



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

**MONDAY, APRIL 6, 2020
2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf
Alternate: Councilmember Ben Bartlett

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the March 30, 2020 meeting of the City Council Agenda & Rules Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://zoom.us/j/501404950>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **501 404 950**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair. NOTE: Your phone number will appear on the videoconference screen.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call

Public Comment

Review of Agendas

- 1. Approval of Minutes: March 30, 2020**
- 2. Review and Approve Draft Agendas:**
 - a. 4/21/20 – 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

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

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

9. **Referral: Compulsory Composting and Edible Food Recovery**

From: Councilmembers Robinson and Hahn

Referred: November 25, 2019

Due: June 7, 2020

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

10. **Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12** *(Item contains supplemental material)*

From: Fair Campaign Practices Commission

Referred: February 4, 2020

Due: July 7, 2020

Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

Council Referral: To refer a discussion of Officeholder Accounts and Council District (D-13) accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Financial Implications: None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

Items for Future Agendas

- **Discussion of items to be added to future agendas**

Adjournment – Next Meeting Monday, April 13, 2020

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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.*

*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.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. 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:

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.

\* \* \*

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 April 2, 2020.



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, MARCH 30, 2020**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

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

**Public Comment:** 13 speakers.

## **Review of Agendas**

**1. Approval of Minutes: March 9, 2020 and March 12, 2020**

**Action:** M/S/C (Arreguin/Hahn) to approve the Minutes of 3/9/20 and 3/12/20.

**Vote:** All Ayes.

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

a. 4/14/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Wengraf/Hahn) to approve the Agenda of 4/14/20 with the revisions noted below.

- *Ceremonial Items: Remove StopWaste Presentation; Add Adjourn in memory of all victims of the COVID-19 pandemic.*
- *Recess Item Added: Recess Item from Police Department regarding substation lease (City Manager)*
- *Information Item Added: Placement of COVID-19 Isolation and Quarantine Facilities (City Manager)*
- *Item 21 Boyer Construction (City Manager) - Revised recommendation*
- *Item 28 Contract: Shaw Industries (City Manager) - Removed from agenda by City Manager*
- *Item 30 Service Animals (Commission on Disability) – Referred to Health, Life Enrichment, Equity & Community Committee*
- *Item 32 BAHIA 45<sup>th</sup> Anniversary (Kesarwani) - Removed from agenda by Author*
- *Item 35 Support SB 54 and AB 1080 (Harrison) - Councilmember Wengraf added as co-sponsor*
- *Item 40 Electricity Plan Upgrade (Harrison) - Rescheduled to April 21, 2020 Council meeting*
- *Item 42 Sustainable Trips (CEAC) – Referred to Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*
- *Item 43 Sale of Gasoline (CEAC) – Referred to Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*
- *Item 44 Used Combustion Vehicles (CEAC) – Referred to Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*
- *Item 45 Use of City Streets (CEAC) – Referred to Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*
- *Item 46 Point in Time Count (Homeless Commission) - Moved to Consent Calendar*
- *Item 47a/b Sanctuary Encampment (Homeless Commission) – Referred to Health, Life Enrichment, Equity & Community Committee*
- *Item 48a/b Source of Income (Homeless Commission) – Referred to Land Use, Housing & Economic Development Committee*
- *Item 50 Open Pools/Showers for Community Use (Davila) – Revised item submitted; referred to the Budget & Finance Committee*

**Order of Action Calendar:**

Item 37 General Plan

Item 38 Zoning Ordinance

Item 39 Charter Amendment

Item 41 Qualified Opportunity Zones

Item 49 Tenant Screening Fees

**Vote:** All Ayes.

- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**
  - None selected.
- 4. Adjournments In Memory**
  - All victims of COVID-19 worldwide

## **Scheduling**

- 5. Council Worksessions Schedule**
  - Crime Report moved to July 21, 2020
- 6. Council Referrals to Agenda Committee for Scheduling**
  - Received and filed
- 7. Land Use Calendar**
  - Received and filed

## Referred Items for Review

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

**Action:** Discussion held. No action taken.

## Unscheduled Items

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### 9. Referral: Compulsory Composting and Edible Food Recovery

**From:** Councilmembers Robinson and Hahn

**Referred:** November 25, 2019

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**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

### 10. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12 *(Item contains supplemental material)*

**From:** Fair Campaign Practices Commission

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**Financial Implications:** None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

## Items for Future Agendas

- None



## **Adjournment**

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

**Vote:** All Ayes.

Adjourned at 4:22 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on March 30, 2020.

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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.*



## DRAFT AGENDA



### BERKELEY CITY COUNCIL MEETING

**Tuesday, April 21, 2020  
6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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*To join by phone: Dial **1-669-900-9128** and enter Meeting ID: <<Meeting ID>>. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair. NOTE: Your phone number will appear on the screen.*

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

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

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

## Preliminary Matters

### Roll Call:

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

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

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

## Consent Calendar

*The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” 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. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020 and initially ratified by the City Council on March 10, 2020.  
**Financial Implications:** See report  
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 21, 2020**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** Mental Health Services Fund - \$192,276  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 3. Contracts: On-Call Landscape Architectural Services for Capital Improvement Projects**  
**From: City Manager**  
**Recommendation:** Adopt three Resolutions authorizing the City Manager to execute contracts and any amendments with the following firms for on-call landscape architectural services for capital improvement projects, for contract periods of May 1, 2020 through April 30, 2023:  
1. BASE Landscape Architecture, for an amount not to exceed \$300,000.  
2. PGA Design, Inc., for an amount not to exceed \$300,000.  
3. RRM Design Group, for an amount not to exceed \$300,000.  
**Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 4. Fiscal Year 2021 Street Lighting Assessments – Initiating Proceedings**  
**From: City Manager**  
**Recommendation:** Adopt Resolutions describing proposed improvements to be used to in determine the annual assessments levied for Berkeley Street Lighting Assessment District No. 1982-1 and Street Lighting Assessment District No. 2018, and ordering the preparation of Engineer's Reports.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300

## Council Consent Items

5. **Send a letter to CA Assemblymember Buffy Wicks in support of AB 1851 “Faith-based organization affiliated housing development projects: parking requirements”**  
**From: Councilmember Bartlett (Author), Mayor Arreguin (Author), Councilmember Davila (Co-Sponsor)**  
**Recommendation:** Send a letter to Assemblymember Buffy Wicks expressing the City of Berkeley’s support for AB 1851, which would allow for the elimination of residential parking requirements on faith-based properties for density bonus qualifying housing development projects.  
**Financial Implications:** None  
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 use the “raise hand” function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

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

## Action Calendar – Public Hearings

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

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

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

## Action Calendar – Public Hearings

6. **Electric Bike Share Program Franchise Amendment** (*Continued from March 10, 2020*)  
**From: City Manager**  
**Recommendation:** Pursuant to Berkeley Municipal Code Chapter 9.60, conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance granting a Franchise Agreement Amendment to Bay Area Motivate, LLC, a subsidiary of Lyft Incorporated, to provide shared electric bicycles to the Berkeley public.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300

## Council Action Items

7. **Adopt a Resolution to Upgrade Residential and Commercial Customers to a 100% Greenhouse Gas Emissions-Free Electricity Plan and to Upgrade Municipal Accounts to a 100% Renewable Plan**  
**From: Councilmember Harrison (Author), Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** (Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee) Adopt a Resolution to: a. Opt up Berkeley's municipal accounts to Renewable 100 (100% renewable and 100% greenhouse gas-free) electricity service, and refer the estimated increased cost of \$100,040 to the June 2020 budget process. b. Upgrade current and new Berkeley residential and commercial customer accounts from Bright Choice (>85% GHG-free) to Brilliant 100 (100% GHG-free), except for residential customers in low income assistance programs. The transition would be effective October 1, 2020 for residential customers and January 1, 2021 for commercial customers. c. Provide for yearly Council review of the City's default municipal, residential, and commercial plans.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

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

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

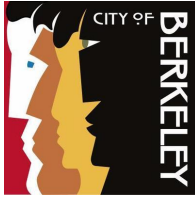
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Captioning services are provided at the meeting, on B-TV, and on the Internet.

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Councilmember Ben Bartlett

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

CONSENT CALENDAR

April 21, 2020

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin (Author),
 Councilmember Cheryl Davila (Co-Sponsor)
 Subject: Send a letter to CA Assemblymember Buffy Wicks in support of AB 1851
 “Faith-based organization affiliated housing development projects: parking requirements.”

RECOMMENDATION

Send a letter to Assemblymember Buffy Wicks expressing the City of Berkeley’s support for AB 1851, which would allow for the elimination of residential parking requirements on faith-based properties for density bonus qualifying housing development projects.

CURRENT SITUATION

The City of Berkeley is currently experiencing a housing crisis. The high cost of living in Berkeley makes it impossible for many city residents to find affordable housing, and there is an immediate need to expand the affordable housing supply to prevent further homelessness and housing insecurity.

As the housing affordability crisis continues to grow, the need to increase the amount of affordable housing grows in urgency. Incentives such as the Density Bonus Law have been legislated to expedite the construction of affordable housing and increase the total number of housing units developers are allowed to build, with the stipulation that more affordable housing units are included in the project.

Underused faith-based property lots have been identified as prime development sites to combat the affordable housing crisis. AB 1851 would accelerate the creation of affordable housing by eliminating minimum parking requirements for units built on faith-based properties if the housing development project qualifies as a faith-based organization affiliated housing development project.

BACKGROUND

California's communities of faith are interested in redeveloping portions of their properties to alleviate the state's housing crisis. This new initiative, originating in San Diego, gained traction when a local tax collector compiled a list of more than 1,100 properties zoned for religious use that could potentially be developed into new homes that would include affordable units.

One key roadblock is the inability for faith-based properties to meet residential parking requirement quotas. Faith-based properties often have religious service parking spaces that are widely available for use to the public but stand empty for much of the year. However, local parking requirements generally bar the application of these empty spaces from meeting residential parking requirements. Not requiring faith-based

institutions to have empty space for parking and lifting the segregation of religious service parking and residential parking could significantly increase the project feasibility and ultimately create more affordable housing in California.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Existing law provides for various incentives to facilitate and expedite the construction of affordable housing, including the Density Bonus Law.

RATIONALE FOR RECOMMENDATION

The City of Berkeley could benefit from the passage of Assembly Bill 1851 because the city is home to numerous faith-based properties. Many of these religious entities are considering developing affordable housing on their properties but are subject to restrictive parking requirements. These parking rules impact the cost of affordable housing production on faith-based properties.

By supporting Assembly Bill 1851, the Mayor and Berkeley City Councilmembers would allow faith-based organizations to develop housing on/around spaces designated for religious-use parking, bolstering the supply of affordable housing and opening new opportunities for very low, low-, and moderate-income households in Berkeley to continue living in their communities.

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impacts.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

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510-981-7130

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Kyle Tang

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ATTACHMENTS

1. Letter to Assemblymember Buffy Wicks
2. City of Oakland's Resolution to Support AB 1851

Attachment 1:
March XX, 2020

The Honorable Assemblymember Wicks
State Capitol Office, Room 5160
Sacramento, CA 94249

Re: Assembly Bill 1851 (Wicks) – Faith-based organization affiliated housing development projects: parking requirements - SUPPORT

Dear Assemblymember Wicks:

The Honorable Mayor and Members of the Berkeley City Council are pleased to support Assembly Bill 1851 (AB-1851). AB-1851 will eliminate minimum parking requirements for affordable housing units built on underutilized faith-based properties' parking lots, in turn creating more sites for affordable housing.

It is vital that very low, low-, and moderate-income households have access to housing that they can afford. Partnering with faith-based organizations will open new opportunities all over California to provide much needed affordable housing units. For these reasons, we would like to strongly support AB1851.

