funding is available for additional staff
- Request additional staffing from Council during the annual appropriations process

**Not Implemented.** No progress.



Risk Category: Financial and Safety/Health

1.5 If budgetary constraints prevent additional staffing or if Council does not approve the budget needed to fund additional staffing, report to Council the restrictions placed on the Code Enforcement Unit's ability to effectively enforce City codes. Include information explaining the hindrance this will cause for any new ordinances the City Council may want to pass in the future. Provide this information regularly, for example, annually as part of the budget process, to keep Council informed of the CEU's capacity restrictions. See also Recommendation 1.7.

**Partially Implemented.** CEU and the Planning Department negotiated the relocation of the Assistant Planner position, which was vacant, to the Planning Department's Land Use Planning Division. All enforcement associated with the position, which includes use permit, short term rental, and zoning code enforcement will transition with the position.



Risk Category: Financial and Safety/Health

1.7 Implement code enforcement software that:

- Identifies case assignment to CEU officers and other work units
- Prioritizes cases, in particular high-risk cases posing health and safety risks
- Captures pertinent case dates, e.g., opened, notice of violation, citation issuance, and closed
- Tracks enforcement actions taken within the CEU and other work units
- Quantifies citations issued and collected
- Allows for readily identifying repeat offenders
- Includes performance measurement tools, e.g., turnaround times within defined specifications (see Recommendation 2.2)
- Allows for uploading information from mobile technologies (see Recommendation 1.8)
- Includes reporting tool to showcase workload trends and capacity restrictions (i.e., backlogs)

**Partially Implemented.** CEU staff continues to work with IT and have researched Red Alert, currently used by the Fire Department, and AMANDA, the software being considered by Environmental Health to replace Envision Connect.



Risk Category: Financial and Safety/Health

1.8 Implement mobile computers and printers to allow Code Enforcement Officers to complete more work in the field, thus improving their time spent in the community and reducing time in the office. Mobile computers should have the capacity to interface with the code enforcement case management software implemented in response to Recommendation 1.7.

**Partially Implemented.** At this time, CEU's software does not support printing documentation in the field. Manual notices will continue to serve this function until such time as the enforcement software described in Recommendation 1.7 is implemented, and can support printing documents in the field.



Risk Category: Financial

2.2 Implement performance metrics and goals to:

- Assess the effectiveness of code enforcement operations and goal achievement
- Identify constraints preventing goal attainability.
- Submit regular reports, e.g., biannually, to City management on performance.

Include a metric to provide at least some proactive code enforcement activities. Develop this metric after implementing the process and system improvement recommendations made in this report.

**Partially Implemented.** CEU provides a monthly report to City management on the unit's performance, which notes constraints to goal attainability and includes a breakdown of proactive code enforcement activities conducted in the preceding month.



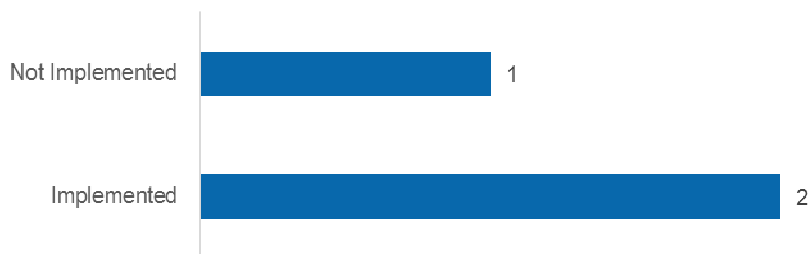
Risk Category: Misinformation

## Credit Card Use: Clearer Guidance Needed

The Credit Card Audit contains one finding and three recommendations aimed at improving the City’s internal controls related to credit card use. The audit was released in June 2018.

Since the audit’s release, Finance has implemented two of the recommendations and has not addressed one. Details regarding open recommendations are below.