Respectfully,
The Honorable Mayor and Members of the Berkeley City Council

Jesse Arreguin
Mayor, City of Berkeley

Members of the Berkeley City Council



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CITY HALL 2020 JAN 30 PM 3:53 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

REBECCA KAPLAN
Council President
atlarge@oaklandnet.com

(510) 238-7008
FAX: (510) 238-6910
TDD: (510) 839-6451

Date: January 30, 2020
To: Members of City Council and Members of the Public
From: Council President Kaplan
Re: File No. 20-0142

A RESOLUTION IN SUPPORT OF AB 1851 (WICKS), FAITH-BASED AFFILIATED HOUSING DEVELOPMENT PROJECTS, TO REDUCE OR ELIMINATE ANY PARKING REQUIREMENTS FOR HOUSING DEVELOPMENT PROJECTS BUILT ON RELIGIOUS-USE PARKING LOTS.

Dear Colleagues on the City Council and Members of the Public,

I am writing to extend and stand in support of AB 1851.

The City of Oakland is suffering from a serious housing crisis as housing costs in the City increase drastically, making housing at all levels of affordability unavailable for many Oakland residents; and expanding the housing supply is necessary to address the immediate need to house Oakland's growing population

In 2019, the EveryOne Counts Homeless Point-in-Time Count & Survey, saw a rise of 47% of individuals experiencing homelessness.

AB 1851 will allow faith-based organizations to build housing development projects on and/or adjacent to parcels designated for religious-use parking; this bill will make it easier for thousands of faith-based organizations that would like to dedicate their resources to helping resolve the housing crisis.

For questions regarding this report, please email Desmond I. Jeffries, Policy Director for the Council President, at djeffries@oaklandca.gov or call at 510.238.7082.

Sincerely,

Rebecca Kaplan
Oakland City Council President

Assembly Bill 1851
Housing Production on Faith-Based Properties
Assemblymember Buffy Wicks (AD-15)

THIS BILL

This bill will eliminate residential parking requirements in order to construct a density bonus qualifying housing development project built on faith-based properties.

THE ISSUE

California's communities of faith are taking interest in redeveloping portions of their property to alleviate the state's housing crisis. This new initiative is called the "Yes in God's Backyard" or YIGBY – a play on the YIMBY, or the "yes in my backyard" movement. Originating in San Diego, this idea became trendy when a local tax collector compiled a list of more than 1,100 properties zoned for religious use that could potentially be developed into new units.

Faith-based communities across the state are expressing interest. Cities like Oakland, Berkeley, Walnut Creek and East Palo Alto are convening meetings with local congregations to discuss turning underused land into housing.

However, plans to build new housing on church sites have often struck roadblocks. One of the most common is the inability to count available church properties toward residential parking requirements due to restrictive local ordinances. With many faith-based parking spaces not used more than a few times per year, church communities could influence the state's housing stock if allowed to share parking between religious and residential units.

SOLUTION

AB 1851 will allow for the elimination of residential parking requirements on faith-based properties for qualifying housing development projects.

SUPPORT

California YIMBY (Co-Sponsor)
New Way Homes (Co-Sponsor)

CONTACT

Melanie Morelos
Office of Assemblymember Wicks
State Capitol Office, Room 5160
(916)319-2015
melanie.morelos@asm.ca.gov

ASSEMBLY BILL

No. 1851

Introduced by Assembly Member Wicks

January 6, 2020

An act to add Section 65913.6 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1851, as introduced, Wicks. Faith-based organization affiliated housing development projects: parking requirements.

Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing, including the Density Bonus Law, which requires, when an applicant proposes a housing development within the jurisdiction of a local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or for the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low, low-, or moderate-income households or qualifying residents.

This bill would upon the request of a developer of a housing development project, require a local agency to ministerially approve a request to that local agency to reduce or eliminate any parking requirements that would otherwise be imposed by that local agency on the development if the housing development project qualifies as a faith-based organization affiliated housing development project, as defined. This bill would prohibit a local agency from requiring the replacement of religious-use parking spaces proposed to be eliminated by a faith-based organization affiliated housing development project

pursuant to a request made and ministerially approved pursuant to the bill, or from requiring the curing of any preexisting deficit of religious-use parking as a condition of approval of a faith-based organization affiliated housing development project. The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

By adding to the duties of local planning officials, this bill would impose a state-mandated local program.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 65913.6 is added to the Government
2 Code, to read:

3 65913.6. (a) For purposes of this section, all of the following
4 definitions shall apply:

5 (1) "Faith-based organization" means a nonprofit corporation
6 organized and registered for religious purposes.

7 (2) "Faith-based organization affiliated housing development
8 project" means a housing development project that meets all of
9 the following criteria:

10 (A) The housing development project is located on one or more
11 contiguous parcels that are each owned entirely, whether directly
12 or through a wholly owned company or corporation, by a
13 faith-based organization.

14 (B) The housing development project qualifies as being near
15 colocated religious-use parking by being any of the following:

16 (i) Located on one or more parcels that collectively contain
17 religious-use parking.

18 (ii) Located adjacent to a parcel owned by the faith-based
19 organization that contains religious-use parking.

1 (iii) Located on one or more parcels separated by no more than
2 0.1 miles from a parcel owned by the faith-based organization that
3 contains religious-use parking.

4 (C) The housing development project qualifies for a density
5 bonus under Section 65915.

6 (3) "Housing development project" means a housing
7 development project as defined in paragraph (2) of subdivision (h)
8 of Section 65589.5.

9 (4) "Local agency" means any county, city, or city and county,
10 including any charter county, city, or city and county.

11 (5) "Religious-use parking" means existing parking spaces that
12 are required under the local agency's parking requirements for
13 places of worship.

14 (b) Notwithstanding any other law or ordinance, a local agency,
15 upon the request of a developer of a housing development project,
16 shall ministerially approve a request to that local agency to reduce
17 or eliminate any parking requirements that would otherwise be
18 imposed by that local agency on the development if the housing
19 development project qualifies as a faith-based organization
20 affiliated housing development project.

21 (c) Notwithstanding any other law or ordinance, a local agency
22 shall not require the replacement of religious-use parking spaces
23 proposed to be eliminated by a faith-based organization affiliated
24 housing development project pursuant to a request made and
25 ministerially approved pursuant to this section.

26 (d) Notwithstanding any other law or ordinance, a local agency
27 shall not require the curing of any preexisting deficit of
28 religious-use parking as a condition of approval of a faith-based
29 organization affiliated housing development project.

30 (e) The Legislature finds and declares that the provision of
31 adequate housing, in light of the severe shortage of housing at all
32 income levels in this state, is a matter of statewide concern rather
33 than a municipal affair as that term is used in Section 5 of Article
34 XI of the California Constitution, and therefore this section applies
35 to all cities, including charter cities.

36 SEC. 2. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 a local agency or school district has the authority to levy service
39 charges, fees, or assessments sufficient to pay for the program or

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OAKLAND

2020 JAN 30 PM 3:53

Approved as to Form and Legality

DRAFT
City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER KAPLAN

A RESOLUTION IN SUPPORT OF AB 1851 (WICKS), FAITH-BASED AFFILIATED HOUSING DEVELOPMENT PROJECTS, TO REDUCE OR ELIMINATE ANY PARKING REQUIREMENTS FOR HOUSING DEVELOPMENT PROJECTS BUILT ON RELIGIOUS-USE PARKING LOTS.

WHEREAS, expanding the housing supply is necessary to address the immediate need to house Oakland's growing population; and

WHEREAS, Oakland is suffering from a serious housing crisis as housing costs in the City increase drastically, making housing at all levels of affordability unavailable for many Oakland residents; and

WHEREAS, the 2019 EveryOne Counts Homeless Point-in-Time Count & Survey, saw a rise of 47% of individuals experiencing homelessness; and

WHEREAS, AB 1851 will allow faith-based organizations to build housing development projects on and/or adjacent to parcels designated for religious-use parking; and

WHEREAS, AB 1851 would make it easier for thousands of faith-based organizations that would like to dedicate their resources to helping resolve the housing crisis; and

WHEREAS, AB 1851 qualifies housing development projects for a density bonus pursuant to Section 65915; and

WHEREAS, AB 1851 shall waive local agency's parking requirements and shall ministerially approve and request local agencies to reduce or eliminate any parking requirements that would otherwise be imposed, if the housing development project qualifies as a faith-based organization affiliated housing development project; and

WHEREAS, the City of Oakland finds and declares the provision of adequate housing in-light of a shortage in the supply of housing at all income levels, is a matter of great concern; now, therefore, be it

RESOLVED: That the Oakland City Council hereby endorses AB 1851 and urges the California State Legislature and Governor Gavin Newsom to support its enactment into law, and be it

FURTHER RESOLVED: That the Oakland City Council requests that the City Administrator transmit a copy of this Resolution to our local state legislative representatives and to the lobbyist for the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

- AYES -
- NOES -
- ABSENT -
- ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California



Kate Harrison
Councilmember District 4

ACTION CALENDAR
April 21, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison, Mayor Arreguín, Councilmembers Robinson and Hahn

Subject: Adopt a Resolution to Upgrade Residential and Commercial Customers to 100% Greenhouse Gas Emissions-Free Electricity Plan and Municipal Accounts to 100% Renewable Plan

POLICY COMMITTEE

Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee

RECOMMENDATION

Adopt a Resolution to:

- a. Opt up Berkeley's municipal accounts to *Renewable 100* (100% renewable and 100% greenhouse gas-free) electricity service, and refer the estimated increased cost of \$100,040 to the June 2020 budget process.
- b. Upgrade current and new Berkeley residential and commercial customer accounts from *Bright Choice* (>85% GHG-free) to *Brilliant 100* (100% GHG-free), except for residential customers in low income assistance programs.¹ The transition would be effective October 1, 2020 for residential customers and January 1, 2021 for commercial customers.
- c. Provide for yearly Council review of the City's default municipal, residential, and commercial plans.

POLICY COMMITTEE RECOMMENDATION

On February 6, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action:

Action: M/S/C (Harrison/Robinson) to approve recommendations b and c, as revised in the supplemental report submitted by Councilmember Harrison, with a Positive Recommendation.

¹ CARE and FERA are state discount programs; eligibility requirements are shown in the Appendix B. The Medical Baseline Program assists residential customers who have qualifying medical conditions with a lower rate on monthly energy bills and extra notifications in advance of a Public Safety Power Shutoff.

Revised recommendation:

- b. Opt up municipal East Bay Community Energy accounts to renewable 100 (100% renewable and 100% greenhouse gas-free) electricity service, 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.

Vote: All Ayes.

Action: M/S/C (Robinson/Harrison) to approve recommendation a, as revised in the supplemental report submitted by Councilmember Harrison, and send the item back to the City Council with a Positive Recommendation.

Revised recommendation:

- a. Changing the service plan for current and new Berkeley residential Bright Choice accounts, except those enrolled in the California Alternate Rates for Energy Program, Family Electric Rate Assistance and Medical Baseline Allowance Program accounts, and all commercial East Bay Community Energy Bright Choice accounts to the Brilliant 100 (100% greenhouse gas-free) electricity service plan, effective [] for residential customers and [] for commercial customers. Customers will not lose the option of changing their plan or opting out of EBCE entirely

Vote: Ayes – Robinson, Harrison; Noes – Davila; Abstain – None.

BACKGROUND

A. Plan Options

Community Choice Aggregators (CCAs) like East Bay Community Energy (EBCE) were authorized by the state,² with the goal of buying less carbon intensive energy at competitive prices. CCAs appoint municipal leaders instead of private shareholders to oversee procurement and energy-related policy-making.

Until June 2018, the default provider of electricity in Berkeley was PG&E. Berkeley joined neighboring cities³ to establish EBCE as the default electricity provider.⁴ The new agency offered significant advantages, including less carbon intensive energy at competitive prices and oversight by local jurisdictions instead of private shareholders.

² Migden, Chapter 838, Statutes of 2002; Leno, Chapter 599, Statutes 2011.

³ The City of Alameda is not a member-jurisdiction of EBCE because it is has its own municipal utility. Newark and Pleasanton decided to join EBCE in 2019 and are scheduled to begin service in 2021.

⁴ A third category of electric service customer (primarily commercial) known as Direct Access are exempted from both PG&E and EBCE entirely for electricity generation services.

EBCE can reinvest profits into expanding carbon-free options, including through its Local Business Development Plan, and into electrification.⁵

EBCE still relies on PG&E to transmit and deliver its energy over the grid to customers. Therefore, customers receive bills that separately list EBCE electricity supply; PG&E electricity transmission and delivery; PG&E for natural gas; and pass-through charges representing long-term contract obligations for buying electricity entered into by PG&E (known colloquially as the “exit fee”⁶).

Customers can rejoin PG&E at any time by opting out of EBCE.⁷ The City of Berkeley boasts an impressive opt out rate of under 2% of customers returning to PG&E.

The following terms relate to the plans offered by East Bay Community Energy (EBCE):

- **GHG-free:** This is generation that emits zero (or in some cases minimal) GHG-emissions. It includes renewable energy and nuclear power. Currently, nuclear power is not included in any of EBCE’s energy portfolios but EBCE is considering including it in its *Bright Choice* service offering.
- **Renewable:** These are a subset of GHG-free energy sources that are also renewable. They include hydroelectric, wind, solar, geothermal, and biomass.⁸

These definitions are carried over into the three current service offerings of EBCE:

⁵ East Bay Community Energy Local Business Development Plan, <https://ebce.org/local-development-business-plan/>.

⁶ Officially known as the Power Charge Indifference Account – the PCIA.

⁷ PG&E requires a one year waiting period to return to EBCE once a customer has opted out to PG&E.

⁸ Although renewable, the California Air Resources Board (CARB) assigns nominal GHG-emissions to geothermal and for hydroelectric generation from the Pacific Northwest. Biomass does have significant GHG-emissions in combustion which are offset by reductions in GHGs in other parts of the cycle.

Figure 1: Comparison of EBCE and PG&E Service Options and Respective Power Content⁹

Type of Energy	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 & GHG-Free	41%	45%	100%	39%	100%
- Biomass/ Biowaste	0%	0%	0%	4%	0%
- Geothermal	1%	0%	0%	4%	0%
- Eligible hydroelectric	0%	0%	0%	3%	0%
- Solar	15%	20%	50%	18%	100%
- Wind	25%	25%	50%	10%	0%
GHG-Free, Not Renewable	59%	55%	0%	49%	0%
- Large Hydroelectric	21%	55%	0%	13%	0%
- Primarily Large Hydro: Unspecified Sources **	38%	0%	0%	2%	0%
- Nuclear	0%	0%	0%	34%	0%
Non-Renewable Natural Gas	0%	0%	0%	15%	0%
Total	100%	100%	100%	100%	100%

* California Energy Commission Power Source Disclosure Program for EBCE and PG&E's 2018 Power Mix.

**Unspecified sources are not traceable to a specific facility, because traded through open market transactions. Unspecified sources of power are typically a mix of all types, and largely include GHG free sources. EBCE states that the primary source of its unspecified generation in *Bright Choice* is the North West Hydro system, which is carbon-free but not renewable large hydroelectric power.

⁹ East Bay Community Energy 2018 Power Content Label, September 10, 2019, https://ebce.org/wp-content/uploads/ebce_PCL_091019_PRINT-small_compressed.pdf. See also, PG&E 2018 Power Mix, https://www.pge.com/en_US/about-pge/environment/what-we-are-doing/clean-energy-solutions/clean-energy-solutions.page?WT.mc_id=Vanity_cleanenergy

Ideally, EBCE can purchase energy to meet its customer needs at rates lower than PG&E's (as it does for its *Bright Choice* program) or at parity with PGE's rates (as with *Brilliant 100*). In 2018, the EBCE Board of Directors¹⁰ established *Bright Choice* as the default product for residential and commercial customers. The *Brilliant 100* plan, was selected by Hayward and Albany for their businesses and residents.¹¹ Piedmont elected to enroll everyone in *Renewable 100* for residential customers, at a slight premium (See Appendix C).

Berkeley's initial city-wide default at enrollment for residential and commercial customers was EBCE's *Bright Choice*. The city's municipal accounts were enrolled in the middle tier, *Brilliant 100*.

By joining EBCE in 2018, the City has already realized greenhouse gas emission reductions. All of EBCE's plans have more renewable energy than PG&E's standard plan and while PG&E's basic offering includes natural gas, none of EBCE's plans do.¹²

B. Effect of this Legislation

This legislation would upgrade Berkeley's municipal accounts to *Renewable 100*. Doing so will support California's burgeoning solar and wind energy sector, which has the potential to further offset electricity generated from natural gas and nuclear, for a relatively small premium.

The resolution also upgrades residents and businesses to the carbon-free plan. This allows the City to move closer towards eliminating the vast majority of its electricity-based GHG emissions,¹³ bringing it closer to its Climate Action Plan goal of reducing emissions by 33% by 2020. Berkeley's 2016 community-wide GHG emissions are approximately 15% below 2000 baseline levels; the City is approximately 18% behind its 2020 goal.¹⁴ In 2016, residential and commercial electricity accounted for 3% and 7%, respectively, of 2016 city-wide emissions.¹⁵

¹⁰ Composed of elected officials from each of the participating jurisdictions.

¹¹ While renewable energy sources such as wind and solar are not consistently available all day and cannot be directly dispatched, rapid advances in battery storage are ameliorating those issues; 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; 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*.

¹² Except as may occur in unspecified system power.

¹³ 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.

¹⁴ In part, this is due to an 18% increase in population in that same time period.

¹⁵ These 2016 figures do not account for GHG reductions resulting from Berkeley's enrollment in EBCE's *Bright Choice* plan in 2018, changes in PG&E's power mix for large customers than remained with PG&E, minimal customer enrollment in *Renewable 100*, and other population and usage trends.

Figure 2: 2016 Community GHG Emissions Inventory

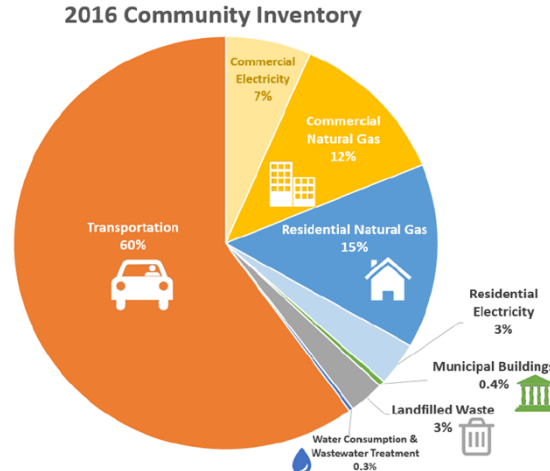
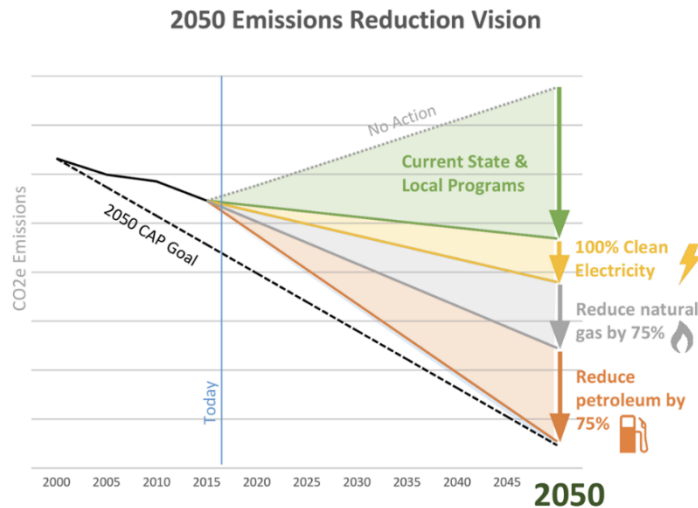


Figure 1: Pie chart of 2016 community-wide GHG emissions inventory, broken down by sector and fuel.

As seen in Figure 3 below, without accelerated efforts, the City will continue to be below its target of 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 3: City of Berkeley Strategies to Achieve 80% GHG reduction by 2050 (2017)¹⁶



¹⁶ 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;

EBCE estimates *Bright Choice* participation alone results in approximately 18,844 metric tons of carbon dioxide emissions each year. These emissions are equivalent to 4,001 passenger vehicles driven per year and would require 24,609 acres of forests to sequester. These 72,363 acres of forest are more than two times Berkeley’s land area.

Figure 4: Carbon impact of *Bright Choice* Use in Berkeley

Per Hour 2018 Emissions from <i>Bright Choice</i>	Annual Total CO _{2e}
101 lb-CO _{2e} /MWh	18,844 metric tons

Were all customers upgraded to *Brilliant 100* and remained there, these emissions would be entirely eliminated.

Moving to *Brilliant 100* would increase the use of solar from 15% to 20% of the power supply paired with eliminating unspecified sources of electricity from EBCE, which are from primarily from large hydroelectric. Total large hydroelectric power would be reduced from up to 59% to 55% and total unspecified power would be reduced from 38% to 0%.

In addition, the EBCE Board is currently considering whether to accept PG&E allocations of nuclear energy in the *Bright Choice* service plan. EBCE staff noted in a recent presentation that, under this scenario, customers could avoid paying directly for nuclear energy generation¹⁷ by opting up from *Bright Choice*: “Any individual customer or entire city can opt-up to *Brilliant 100* or *Renewable 100* to eliminate nuclear generation from their power mix.”¹⁸ The City of Berkeley has a long-standing policy on nuclear energy, including a statement of “oppos[ing] the nuclear fuel cycle as a whole.”¹⁹ The uncertainty surrounding the inclusion of nuclear power in *Bright Choice* would be eliminated as a result of this legislation.

Upgrading customer accounts would also insure that the energy purchased in Berkeley is significantly greener than that provided by PG&E. During the last couple of years, PG&E has also made its supply greener; in 2018, PG&E’s least green plan offered 86% carbon-free electricity.²⁰

¹⁷ The exit fees charged pay for a portion of PG&E’s nuclear generation.

¹⁸ Nick Chaset, East Bay Community Energy Executive Committee, PG&E Carbon-Free Allocations (Informational item), November 20, 2019, <https://ebce.org/wp-content/uploads/Item-5-PGE-Carbon-Free-Allocations.pdf>.

¹⁹ Nuclear Free Berkeley Act, BMC 12.9.

²⁰ See PG&E 2018 Power Mix.

Finally and, most critically, using cleaner energy in Berkeley will 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.²¹ Maximizing the climate benefits of building and transportation electrification requires the cleanest possible electric supply.²²

The Berkeley City Council, with approval from the EBCE Board, may revise default customer rate plans at any time. Market-based solutions to the climate emergency have and will likely continue to fail to deliver the necessary emergency reductions. EBCE customers have had the option to voluntarily enroll in greener plans but to date very few have done so. As of January 2020, less than 3% of Berkeley customers upgraded from *Bright Choice*.

Figure 5: Current Enrollment in EBCE Service Plans

	# of Total Customers	% of total
Bright Choice	52,113	97.06%
Brilliant 100	577	1.07%
Renewable 100	1,002	1.87%
Total Customers	53,692	100%

Upgrading customers while continuing to allow people to opt back down will yield substantially more benefits than the best marketing campaign aimed at encouraging customers to opt-up individually.

This resolution makes these changes on a rolling basis. The City’s municipal accounts would be upgraded to *Renewable 100* in July, 2020, subject to budget adoption. EBCE’s *Brilliant 100* would become the default plan for residential customers in it as of October 1, 2020 and commercial accounts as of January 1, 2021.²³ This timeline will allow for outreach through community workshops, on-line guidance and information and other forms of engagement, especially to low and moderate income community members and small businesses, in advance of enrollment in *Brilliant 100*.