Figure 15: One Recommendation Needs to Be Implemented to Close the Audit



Source: Auditor’s review of audit progress

### Finding 1: Credit Card use practices out of alignment with City purchasing policies

1.3 Align City policies and procedures reflecting purchasing requirements and restrictions: purchasing; travel and attendance; petty cash; credit card use; food purchases; and any others that, if not updated, would create disconnect regarding the City’s expectations and create confusion for City staff expected to adhere to City policy.

**Not Implemented.** Finance will align all related administrative regulations to reflect purchasing requirements and restrictions once the department finalizes its new processes resulting from implementation of the city’s new financial system.

 Risk Category: Financial

#### Summary of Audit

The objectives of this audit were to determine whether staff used their city-issued credit cards in accordance with City policies and whether the City would benefit from adopting industry best practices to manage its credit card program. Necessitated by a business need to pay vendors who do not accept purchase orders, the use of credit cards has expanded faster than the City’s response to create and update policies and procedures regarding their use. Though clear and consistent written guidance was lacking, staff generally limited their use of credit cards to legitimate business purchases. We examined 232 credit card transactions with an emphasis on those with the highest related fraud and misuse risk. None indicated a pattern of fraud and misuse. We found that there are additional best practices that would further strengthen internal controls and prepare the City for rolling out its planned purchasing card program, which will likely increase the volume of transactions and involve more employees in the process.

## 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale

The 911 Dispatch Audit contains three findings and 14 recommendations aimed at improving the Communications Center’s staffing levels and morale among dispatchers. The audit was released in April 2019.

Since the audit’s release, the Police Department has begun working towards implementing the recommendations. All 14 recommendations remain not implemented at this point. An update from the Police Department was due to Council this fall. Details regarding the open recommendations are below.

### Finding 1: It is taking longer to answer 911 calls and there are not enough call takers.

1.1 Conduct an annual staffing analysis of required minimum staffing levels and budgeted dispatchers to ensure budget staffing requests and scheduling efforts meet demand and limit the use of overtime where possible (see also Finding 2). Use the staffing analysis to communicate to Council and the public during the annual appropriations process:

- Service level demands
- The full-burdened cost of budgeting for additional staff
- Whether there is sufficient funding available to budget for the additional staff or a shortfall (quantified in dollars)
- Additional staffing requests, if needed

**Not Implemented.** The Department has already begun to consider several automated scheduling programs to replace the current manual method.



Risk Category: Safety/Health

1.2 Use the staffing analysis performed in response to recommendation 1.1, to determine future resource needs of the Communications Center, including staffing, equipment, and physical space. Take into account planned changes to services and factors that may influence call volume.

**Not Implemented.** The Department has already begun discussion on the Communications Center’s spatial needs.



Risk Category: Safety/Health

### Summary of Audit

The objectives of this audit were to determine whether there is sufficient staff to handle workloads and service demands, what contributes to overtime use, and how working conditions affect morale. We found that it is taking longer than previous years for call takers to answer 911 calls. The Communications Center’s staffing levels are not sufficient to meet current call demands and, with predicted population growth, the Center will soon need even more resources to maintain its emergency response service levels. We determined that due to consistent under-staffing, the Communications Center relies heavily on overtime to meet minimum staffing requirements, spending nearly \$1 million per year on overtime. The Police Department works to fill vacant positions, but the hiring and training processes are lengthy and extensive. There are opportunities to improve those processes to reduce both the number of continuous vacancies and the significant reliance on overtime. Under-staffing also leads to low morale in the Communications Center.

**Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.**

**2.1 Open all dispatcher positions to continuous recruitment.**

**Not Implemented.** Human Resources has already agreed to open and continuous hiring for lateral Public Safety Dispatcher II classification and Management has requested the same for both the non-lateral and Public Safety Dispatcher I classifications.

 Risk Category: Safety/Health

**2.2 Work with Communications Center staff to create a specific recruitment plan for dispatcher positions including recruitment events and marketing material. Use recruitment best practices to reach potential applicants and increase the number of applicants.**

**Not Implemented.** The Department created a Recruitment and Retention Team in 2018 in order to address the departmental recruitment needs. This was the first step in setting out a concrete plan.