²¹ 2018 Berkeley Climate Action Plan Update, p. 10.

²² While wind and solar are not consistently available throughout the day and cannot be directly dispatched, rapid advances in battery storage technology are ameliorating those issues.

²³ See East Bay Community Energy, Rates, <https://ebce.org/residents/> & <https://ebce.org/businesses/>

C. EBCE Compared to other Regional CCAs

CCAs need to buy on the open market or create new sources of renewable energy. Other CCAs, even those that were recently formed, have been able to enroll all customers in GHG-free plans. 74% of Clean Power Alliance CCA in Southern California, formed in 2017, customers are on 100% GHG-free service plans and an equivalent opt out rate to EBCE (3.8% vs. 4.0%). Silicon Valley only has the two greener plans, with no equivalent to EBCE's *Bright Choice*. MCE, which offers a mixed carbon and carbon-free plan, has a higher opt out rate than EBCE. A transition across EBCE's service area to 100% GHG-free energy will support regional efforts to reduce emissions.

D. Cost Impacts of the Transition on Customers

The cost impact of *Brilliant 100* needs to be understood compared to PG&E rates and those of *Bright Choice*. Based on current pricing, *Brilliant 100* customers would 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. However, there will be a small price premium when compared to *Bright Choice*. All other things being equal, the average price increase for a residential customer due to the proposed upgrade is estimated to be \$0.63/month (see Appendix D) and for a small business \$2.63/month (see Appendix E).²⁴

Due to anticipated increases in exit fees, the cost of *Brilliant 100* compared to PG&E could increase. On average, exit fees represent a relatively nominal percentage (11%) of an EBCE bill.²⁵ On February 27, 2020,²⁶ the California Public Utilities Commission (CPUC) updated its calculation of the exit fees. In FY 2020-2021, CPUC has limited the increase in exit fees to ½ cent/kilowatt hour, about a 16% increase in the current exit fee and established a 7% cap for under collection set at for the same time period.²⁷ This net increase of 23% could result in a total increase of 2.82% over an average PG&E bill. An increase in the exit fees impacts all three of EBCE's rate plans.

For informational purposes only, Appendix D and E include calculations, all other things being equal, representing the marginal increase resulting from a 25% PCIA increase scenario.

²⁴ See Figure 4.

²⁵ Generation accounts for 34% and PG&E transmission and delivery charges are 54% of an EBCE Bill.

²⁶ Decision Adopting Pacific Gas And Electric Company's 2020 Energy Resource Recovery Account Forecast And Generation Non-Bypassable Charges Forecast And Greenhouse Gas Forecast Revenue Return And Reconciliation, California Public Utilities Commission ALJ Final Decision, 2/28/2020, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M328/K199/328199856.PDF>.

²⁷ See PCIA Update, EBCE, February 19, 2020, <https://ebce.org/wp-content/uploads/Item-10-PCIA-UPDATE-Informational-Item.pdf>. See also, CPUC Decision 18-10-019, October 11, 2018 <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M232/K687/232687030.PDF>.

The EBCE Board may choose from among various steps to mitigate potential PCIA-related financial losses, including raising rates. EBCE has indicated that they will likely preserve some differential in the *Bright Choice* option from PG&E's rates to keep customers from opting out, and increase *Brilliant 100* disproportionately to make up the difference.

Although the outcome of the PCIA is far from certain, EBCE estimates that the cost of *Brilliant 100* could increase from 1%-6% above PG&E's standard rate, as compared to the current price parity with PG&E.²⁸ Some of EBCE's \$120 million in cash and cash equivalents could be used to subsidize rates over the next year.²⁹ Using the middle of the range, or a 3.5% rate increase over PG&E, would bring the price differential from PG&E up slightly to \$3.12/month for residential customers and \$13.24 for commercial customers (See Appendices D and E). These estimates are largely consistent with exit fee estimates made by neighboring jurisdictions such as San Francisco. If none of EBCE reserves are used, the *Brilliant 100* percentage amount above PG&E rates could be greater.

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 not be upgraded and will continue to receive their monthly discounts through PG&E under their current plan. This discount is already applied to the transmission and distribution charges on other customers' electricity bills pursuant to state law.

A change in customer rate plans does not bind customers; customers retain the choice to opt back down. They may also opt out, at any time for a one-time fee of \$5 for residential customers and \$25 for commercial customers.

E. Cost and Environmental Impacts of Municipal Accounts at *Renewable 100*

Berkeley's municipal accounts represent about 2% of city-wide electricity usage.³⁰ The City's accounts are currently enrolled in carbon-free energy through *Brilliant 100*. Short

²⁸ See EBCE PCIA Update.

²⁹ Fiscal Year 2019-2020 Second Quarter Financial Statements, February 19, 2020, <https://ebce.org/wp-content/uploads/Consent-Item-7-Fiscal-Year-2019-20-Second-Quarter-Financial-Statements.pdf>. The EBCE Board is considering whether to set aside approximately \$40.5 million towards its reserves, which could reduce available cash and cash equivalents to approximately \$80 million. See Reserve Fund Allocations from 2018-19 Fiscal Year Net Revenues (Action Item), December 18, 2019, <https://ebce.org/wp-content/uploads/Item-14-Reserve-Fund-Allocations-from-2018-19-Fiscal-Year-Net-Revenues-Action-Item.pdf>.

³⁰ 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.

of directly building 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 a cost of \$100,040³¹ per year.

Economic and environmental advantages to investing in exclusively renewable electricity through *Renewable 100* include:

- *Renewable 100* represents an important investment in green energy; enrolling in this plan represents an important commitment to combatting climate change.
- The cost to the City is minimal. Other such cities, such as 1/3 of those in Los Angeles County and the cities of Dublin and Piedmont 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 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 help to stimulate critical research and investment in advanced battery technology that can even the playing field between variable renewables and natural gas, nuclear and hydroelectric.³²

F. Alternatives Considered

Enrolling residential and commercial customers in *Brilliant 100* represents the most reasonable, equitable and feasible step towards reducing GHG emissions. *Renewable 100* is currently on average \$4.22 (4%) per month more expensive than PG&E for residential customers; this increase could rise to \$6.53 over PG&E with exit fee increases. On the commercial side, *Renewable 100* is estimated to cost \$17.70 more per month for the average small business, and could increase to \$26.75/month with increases in the exit fees. This 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 exit fees. An unfavorable future CPUC decision could disproportionately impact rate hikes for those in the more

³¹ EBCE staff provided cost estimate.

³² 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>.

expensive *Renewable 100*, especially inequitable for low-income residents. Opt downs and opt ups would also be more likely to increase.

However, because the energy sector, including the renewable industry, is rapidly evolving, and as the EBCE Board may decide to modify rate structures, this item also calls for yearly Council review of the default plan with respect to power mix sustainability and cost in order to determine whether further adjustment of the default or another community-wide change in service plan is warranted.

FINANCIAL IMPLICATIONS

Upgrading Berkeley municipal accounts to *Renewable 100* is estimated to cost the City approximately \$100,040 more annually.

In response to a referral adopted by City Council on January 21, 2020, staff is currently working to develop estimates regarding funding and capacity needed to increase community outreach and engagement related to climate action. These increased engagement presents an ideal opportunity to educate community members about East Bay Community Energy service plans as part of that effort.

ENVIRONMENTAL SUSTAINABILITY

Reducing carbon emissions at an emergency and equitable pace is a necessary step to meet 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. Resolution
2. Appendix A: Current PG&E Rates
3. Appendix B: 2019-2020 CARE and FERA Income Eligibility
4. Appendix C: Default Enrollment Service for Jurisdictions Participating in EBCE
5. Appendix D: Residential Rate Scenarios
6. Appendix E: Commercial Rate Scenarios

Adopt a Resolution to Upgrade Residential and Commercial Customers to a 100% Greenhouse Gas Emissions-Free Electricity Plan and to Upgrade Municipal Accounts to a 100% Renewable Plan

ACTION CALENDAR
April 21, 2020

Appendix A: PG&E Rates (2020)

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

Appendix B: 2019-2020 CARE and FERA Income Eligibility (February 2020)³³

		Average Monthly Bill (\$)
PG&E	Standard Residential Rate	\$89
	Solar Residential Choice	\$92
	Standard Commercial Rate	\$378
	Solar Commercial Choice	\$386

³³ 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.

Appendix C: Default Enrollment Service for EBCE Jurisdictions

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

Adopt a Resolution to Upgrade Residential and Commercial Customers to a 100% Greenhouse Gas Emissions-Free Electricity Plan and to Upgrade Municipal Accounts to a 100% Renewable Plan

ACTION CALENDAR
April 14, 2020

Appendix D: Residential Price Scenarios

	Current Average Monthly Bill		25% Increase in Exit Fees ³⁴		Brilliant 100 Premium (Mid-Point 3.5%) ³⁵	
	Average Monthly Bill (\$)	Average Monthly Cost Compared to <i>Bright Choice</i> (\$)	Average Monthly Bill (\$)	Increase Compared to PG&E (\$)	Average Monthly Bill (\$)	Marginal Monthly Increase over PG&E (\$)
Bright Choice	\$88.58	-	\$91.31	-	-	-
Brilliant 100	\$89.21	\$0.63	\$91.94	\$2.94	\$92.33	\$3.12
Renewable 100	\$92.80	\$4.22	\$95.53	\$6.53	-	-
PG&E	\$89.21	\$0.42	-	-	-	-

³⁴ See CPUC Decisions 18-10-019 and 20-02-047.

³⁵ See PCIA Update, EBCE, February 19, 2020, <https://ebce.org/wp-content/uploads/Item-10-PCIA-UPDATE-Informational-Item.pdf>. pp. 3-4.

Appendix E: Commercial Price Scenarios

	Current Average Monthly Bill		25% Increase in Exit Fees ³⁶		Brilliant 100 Premium (Mid-Point 3.5%) ³⁷	
	Average Monthly Bill (\$)	Average Monthly Cost Compared to Bright Choice (\$)	Average Monthly Bill (\$)	Increase Compared to PG&E (\$)	Average Monthly Bill (\$)	Marginal Monthly Increase over PG&E (\$)
Bright Choice	\$375.79	-	\$387.06	-	-	-
Brilliant 100	\$378.42	\$2.63	\$389.69	\$2.63	\$391.66	\$13.24
Renewable 100	\$393.49	\$17.7	\$404.75	\$17.7	-	-
PG&E	\$378.42	\$2.63	-	-	-	-

³⁶ See CPUC Decisions 18-10-019 and 20-02-047.

³⁷ See PCIA Update, EBCE, February 19, 2020, <https://ebce.org/wp-content/uploads/Item-10-PCIA-UPDATE-Informational-Item.pdf>. pp. 3-4.

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, effective October 1, 2020 for residential customers and January 1, 2021 for commercial customers, 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.