 Risk Category: Safety/Health

**2.3 Identify and implement feasible option to improve turnaround time on background checks for dispatcher positions. This can include outsourcing background investigations or working with Human Resources to ensure that the Department is able to complete all background investigations in a timely manner.**

**Not Implemented.** In April 2019, the Department contracted with a background investigation firm.

 Risk Category: Safety/Health

**2.4 Design a way to retain staff that are unable to pass the Police Desk training, for example, keep staff as PSD I and have them work as a call taker or create a new job classification for a call taking position.**

**Not Implemented.** The Police Department is creating a proposal for adding a call taker position.

 Risk Category: Safety/Health



2.5 Evaluate the results from dispatcher recruitment routinely (e.g., annually or at the end of a recruitment cycle) to determine areas for improvement. Update recruitment plans.

**Not Implemented.** The Department plans to improve tracking and review of the number of applicants, how successful applicants are through the process, and where they most often are “lost” in the process. The Department also plans to review these results in line with testing processes in order to adjust as necessary.



Risk Category: Financial

2.6 Implement an automated scheduling software that has built-in decision-making capabilities to automatically fill shifts based on specified qualifications and staff availability.

**Not Implemented.** The Police Department has begun to review potential software vendors.



Risk Category: Financial

2.7 Decrease the concentration of overtime among dispatchers.

**Not Implemented.** The Department is working to hire more dispatchers in order to reduce overtime levels.



Risk Category: Safety/Health

2.8 Develop and implement a Communications Center training plan to ensure compliance with POST training requirements. Evaluate training processes and update training plans routinely.

**Not Implemented.** The Communications Center leadership team plans to track POST training requirements along with yearly Performance Appraisal Reviews.



Risk Category: Compliance

**Finding 3: Working conditions adversely affect dispatcher morale.**

3.1 Create a comprehensive stress management program specifically for the Communications Center that includes the following:

- Stress management training for all staff, 8 hours minimum during career

- Access to on-site educational resources to help with stress and related risks, e.g., directory of local therapists specializing in treatment of stress and traumatic stress disorders and City programs that provide information on how and where to access help
- Procedures assuring participation of staff in critical incidence stress management activities (e.g., debriefing sessions when involved in traumatic call events)
- A Peer Support Program
- Comprehensive, ongoing training on structured call-taking processes

**Not Implemented.** Communications Center leadership team plans to work with Personnel and Training to expand current stress management toolset to include a mandatory 8 hour stress management course for all Communications Center staff.



Risk Category: Safety/Health

3.2 Develop and implement plans to address workplace cleanliness and equipment and furniture maintenance and replacement.

**Not Implemented.** Police management plans to improve the cleanliness of the Communications Center through quarterly deep cleanings and the purchase of HEPA filters.



Risk Category: Safety/Health

3.3 Conduct regular supervisor level meetings to share information about operations and staffing. Use these meetings to improve understanding of the supervisor role, identify problems, discuss changes that may affect operations, and establish communications plans for distributing information to all staff.

**Not Implemented.** The Communications manager is in the process of creating a web based information portal which includes sections for polices, Supervisory blog, Communications Center blog, resources, health and wellness, new dispatcher training, and links to web based training opportunities for tenured staff.



Risk Category: Safety/Health

3.4 Routinely have Police and Fire staff meet with all Center Supervisors to solicit feedback on Center operations and to address any issues. Use these meetings to improve understanding of the dispatcher role and current policies of public safety, identify problems that should be evaluated for further discussion, and discuss known and expected changes that may affect the Communications Center.

**Not Implemented.** The Department plans to invite Police and Fire staff to attend the weekly supervisor meetings whenever problems are identified or whenever known or anticipated changes may affect the Communications Center.

 Risk Category: Safety/Health

## Fire Prevention Inspections: Insufficient Resources Strain Code Compliance

The Fire Inspections Audit contains three findings and 11 recommendations aimed at improving the Fire Department’s ability to meet fire inspections mandates. The audit was released in May 2019.