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
May 5	<ol style="list-style-type: none"> 1. Budget Update 2.
June 23	<ol style="list-style-type: none"> 1. Climate Action Plan/Resiliency Update 2.
July 21	<ol style="list-style-type: none"> 1. Crime Report 2.
Sept. 29	<ol style="list-style-type: none"> 1. Digital Strategic Plan/FUND\$ Replacement/Website Update 2. Update: Zero Waste Priorities
Oct. 20	<ol style="list-style-type: none"> 1. Update: Berkeley's 2020 Vision 2. BMASP/Berkeley Pier-WETA Ferry

Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. Vision 2050 3. Ohlone History and Culture (special meeting) 4. Presentation from StopWaste on SB 1383

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> 1. Systems Realignment

	City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling
1.	<p>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city's short-term rental ordinance (<i>Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.</i>) March 18, 2019 Action: <i>Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</i></p> <p>From: Councilmember Worthington</p> <p>Recommendation: Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties.</p> <p>Financial Implications: Minimal</p> <p>Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>
2.	<p>36. Referral Response: Issue a Request for Information to Explore Grant Writing Services from Specialized Municipal Grant-Writing Firms, and Report Back to Council (<i>Referred from the October 15, 2019 agenda</i>)</p> <p>From: City Manager</p> <p>Contact: Henry Oyekanmi, Finance, 981-7300</p> <p><i>Note: Will be considered in FY 2021 Budget Process</i></p>
3.	<p>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow (<i>Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee</i>) (<i>Referred from the January 21, 2020 agenda</i>)</p> <p>From: Councilmember Harrison</p> <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow. 2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods. <p>Financial Implications: See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda & Rules for future scheduling.</i></p>
4.	<p>33. Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley (<i>Referred from the March 10, 2020 agenda</i>)</p> <p>From: Commission on Disability</p> <p>Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300</p> <p><i>Note: Referred for scheduling of a presentation by the Commission</i></p>

CITY CLERK DEPARTMENT				
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL				
Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
Public Hearings Scheduled				
1533 Beverly Pl (single-family dwelling)	ZAB			6/2/2020
0 Euclid Ave - Berryman Reservoir (denial of 4G telecom facility)	ZAB			TBD
Remanded to ZAB or LPC				
1155-73 Hearst Ave (develop two parcels) 90-Day Deadline: May 19, 2019	ZAB			
Notes				

4/2/2020

The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. 69,283–N.S. and
amended by Resolution No. 69,295–N.S.

Effective February 11, 2020

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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 a limit 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 except during recess periods; 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, as appropriate to the charge or responsibilities of such subcommittee. 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 four Authors and Co-Sponsors, in any combination that includes at least one Author.

Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors 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
2. 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's Primary 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 points of analysis in Appendix B - Guidelines for Developing and Writing Council Agenda Items.
3. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.
4. "Primary Author" means the Mayor or Councilmember listed first on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author.
5. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be co-sponsors of the council agenda item.
6. "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.
7. "Packet" means the agenda plus all its corresponding agenda items.
8. "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.

9. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
10. "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 are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee 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 15th 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. four 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 take the following actions:

- i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
- ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
- iii. Refer the item back to the Primary Author for adherence to required form or for additional analysis as required in Section III.B.2 (Primary Author may decline and request Policy Committee assignment).
- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.i, ii, or iii, the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) 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; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs III.C.1.a. i, ii, or iii, or request Policy Committee assignment.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

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 unless referred for policy review to 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. Refer the item to a Policy Committee for review.
 4. 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 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 Primary 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. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

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 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.8.
 - 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.

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 be listed as Authors or Co-Sponsors on an item provided that one of the Authors or Co-Sponsors 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, who also can not be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating Author or Co-Sponsor.
- d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.
- e. Only one Author or Co-Sponsor 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 who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member 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 revised or supplemental 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 Primary Author's request that the item remain in committee until a date certain (more than one extension may be requested by the Primary 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 Primary 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 City Clerk 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.

Policy Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority 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 Primary 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 Primary 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, public comment on consent and information items, and adoption of the Consent Calendar, 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, below.

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. Written Communications

Written communications 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.

G. 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 or motion 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. Robert's Rules of Order

Robert's 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, a motion for the previous question, which, if passed by a 2/3 vote, 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.

L. Use of Cellular Phones and Electronic Devices

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. 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 electronic devices such as laptop computers and tablets.

The use cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.

VI. FACILITIES

A. Meeting Location 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 Primary 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 Primary 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

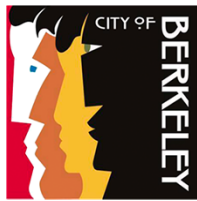
Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

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



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

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.¹

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.²

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.³ This successful policy laid the

¹ <http://www.recyclingrulesac.org/ordinance-overview/>

² <http://www.recyclingrulesac.org/my-recycling-rules/>

³ <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 2025.⁴ 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.⁵

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.⁶

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 2050.⁷

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.⁸ 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 2019.⁹ 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

⁴ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1383

⁵ <https://www.calrecycle.ca.gov/organics/slcp/education>

⁶ http://ncrarecycles.org/wp-content/uploads/2018/10/SB1383_Final-May-Draft-Edible-Regs-Only.pdf

⁷ <https://ww3.arb.ca.gov/cc/cc.htm>

⁸ <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>

⁹ <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.¹⁰

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.”¹¹

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

¹⁰ <https://berkeleyfoodnetwork.org/about/our-work/>

¹¹ 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

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.

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

IN CALIFORNIA, MILLIONS ARE

FOOD INSECURE

1 IN 8 CALIFORNIANS

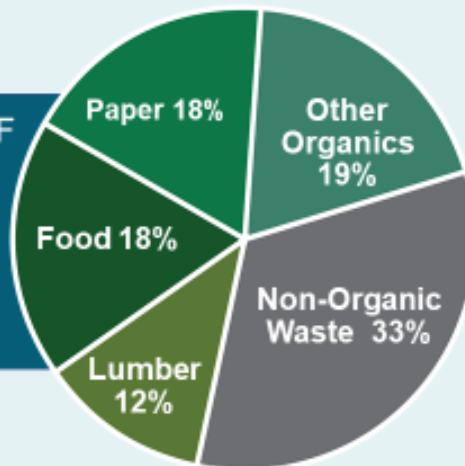
1 IN 5 CHILDREN



CALIFORNIA THROWS AWAY

MORE THAN 6 MILLION TONS
OF FOOD WASTE EVERY YEAR!

CALIFORNIA DISPOSED OF
APPROXIMATELY
27 MILLION TONS OF
ORGANIC WASTE IN 2017



California's Waste Stream

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 CO₂

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 (CO₂) 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_{2.5}).
 - 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

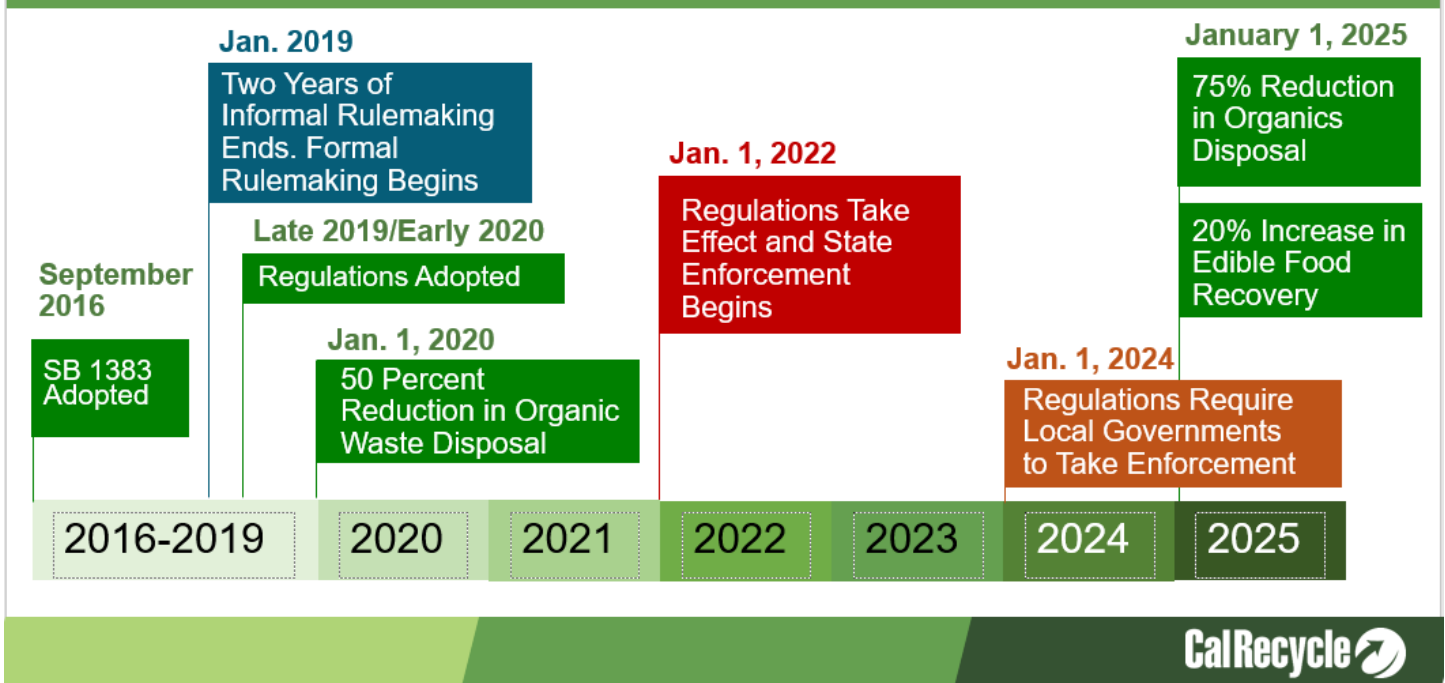
2020	50 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (11.5 Million Tons Allowed Organic Waste Disposal)
2022	REGULATIONS TAKE EFFECT
2025	75 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (5.7 Million Tons Allowed Organic Waste Disposal)
2025	20 PERCENT INCREASE IN RECOVERY OF CURRENTLY DISPOSED EDIBLE 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**



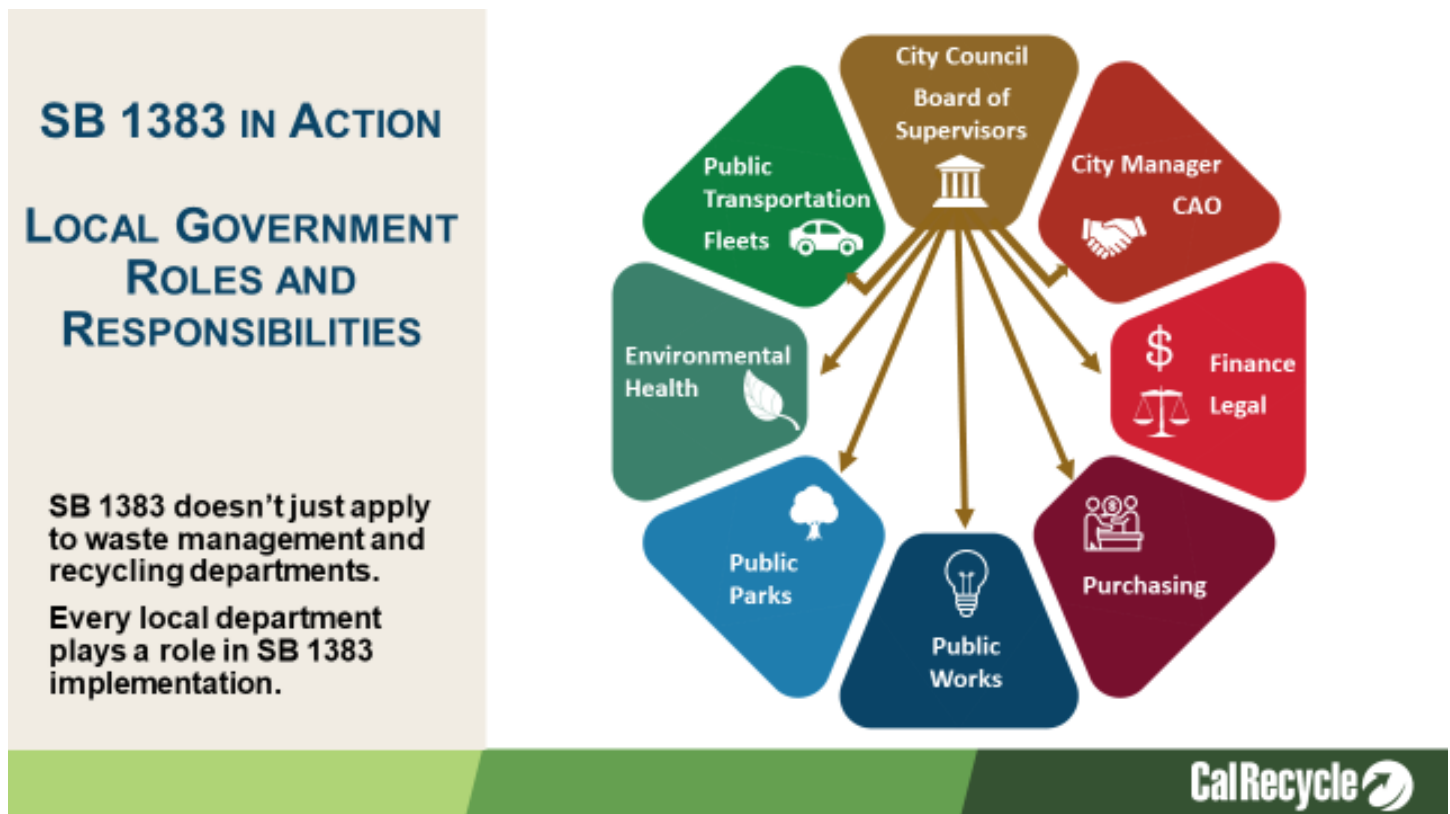
**Monitor Compliance
and Conduct
Enforcement**