Since the audit’s release, the Fire Department has begun working towards implementing the recommendations. All 11 recommendations remain not implemented at this point. An update from the Fire Department was due to Council this fall. Details regarding the open recommendations are below.

### Finding 1: Fire Not Meeting Inspection Mandates; Extensive Code Requirements and Population Growth Impact Staffing Workload

1.1 Analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.

**Not Implemented.** Fire plans to research the history and rationale for the local adoption of an annual commercial inspection program. Based on the research results, Fire will evaluate the risk versus benefits of the type and frequency of fire prevention inspection that are not mandated by the state laws.

 Risk Category: Safety/Health

1.2 Perform a workload analysis to quantify the staff needed now and in the future to comply with the local fire prevention inspection requirements.

**Not Implemented.** No progress.

 Risk Category: Safety/Health

### Finding 2: Fire Relies on Incomplete Data to Manage Inspections

2.1 Develop a process, in consultation with the Information Technology Department, for sharing information on property changes and additions between Fire and other City database platforms.

**Not Implemented.** With support from IT, Fire is currently seeking a software that can communicate with the software used by the Planning and Finance Department.

 Risk Category: Safety/Health

#### Summary of Audit

The objectives of this audit were to determine whether the Fire Department met the mandated inspection requirements, how they manage inspections, and what challenges remain in fire inspections. The Fire Department is not meeting inspection mandates. In fiscal year 2018, the Department’s unresolved violations increased to nearly 2,500 and it did not inspect over 500 properties. Without increased staffing, the Department is strained by both City inspection requirements that go beyond California’s requirements and the impacts of population growth. The Fire Department’s database does not contain a complete inventory of properties requiring inspections and lacks controls to ensure complete data. The Fire Department staff need more support to be able to complete mandated inspections. Fire does not perform complete risk assessments or sufficiently communicate within the Department and with the community.

2.2 Work with both the database’s software vendor and the Information Technology Department to strengthen controls over the database, including:

- Assessing the needs for required fields for processing an inspection, such as unit, shift, inspector name, address, violation details, and violation location.
- Formatting drop-down menus for inspection status, inspection type, and violation status. Formatting the options available for the violation code numbers and violation description fields.

**Not Implemented.** Fire Prevention will reach out to Red Alert to determine their ability to customize fields within the software. Additionally, Fire and IT are actively reviewing available software that can meet the needs of Fire and is compatible with software used by the other city departments.

 Risk Category: Safety/Health

**Finding 3: Fire Staff Do Not Have Enough Support to Get Inspections Done**

3.1 Coordinate work plans with Suppression for all mandated fire prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.

**Not Implemented.** Fire plans to update General Order to give clear expectations of inspection policy and procedure.

 Risk Category: Safety/Health

3.2 Create a risk-assessment plan to identify those properties that are most at risk of a fire.

**Not Implemented.** The Fire Chief is researching the resources needed to conduct such assessments using other cities’ programs as models.

 Risk Category: Safety/Health

3.3 Issue a General Order to the Department on the importance and necessity of performing fire prevention inspections.

**Not Implemented.** The Fire Chief will revise the General Order to stress the importance and the expectations of Fire Prevention Inspections to the Suppression personnel.



Risk Category: Safety/Health

3.4 The Fire Marshal and Suppression Management jointly develop a communication plan between Fire Prevention and Suppression.

**Not Implemented.** In the long term, with the revised General Order, the designated Shift Fire Inspector will take on a more active role as a resource to guide the suppression staff on conducting annual inspections.



Risk Category: Safety/Health

3.5 Revise the fire prevention inspection training to provide hands-on training, using experienced Suppression staff, on how to conduct inspections and interact with residents and community members during inspections.

**Not Implemented.** The Fire Chief plans to revise the General Order to clearly spell out training requirements and expectations. The Department also plans to allocate more time for staff for be trained and require the Shift Fire Inspector to provide hands-on training as needed.