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)

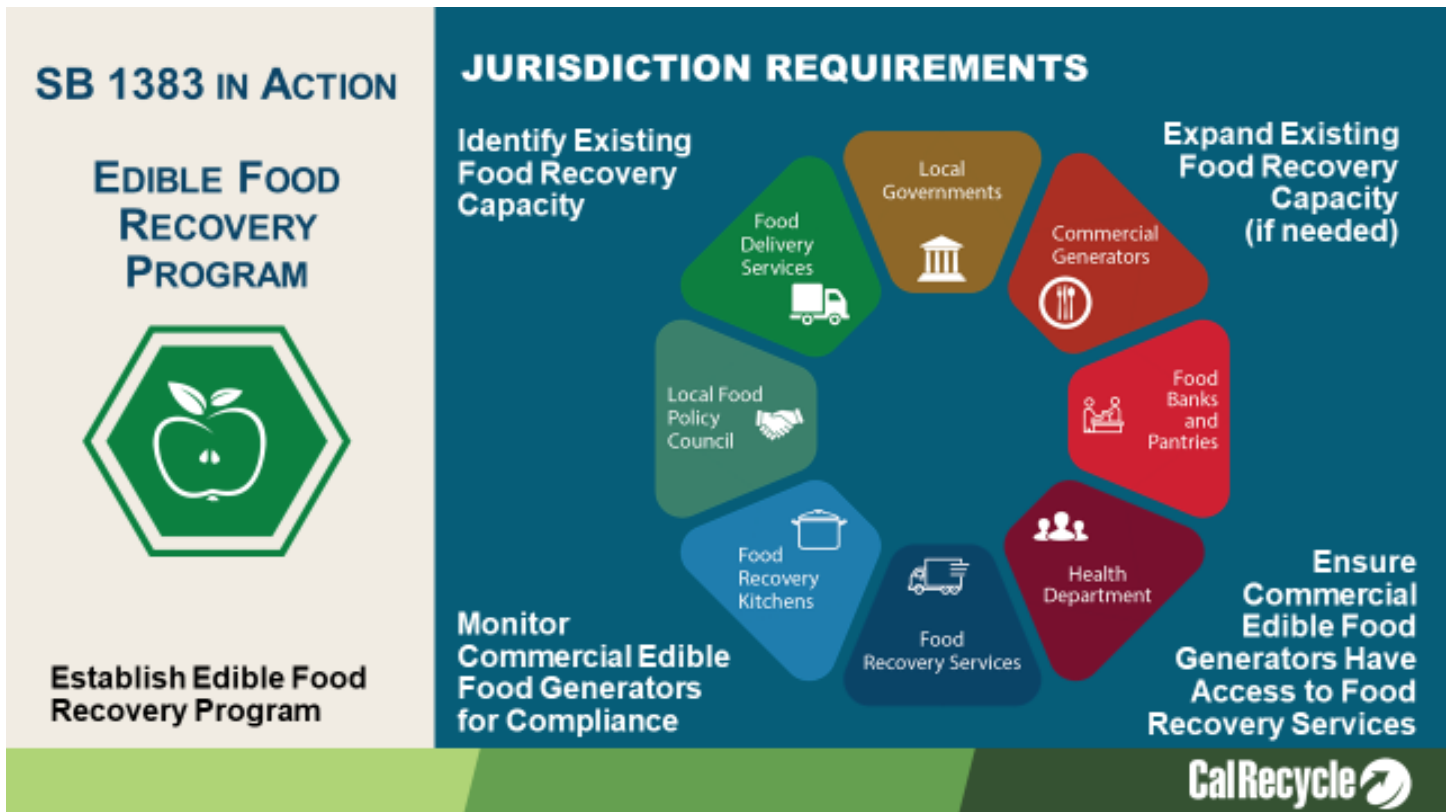
- Minimum contamination monitoring and reduction requirements
- Collection waivers authorized for certain documented circumstances



(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

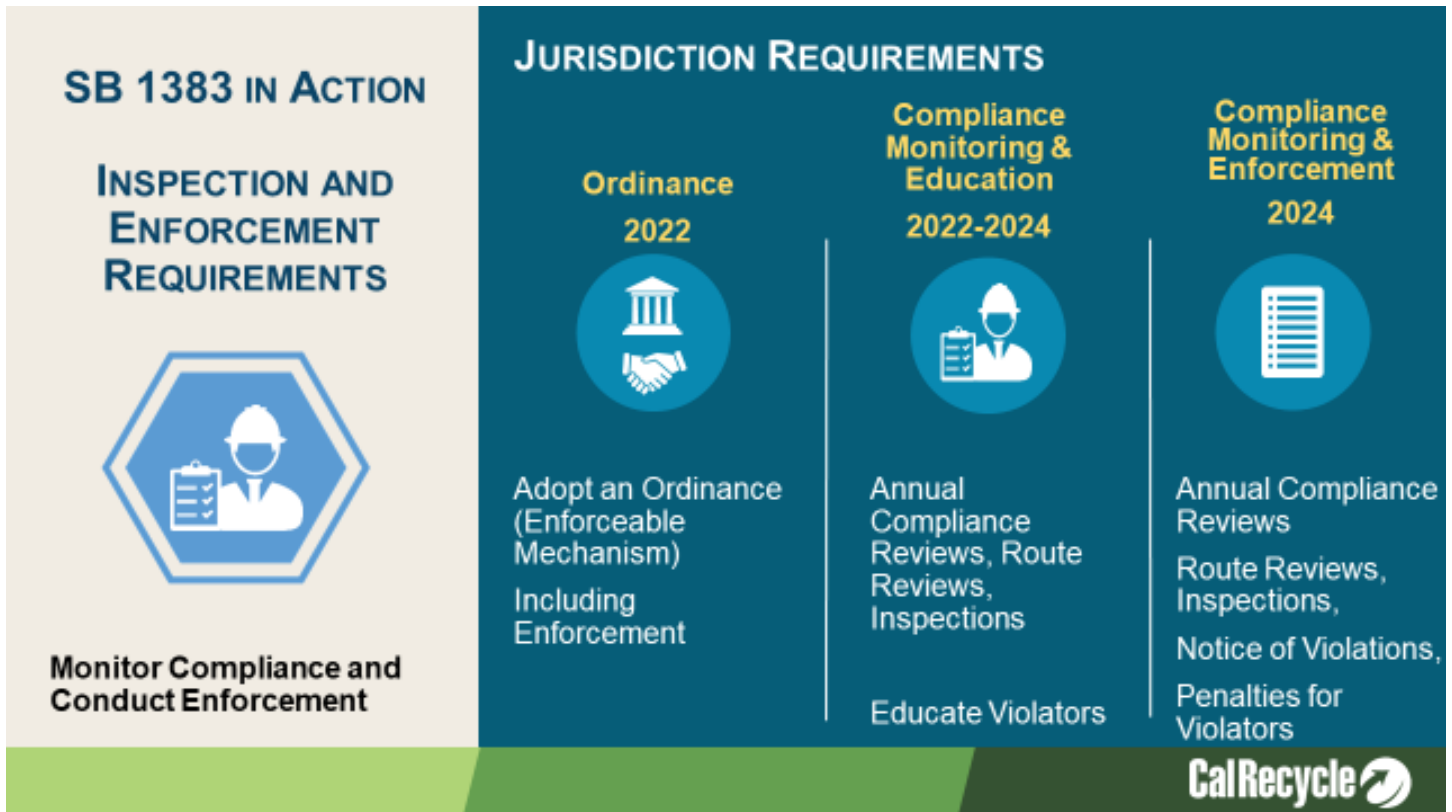


CalRecycle 

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 ≥ 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

CALRECYCLE OVERSIGHT (BEGINS IN 2022)

STATE ENFORCEMENT

CalRecycle

Authorize Waivers

- Low Population
- Rural Areas

Emergency Circumstances

Oversee and Monitor

- State Agencies and Facilities
- Local Education Agencies

Oversee and Monitor for Compliance

Jurisdiction Review

- Conduct joint inspections with jurisdictions
- Review Implementation Record

If Violations

- Issue Notices of Violation
- May Authorize Corrective Action Plan
- Allows up to 24 months to address barriers outside of a jurisdiction's control

CalRecycle

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 and 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.



CalRecycle
STAY ENGAGED

 <https://www2.calrecycle.ca.gov/Listservs/Subscribe/152>

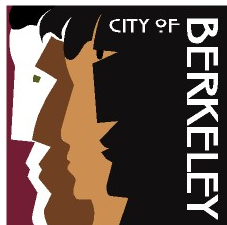
 <https://www.calrecycle.ca.gov/organics/slcp>

 **Presenter's Contact Info**

CalRecycle 

(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.



[First Last name]
Councilmember District [District No.]

SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

Item Number: 2

Item Description: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



SOPHIE HAHN

Berkeley City Council, District 5
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
(510) 981-7150
shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Sophie Hahn
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.¹ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.² Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

¹ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

² <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, “such as a newsletter or brochure, [...] delivered, by any means [...] to a person’s residence, place of employment or business, or post office box.”³ Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.⁴ Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or “Officeholder”) funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

³ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

⁴ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.⁵ For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

⁵ Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.⁵

members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.

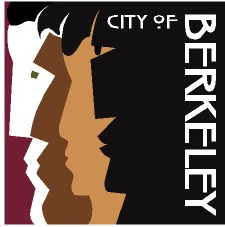
Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.⁶

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

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

⁶ <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

Item Number: 2

Item Description: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Samuel Harvey; Deputy City Attorney / Secretary, Fair Campaign Practices Commission

Attachment 4 to the report (“Memorandum signed by City Attorney Manuela Albuquerque”) included an attachment which was erroneously omitted from the Council item. Attached is Attachment 4 (for context) along with the additional pages which should be included to appear as pages 16 -17 of the item.



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

PAUSERSUBEL2\offhldr.mem.doc

² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Loni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

in opposition to the nomination or election of one or more candidates (Emphasis added.)

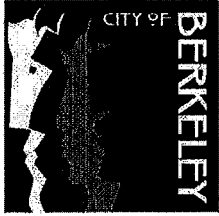
Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.^{1/} (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

^{1/}I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.