Risk Category: Safety/Health

3.6 Develop and distribute educational information to property owners prior to the beginning of the inspection cycle to provide information on the fire prevention inspection program, common violations, and any upcoming inspections for that area of the City.

**Not Implemented.** The Fire Department is planning to create new public education materials for the city website and will be preparing a comprehensive Wildfire Safety packed for all property owners.



Risk Category: Safety/Health

3.7 Create a process for issuing, tracking, and following up on administrative citations for properties with repeat or high-risk violations, including revenue collections and tracking. That process should collaborate with other City work units that perform enforcement activities to provide consistency.

**Not Implemented.** The Fire Department plans to review internal policies and procedures and update the Fire Prevention General Order.

  Risk Category: Safety/Health and Financial



**Mission Statement**

Promoting transparency and accountability in Berkeley government.

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BERKELEY CITY AUDITOR



Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
Jan. 14	<ol style="list-style-type: none"> <li>1. Vision 2050</li> <li>2. Civic Center Visioning</li> <li>3. Systems Realignment</li> </ol>
Feb. 4	<ol style="list-style-type: none"> <li>1. Discussion of Community Poll (Ballot Measures)</li> <li>2. Adeline Corridor Plan</li> </ol>
March 17	<ol style="list-style-type: none"> <li>1. CIP Update (PRW and Public Works)</li> <li>2. Measure T1 Update</li> </ol>
May 5	<ol style="list-style-type: none"> <li>1. Budget Update</li> <li>2. Crime Report</li> </ol>
June 23	<ol style="list-style-type: none"> <li>1. Climate Action Plan/Resiliency Update</li> <li>2. Digital Strategic Plan/FUND\$ Replacement/Website Update</li> </ol>
July 21	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>

Unscheduled Workshops
<ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> </ol>

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> <li>1. Update: goBerkeley (RPP)</li> <li>2. BMASP/Berkeley Pier-WETA Ferry (November 2020)</li> </ol>

	<b>City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling</b>
1.	<p><b>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</b> (<i>Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.</i>) <b>March 18, 2019 Action:</b> <i>Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</i></p> <p><b>From: Councilmember Worthington</b></p> <p><b>Recommendation:</b> 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.</p> <p><b>Financial Implications:</b> Minimal</p> <p>Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>
2.	<p><b>36. Referral Response: Issue a Request for Information to Explore Grant Writing Services from Specialized Municipal Grant-Writing Firms, and Report Back to Council</b> (<i>Referred from the October 15, 2019 agenda</i>)</p> <p><b>From: City Manager</b></p> <p>Contact: Henry Oyekanmi, Finance, 981-7300</p> <p><i>Note: Will be considered in FY 2021 Budget Process</i></p>
3.	<p><b>28. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention</b> (<i>Referred from the November 12, 2019 agenda</i>)</p> <p><b>From: Mayor Arreguin and Councilmembers Harrison, Droste, and Hahn</b></p> <p><b>Recommendation:</b> Adopt second reading of Ordinance No. 7,668-N.S. repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation at completion of the project.</p> <p>First Reading Vote: All Ayes.</p> <p><b>Financial Implications:</b> Staff time</p> <p>Contact: Jesse Arreguin, Mayor, (510) 981-7100</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
<b>NOD – Notices of Decision</b>				
3020 College Ave (residential building)	ZAB	12/2/2019		
2431 Fifth St (convert existing building)	ZAB	12/2/2019		
2348 Hilgard Ave (construction of ground floor addition)	ZAB	12/2/2019		
1312 Josephine St (construction of balcony)	ZAB	12/3/2019		
1581 Le Roy Ave (convert vacant elementary school property)	ZAB	12/3/2019		
<b>Public Hearings Scheduled</b>				
0 Euclid Ave - Berryman Reservoir (denial of 4G telecom facility)	ZAB			TBD
2422 Fifth St (construct mixed-use building)	ZAB			TBD
<b>Remanded to ZAB or LPC</b>				
1155-73 Hearst Ave (develop two parcels)	ZAB			
90-Day Deadline: May 19, 2019				
<b>Notes</b>				

Last Updated: 11/20/19



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This version incorporates changes and amendments approved by the Agenda & Rules Committee on September 16, 2019 for approval by the City Council.

# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ~~##,###~~–N.S.  
Effective October 29, 2019

## Table of Contents

<b>I.</b>	<b>DUTIES .....</b>	<b>4</b>
	A. Duties of Mayor .....	4
	B. Duties of Councilmembers .....	4
	C. Motions to be Stated by Chair .....	4
	D. Decorum by Councilmembers .....	4
	E. Voting Disqualification .....	4
	F. Requests for Technical Assistance and/or Reports .....	5
<b>II.</b>	<b>MEETINGS .....</b>	<b>6</b>
	A. Call to Order - Presiding Officer.....	6
	B. Roll Call .....	6
	C. Quorum Call .....	6
	D. Council Meeting Conduct of Business .....	6
	E. Adjournment .....	7
	G. City Council Schedule and Recess Periods .....	7
	H. Pledge of Allegiance to the Flag .....	8
	I. Ad Hoc Subcommittees .....	8
<b>III.</b>	<b>AGENDA .....</b>	<b>9</b>
	A. Declaration of Policy .....	9
	B. Definitions.....	9
	C. Procedure for Bringing Matters Before City Council .....	11
	D. Packet Preparation and Posting .....	14
	E. Agenda Sequence and Order of Business .....	16
	F. Closed Session Documents.....	16
	G. Regulations Governing City Council Policy Committees .....	17
<b>IV.</b>	<b>CONDUCT OF MEETING .....</b>	<b>22</b>
	A. Comments from the Public .....	22
	B. Consent Calendar.....	24
	C. Information Reports Called Up for Discussion .....	25
	D. Communications.....	25
	E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters .....	25
	F. Work Sessions.....	26
	H. Protocol .....	27
<b>V.</b>	<b>PROCEDURAL MATTERS .....</b>	<b>28</b>
	A. Persons Authorized to Sit at Tables .....	28
	B. Decorum.....	28
	C. Enforcement of Decorum.....	28
	D. Precedence of Motions .....	28
	E. Roberts Rules of Order.....	29
	F. Rules of Debate .....	29
	G. Debate Limited .....	30
	H. Motion to Lay on Table .....	30
	I. Division of Question.....	30
	J. Addressing the Council.....	30
	K. Addressing the Council After Motion Made .....	31

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<b>VI.</b>	<b>FACILITIES .....</b>	<b>32</b>
A.	Council Chamber Capacity .....	32
B.	Alternate Facilities for Council Meetings .....	32
C.	Signs, Objects, and Symbolic Materials.....	32
D.	Fire Safety .....	32
E.	Overcrowding .....	32
	<b>APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES .....</b>	<b>33</b>
	<b>APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA</b>	
	<b>ITEMS .....</b>	<b>36</b>

## I. DUTIES

### A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

### B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

### C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

### D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set limits on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

### E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be



decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

## II. MEETINGS

### A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

### B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

### C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

### D. Council Meeting Conduct of Business

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

**H. Pledge of Allegiance to the Flag**

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

**I. Ad Hoc Subcommittees**

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items continued from a previous meeting and published on a revised agenda.

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of three Co-Sponsors (in addition to the Primary Author). Co-Sponsors to Council reports may only be added in the following manner:
  - In the original item as submitted by the Primary Author
  - In a revised item submitted by the Primary Author at the Agenda & Rules Committee
  - By verbal request of the Primary Author at the Agenda & Rules Committee
  - In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
  - By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full council at which the item is considered

Agenda items shall contain all relevant documentation, including the information listed below.

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
- 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 report author that describes the action to be taken on the item, if applicable;

- 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.
  - k) Additional information and analysis as required. It is recommended that reports include the recommended points of analysis in the Council Report Guidelines in Appendix B.
2. "Primary Author" means the Mayor or Councilmember that initiated, authored, and submitted a council agenda item.
  3. "Co-Sponsor" means the Mayor or other Councilmembers designated by the Primary Author to be co-sponsor of the council agenda item.
  4. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
  5. "Packet" means the agenda plus all its corresponding duplicated agenda items.
  6. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
    - a) A work stoppage or other activity which severely impairs public health, safety, or both;
    - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.
  7. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
  8. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

## C. Procedure for Bringing Matters Before City Council

### 1. Persons Who Can Place Matters on the Agenda.

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by the Agenda & Rules Committee, which shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

- a) **Items Authored by the Mayor, a Councilmember, or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, a Policy Committee, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

The author of a “referred” item must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration. Option 2 is not available for items eligible to be referred to a Policy Committee.

In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the Agenda & Rules Committee’s adjournment, the recommendation of the Agenda & Rules Committee will take effect.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

- b) **Items Authored by the City Manager.** The Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee.

- i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized commission report in the following manner:

1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
3. Allow the item to proceed as submitted.

- ii) For any commission report that requires a companion report, the Agenda & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.

- d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.



2. **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**  
The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.
3. **Submission of Agenda Items.**
- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.
  - b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
  - c) **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 Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.  
  
The author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.
  - d) The City Clerk may not accept any agenda item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.
4. **Submission of Supplemental and Revised Agenda Material.**  
Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:
- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council

meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.
- c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

#### **5. Scheduling a Presentation.**

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda.

### **D. Packet Preparation and Posting**

#### **1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4.

**2. Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

**E. Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business
4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

**F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.

3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

## **G. Regulations Governing City Council Policy Committees**

### **1. Legislative Item Process**

All agenda items begin with submission to the Agenda & Rules Committee.

#### Full Council Track

Items under this category are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from the Mayor and Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- l. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item. If an item submitted by the Mayor or a Councilmember has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues the Agenda & Rules committee may refer the item to a Policy Committee.

### Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.

### Time Critical Track

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 Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

## **2. Council Referrals to Committees**

The full Council may refer any agenda item to a Policy Committee by majority vote.

## **3. Participation Rules for Policy Committees Pursuant to the Brown Act**

- a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may co-author an item provided that one of the authors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed

- alternate will serve as a committee member in place of the non-participating co-author.
- d. All three members of a Policy Committee may not be co-authors of an item that will be heard by the committee.
  - e. Only one co-author who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.
  - f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author is present to participate in the discussion of their item, no other Councilmembers, nor the Mayor, may attend as observers.
  - g. An item may be considered by only one Policy Committee before it goes to the full Council.

#### **4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- j. Per Brown Act regulations, any such materials must be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a Policy Committee from the Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

The original Council author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the Policy Committee are submitted to the agenda process by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Non-legislative or discussion items may be added to the Policy Committee agenda by members of the Committee with the concurrence of a quorum of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the author, and it will return to the Agenda & Rules Committee on the



next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

### **5. Number and Make-up of Committees**

Six committees are authorized, each comprised of three Councilmembers with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

### **6. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

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.”

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. 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, the Mayor or 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.

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

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.

If ten or fewer persons are interested in speaking, each speaker 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.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section.

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

**4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, 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.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

**5. Ralph M. Brown Act Pertaining to Public Comments.**

The "Brown Act" prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

**D. Communications**

Letters from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

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.

If ten or fewer persons are interested in speaking, each speaker 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

#### **F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

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. If ten or fewer persons are interested in speaking, each speaker 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**H. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question is before the Council, no motion shall be entertained except:

1. To adjourn,
2. To fix the hour of adjournment,
3. To lay on the table,
4. For the previous question,
5. To postpone to a certain day,
6. To refer,
7. To amend,
8. To substitute, and
9. To postpone indefinitely.



These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, the previous question, which, if passed, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

## VI.FACILITIES

### A. Council Chamber Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## **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 & Rules 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) to be taken. 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

**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?

#### 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.

**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**