Office of the City Auditor
Ann-Marie Hogan, City Auditor

MEMORANDUM

Date: March 14, 2017
To: Councilmember Harrison
From: Ann-Marie Hogan, City Auditor
Re: Council Expense Reimbursement Guidance

The purpose of this memo is to provide you with forms for, links to, and general guidance on Council expense and reimbursement policies. In some cases, the restrictions on expenses for Council Members are more restrictive and more complex than those for City employees, because of state law. You must contact my office prior to incurring expenses for attendance at a conference, seminar, or training, or making travel arrangements. The purchase of routine office supplies should be made using the City's standard procurement procedures and vendors, using a purchase order, but on those occasions when you must pay for something personally and then request reimbursement, you will also need to submit the request to my office. For information regarding the City's procurement procedures, see Administrative Regulation 3.4¹. Once your City email is active, we'll send this memo to you via email, so you can click on the links to the City's intranet. Please feel free to contact me if you or your staff have questions.

In July 2006, the Berkeley City Council passed Resolution No. 63,412–N.S. to comply with state bill AB1234, which requires all cities to adopt an expense reimbursement policy for legislators in local government, and sets specific requirements for that policy. In September 2013, at the recommendation of the City Attorney, Council rescinded Resolution No. 63,412–N.S. and replaced it with Resolution No. 66,295–N.S. (See attached.) Council adopted the new resolution to incorporate a budget relinquishment and grant policy, and also to clarify the criteria and spending limitations associated with reimbursements for the Mayor and Council Members. Some of the spending limitations include:

- **Mileage and Transit**:- Mileage is reimbursed at the current year's IRS mileage rate and must be accompanied by supporting documentation, such as a Google Maps printout. Use the most economical mode of transportation practical.
- **Meals**: Meals are reimbursed at the per diem rates set forth in City Administrative Regulation 3.9, or the actual cost of the meal, whichever is *lower*.² The per diem rate covers the meal, tax,

¹ Administrative Regulation 3.4: <http://icobweb/AR/PDF/AR3-4.pdf>

² Administrative Regulation 3.9: [http://icobweb/AR/PDF/2016/Administrative Regulation 3.9.pdf](http://icobweb/AR/PDF/2016/Administrative%20Regulation%203.9.pdf)

tip, and nonalcoholic beverages (alcoholic beverages are not reimbursable). The per diem rate also applies when Council Members are requesting reimbursement for meals paid on behalf of individuals who are conducting city related business, such as Legislative Assistants. Council Members must submit original receipts, a list of attendees and the Statement of Municipal Purpose form (explaining how the expense benefits the City), as part of the reimbursement request. Any expense in excess of the individual meal allowance will not be reimbursed. The current per diem rates are:

- Breakfast \$10
 - Lunch \$15
 - Dinner \$26
- **Airfare:** Airfare is reimbursed based on the most economical mode and class of transportation reasonably consistent with scheduling needs. We suggest that you attach a printout of available fares with your request. Please note that the current language in Resolution No. 66,295–N.S. is out of date because it references a program that is no longer available. This will be corrected in Council’s next revision of that resolution.
 - **Lodging:** Lodging for conferences will be reimbursed at the available group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or the government rates published by the U.S. General Services Administration, whichever is greater. Where no conference rate is published, the reimbursement rate will be based on the government rate or the median rate listed on discount travel websites, whichever is greater. Trivago, Priceline, Kayak, Orbitz, Travelocity, and Expedia are examples of travel sites that provide discount rates and may be used to identify a reasonable median rate. Include a printout of the published conference rate, government rate, or travel site rates with the reimbursement request as applicable. Council Members can look up rates by using the U.S. General Services Administration’s Per Diem Rates Look-Up tool.³ Council Members should select the specific location they are traveling to in the look-up tool.
 - **Registration:** Generally, Council Members should use a purchase order for conference, seminar, and training registrations as defined by Administrative Regulation 3.9. However, Council Members may use their credit card to register, if that is the vendor’s required form of payment. Council Members may not submit their reimbursement request until after the event has taken place, and must include proof of payment, and should include evidence of attendance with their request. Resolution No. 66,295–N.S. also requires that Council members provide a report to Council on training they attend, but we will be recommending that this requirement be deleted since it is not required by AB1234.

³ Hotel fee tool: <http://www.gsa.gov/portal/category/100120>

When completing a reimbursement request, Council Members must complete and provide the following:

1. FN-024 payment voucher: available in Administration Regulation 3.14⁴, on the City's intranet⁵, or by contacting Accounts Payable at (510) 981-7310. All three sources provide guidance for completing this form.
2. Statement of municipal purpose form: available in City Auditor's Groupware section or by contacting the City Auditor's Office at (510) 981-6750 or auditor@cityofberkeley.info.
3. Supporting documentation: Council member original receipts, proof of payment, official per diem rates, etc.

Council Members must include account codes on the FN-024 payment voucher. The City's standard account codes are *14 digits* long and include both an element and an object code as the last four digits. The most commonly used element and object codes are:

- 4064: mileage/transportation (including taxi or ride-sharing service, such as Uber or Lyft)
- 4063: registration
- 4062: meals and lodging related to conferences, seminars, training, workshops, and similar
- 4061: airfare
- 5550: meals and food for city business, events, functions, and similar business meals

City Administrative Regulation (A.R.) 3.9 establishes the policies and procedures for reimbursing expenses incurred by City staff to attend conferences, meetings, seminars, trainings, and workshops. The regulation complements Resolution No. 66,295–N.S., which establishes the procedures for Council Members. A.R. 3.9 includes the following exceptions for Mayor and Council Members' expenses:

- **Attendance and travel request form:** The Mayor, Council Members, and Legislative Assistants are not required to submit an Attendance and Travel Request form. (A.R. 3.9, page two)
- **Paying for another employee's expenses:** The Mayor, Council Members, and Legislative Assistants may be reimbursed for paying for other legislative staff's or Council Members' expenses incurred for city related business. This is an exception to A.R. 3.9, noted on page three.
- **Business meals:** The Mayor and Council Members may be reimbursed for meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents). City Auditor review and approval is required. Council Members must describe the purpose of their business meal, e.g. issues discussed and how they relate to adopted priorities of Council, on the Statement of Municipal Purpose form and list the attendees. *Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower.* (A.R. 3.9, page four) **Note that AB1234 requires that members of a legislative body shall**

⁴ A.R. 3.14: <http://icobweb/AR/PDF/AR3-14.pdf>

⁵ City Intranet: <http://icobweb/finance/GroupwareAP.FN-024&PettyCash.htm>

provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

- **Receipts:** The Mayor, Council Members, and Legislative Assistants must submit meal receipts. Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower. (A.R. 3.9, page four)

cc: Sheila Soo, Administrative Assistant, Auditor's Office

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

A. Authorized Activities.

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
- 5. Alcoholic beverages;
- 6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
- 7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

F. Audits of Expense Reports

All expenses are subject to verification by the City Auditor of compliance with this policy.

G. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

H. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

I. Violation of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

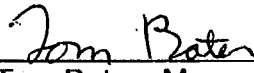
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, City Clerk

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

A.R. NUMBER: 3.4
ORIGINAL DATE: 07/94
POSTING DATE: 4/14/2009
PAGE 1 of 5 PAGES

SUBJECT: Purchasing Policy & Purchasing Manual

PURPOSE

To ensure that the City receives the most favorable price, quality, and/or service available for all purchases, while adhering to City Council directives. The Precautionary Principle (PP) and Environmentally Preferable Purchasing Policies (EP3) should be considered whenever feasible, and in accordance with the adopted budget. Furthermore, the complete AR provides City employees with appropriate procedures to knowledgeably participate in the procurement process. This is the Executive Summary of AR 3.4, with an introduction to procedures for the City's Purchasing Policy. The Purchasing Manual is the full AR 3.4, and includes the complete policy and procedures. The City Purchasing Manual can be found online at Groupware – Finance: Purchasing Manual.

POLICY

It is the policy of the City Manager that all City purchases, with only specified and approved exceptions, shall be made through a competitive process. Regardless of the value of the purchase, more than one documented quotation, bid, or proposal is strongly encouraged. The City Council periodically sets or adjusts cost levels of purchases for Council review and approval, and the parameters for the formally documented competitive processes.

Responsibility for City Purchases rests with designated positions for implementation of this policy:

1. The City maintains a centralized General Services office through which all purchases of goods and services are processed. Each Department originates requests for procurement.
2. Departments are responsible for requesting the type and quality of product or service required. Sole and single source contracts are discouraged, but may be utilized if approved as provided in the Purchasing Manual. The FUNDS system maintains lists of vendors cross-referenced to commodities and services.
3. The General Services Division is ultimately responsible for determining the means of purchase and the appropriate vendor. All purchases made will be of a quality consistent with the ultimate use intended and will be based on best value to the City of Berkeley, not necessarily on the lowest obtainable price.
4. Only the City Manager has the authority to enter into a contract/agreement, except purchase orders, with a vendor. The authority to enter into a Purchase Order has been delegated to the General Services Manager.
5. A comprehensive list of City restrictions on procurement are addressed in Section I of the manual. In addition to those restrictions prescribed by law the following are prohibitions requested by City Council.

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- A) On January 29, 2008 Council requested the City Manager prohibit purchases from Chevron Corporation whenever possible.
 - B) On October 28, 2008 Council requested the City Manager research limiting the purchase of bottled water. In response, the City Manager directed staff to eliminate as much as possible the purchasing of individual bottles of water. Bottled water can still be purchased for emergency preparedness and for field events where health and safety are a concern. For all other events, carafes and tap water should be used.

PROCEDURE

See the current version of the City Purchasing Manual, available online at [Groupware – Finance: Purchasing Manual](#), for complete information and procedures. The following is the table of contents for the Purchasing Manual:

- I. General Procedures, Responsibilities and Requirements
- II. Purchasing Requirements by Price
- III. Purchasing Procedures
- IV. Glossary of Terms
- V. Frequently Asked Questions (FAQs)
- VI. Requirement on Contracting with Certain Entities (Forms & Council Actions)
- VII. Council Guidelines on Purchasing Services and Goods
- VIII. How to Guide
- IX. Reports (In Development)
- X. Forms

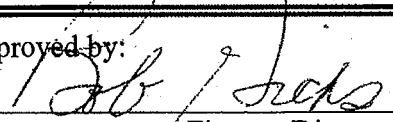
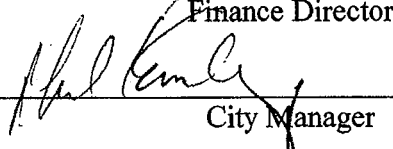
DEFINITIONS

1. **Procurement:** Procurement refers to the process of managing activities associated with an organization's need to obtain the goods and services required for its operation. To ensure that the correct amount of the product or service is received at the appropriate time, specific steps are taken in the procurement process, including: value assurance; determining which commodities or services are best; choosing the right suppliers and vendors; negotiating the best prices; and awarding contracts. For General Services to conduct the procurement process responsibly, its functions include spend analysis, sourcing, supplier implementation, transaction management, category management, and supplier performance management.
2. **Purchasing:** The processing of a purchase order. The key steps in the process are: departments place and approve requisitions; General Services or departments find the item (sourcing); General Services issues the purchase order (PO); and General Services sends PO to vendor. Upon fulfillment of the order, the City is invoiced and the vendor is paid.

3. Purchasing Requisition (PR): A purchasing requisition is a document that instructs General Services to spend a designated and approved amount from a specific department/division budget account for needed goods or services.
4. Purchase Order (PO): A purchase order is used for the purchase of goods. The PO represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.
5. Blue-Backed Contract: A blue backed contract is used for the purchase of services. A blue-backed contract represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.

Attachments:

1. Purchasing Thresholds: Ordinance No. 6,875 – N.S.
2. Purchasing Thresholds: Ordinance No. 7,035 – N.S.

<p>RESPONSIBLE DEPARTMENT: Finance Department</p> <p>TO BE REVIEWED/REVISED: Every year</p>	<p>Approved by:</p> <p> _____ Finance Director</p> <p> _____ City Manager</p>
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ATTACHMENT 1

ORDINANCE NO. 6,875-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010B REGARDING EXPENDITURES FOR SPECIFIC IMPROVEMENTS, INCLUDING PLAY AREA IMPROVEMENTS AND EQUIPMENT WHICH EXCEED \$200,000; AMENDING SECTION 7.18.010C REGARDING EXPENDITURES FOR THE PURCHASE OF SUPPLIES, EQUIPMENT, AND MATERIALS WHICH EXCEED \$100,000; AND AMENDING SECTION 7.18.020A REGARDING EXPENDITURE LIMITATIONS IN CASE OF EMERGENCY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended as follows:

Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$25,000 shall require Council approval.

B. Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of \$200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

C. Expenditures for the purchase of supplies, equipment, and materials which exceed the amount of \$100,000 shall require Council approval.

Section 2. That Berkeley Municipal Code Section 7.18.020A is amended as follows:

Section 7.18.020 Expenditures pursuant to Charter Article XI, Section 67.4 Emergencies.

A. Expenditures pursuant to Article XI, Section 67.4 of the Charter of the City which exceed the amount of \$100,000 shall require Council approval; and expenditures for public construction projects and playground improvements and equipment which exceed the amount of \$200,000 shall require Council approval.

B. Notwithstanding subsection A of this section, in the event of a declared emergency under Chapter 2.88, the expenditure limitation under Article XI, Section 67.4 of the Charter of the City shall be an amount not exceeding the amount appropriated by the Council in the most recent appropriation ordinance for the fund from which an expenditure is made and for the purpose authorized for such fund.

C. Whenever purchases are made pursuant to this section, the City Manager shall promptly inform the Council as to the nature and amount.

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

ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010 REGARDING EXPENDITURES FOR SERVICE CONTRACTS TO INCREASE CITY MANAGER'S AUTHORITY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended to read as follows:

Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$50,000 shall require Council approval.

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

At a regular meeting of the Council of the City of Berkeley held on April 22, 2008, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on May 6, 2008, this Ordinance was adopted by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

ATTEST: [Signature] Deanna Despain, Deputy City Clerk

[Signature] Tom Bates, Mayor

Date signed: [Signature]

CITY OF BERKELEY

ADMINISTRATIVE REGULATIONS

SUBJECT: Attendance and Payment of Expenses Associated with Conferences, Meetings, Seminars, Trainings, and Workshops

PURPOSE

To establish policies and procedures for City staff to obtain approval to attend conferences, meetings, seminars, trainings, and workshops; and to establish procedures for the City's direct payment of authorized expenses incurred by an individual for attendance at an approved event or meeting. Obtaining approval of an Attendance & Travel (A&T) Request for an event or meeting, along with associated expenses, ensures that appropriate supervisors and Department Directors have determined an employee's attendance at an event or meeting benefits the City, and that expenses are consistent and in line with the department's adopted budget.

This Administrative Regulation (AR) also complements **Resolution No. 66,295, City Council Expenditure and Reimbursement Policies** for the Mayor and Council (Attachment B); and **Resolution No. 63,413, Establishing Travel and Training Reimbursement Policy for Board and Commission Members** of the Rent Stabilization Board, Board of Library Trustees, and members of other boards or commissions (Attachment C).

POLICY

It is the policy of the City Manager to authorize Department Directors and Supervisors to approve an employee's request to attend, and to receive payment for expenses associated with conferences, meetings, seminars, training, and workshops.

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I. APPROVALS

Note: Employee Must Submit and Obtain Approval for A&T Request before incurring any allowable expenses

City Approval to attend and incur authorized expenses for an eligible event is based on the following factors:

- A. Expectation that the City will derive a specific benefit from staff attendance.
- B. Employee submission of the authorized A&T Request form (the current version in Groupware), and receipt of approval from her/his Supervisor &/or Department Director in advance of an authorized event, including approval for all associated expenses.
- C. All expenditures and reimbursements for the Mayor and Council must adhere to Resolution No. 66,295 and be approved by the City Auditor.
- D. For routine and, or, recurring meetings an A&T Request must be submitted, approved, and on file in the department in advance of the initial date, and must be renewed annually for each fiscal year.
- E. Department Directors are to complete and submit an A&T Request; no other signature is required for approval.
- F. Exceptions to use of the A&T Request form are: Mayor, Council, and Legislative Assistants (when allowed under Resolution No. 66,295); and members of the Rent Stabilization Board, and Board of Library Trustees. Resolution No. 66,295 or Resolution No. 63,413 governs their approvals, expenditures, and related matters.
- G. Expenditures are provided for in the adopted budget for the employee's department. For specific procedures, see item III. Allowable Expenses.

II. EXPENDITURES BASICS

Expenditures must be documented in accordance with all related City ARs and other associated policies, using current forms (published in Groupware), including and not limited to:

- AR 3.4 Purchasing Manual: Employees and Mayor/Council must make full use of the City's Procurement procedures and submit purchase requisitions to generate payment for registration prior to travel. Note: Expenses for Board/Commission members and other non-staff or elected officials eligible to attend an event pursuant to the standards in Resolution No. 63,413 must have payments processed by the designated board or commission Secretary, using FN-024 Payment Vouchers through Accounts Payable.
- AR 3.14 FN-024 Voucher Processing
- AR 7.2 Use of Private Vehicles and Mileage Reimbursement
- Auto Record for Mileage Reimbursement: for further details, see AR 7.2 and Transportation: Private Vehicle, below.

-
- City Council Resolution No. 66,295 City Council Expenditure and Reimbursement Policies.
 - City Council Resolution No. 63,413 Establishing Travel and Training Reimbursement Policy for Board and Commission Members.

In addition:

- Statement of Expense forms and receipts, for reconciliation of an advance &/or reimbursement of expenses incurred, must be submitted to Finance – Accounts Payable within 60 calendar days (30 days for Council/Commission, unless revised) after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and individuals assume full, personal responsibility for the costs they incurred.
- Advances or reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of any other employee. Exception to this restriction is for reimbursements only of expenses for Mayor and Council and their Legislative Assistants.

See item V. Advance Payments and Reconciliation.

III. ALLOWABLE EXPENSES

Expenditures should adhere to the following guidelines. In the event that expenses are incurred that exceed these guidelines, the cost borne or reimbursed by the City will be limited to those that fall within these guidelines, unless approved by an appropriate, designated authority. Proof of payment for all expenses must be provided when reconciling the Statement of Expense form, except as indicated.

- A. **Registration:** Registration fee charged for an authorized conference, meeting, seminar, training or workshop is allowable. Employees should register in a timely manner to take advantage of registration discounts. Payments can be made by Purchase Orders (PO). See also: Payments by Check Using a Purchase Order, below.
- B. **Transportation:** Employees must use the most economical mode and class of transportation reasonably consistent with scheduling needs, coordination with other employees traveling together, and cargo space requirements, and following the most direct and time-efficient route incorporating these factors. If an employee chooses a more expensive mode of travel based on personal criteria, reimbursement will be for the lesser cost of transportation.
 1. **Public Transit** should be used for travel to events and meetings outside the City of Berkeley and in other locations, where accessible by transit. Receipts are not required for these expenses.
 2. **Fleet Vehicle:** see AR 7.1 Use of Fleet Vehicles for details.
 3. **Private Vehicle:** see AR 7.2 Use of Private Vehicles & Mileage Reimbursement for details. If use of a private vehicle is authorized, mileage is reimbursed at IRS

rates currently in effect, in addition to parking fees, bridge and road tolls, which are also reimbursable.

- Unless an alternative is proposed by a department and acceptable to Accounts Payable, expenses for approved use of a private vehicle should be submitted with other expenses associated with attendance at an authorized event or meeting on the Statement of Expense.
4. **Rental Vehicle** charges may be reimbursed under this provision with Department Director approval. Rental fees, receipted fuel expenses, and authorized parking fees, **bridge and road tolls will be reimbursed**.
 5. **Air/Train** fares for reimbursement under this policy should be the most economical and reasonable amount available after the Attendance and Travel Request is approved.
 6. **Travel to/from Airports: Employees will be reimbursed for the most economical and appropriate means**; if there's any question about this, obtain department approval before incurring the expense.
 7. **Taxi or Shuttle** fares may be reimbursed with receipts.
- C. **Lodging:** Cost of accommodations will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay.
1. When travel status is more than twelve (12) hours; or when the location is more than 50 miles from the employee's worksite and residence based on odometer, MapQuest or other reliable documentation; or when an event begins before 8:00am or ends after 5:00pm and a documented evening event requires the employee's attendance.
 2. If lodging is associated with a conference, employees should register in a timely manner to take advantage of discounts or conference rates. Lodging expenses that exceed the group rate published by the conference sponsor must be approved by an appropriate, designated authority.
 3. For non-conference lodging, travelers must request government rates, when available and must be authorized by Department Director.
 4. Costs to upgrade rooms from the basic accommodations provided are not reimbursable, unless authorized by the Department Director.
- D. **Meals: Meals are reimbursable only if travel status is over twelve hours or requires overnight lodging.**
1. **Meal expenses**, including non-alcoholic beverages, tax, and tips, are reimbursable up to a total per diem of \$51: the amounts per meal are \$10 breakfast; \$15 lunch; \$26 dinner; and receipts are not required. Expenses above the authorized amounts are the responsibility of the employee.
 2. **Breakfast &/or evening meetings with meals**, which are scheduled before conferences or meetings commence, or after they adjourn, and that require the employee's attendance, will be considered for reimbursement when

documentation is submitted reflecting the requirement of the employee's attendance for the meeting and location.

3. **Meals included with registration or lodging that are taken at additional expense** will only be considered for reimbursement at the authorized per diem by approval of the Department Director when documentation is submitted reflecting the necessity of this expense, such as:
 4. **Meals during approved travel time** to/from an event or meeting destination may be reimbursable with approval by the employee's Department Director, at the authorized amount for the individual meal(s) (see Meal expenses, above).
 5. **NOTE:** Business meals with other employees, commissioners or elected officials of the City of Berkeley are specifically NOT reimbursable. Exceptions for Mayor and Council must be reviewed and approved by the City Auditor. City funds may also NOT be used for expenses related to holiday activities or other office parties or events, unless exempted by AR 3.3.
- E. **Other Travel Related Expenses:** Expenses for which City staff or officials receive reimbursement from another agency are not reimbursable.

IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

Generally, General Services – Procurement will process a PO within three working days, and a check could be issued in the next AP check run. It is the department responsibility to notify Procurement staff when the requisition is approved to ensure timely processing of the PO in order to issue the check promptly. Departments may have internal procedures that require additional time, and employees are expected to familiarize themselves with these internal deadlines.

- A. Expenses for registration should be paid by check using a Purchase Order (PO). This includes online registration when "pay by check" is an option.
- B. Use of an employee's credit card or personal check for registration is only permitted and eligible for reimbursement when time does not permit issuing a City check for payment, and is approved by the Department Director.
- C. Resolution No. 66,295 or Resolution No. 63,413 governs any exceptions for Mayor and Council, or for the Rent Stabilization Board or Board of Library Trustees.
- D. Expenses for accommodations, if lodging is included in the event package, should be paid with the registration fee using a Purchase Order (PO).

V. ADVANCE PAYMENTS & RECONCILIATION

An approved A&T Request is required for any request for an advance. Advances are extended only to employees in classifications that are not included on the list of **Classifications NOT eligible for advances**. Advances are limited to approved air/train fare and lodging only.

In addition:

- Registration or meals, and other transportation expenses may not be advanced to any employee.
- Advances to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- Departments must maintain a Tracking Worksheet that documents employees' advance requests and reconciliations. These Worksheets must be submitted to the Auditor's Office by the 10th working day of each calendar quarter (January, April, July, October), along with copies of correspondence to those employees who have advance reconciliations outstanding. The Auditor's Office will review departmental travel advance worksheets on a sample basis.
- If an advance is issued to an employee and the employee does not attend the event, whether due to personal circumstances, the event being cancelled, or the City intervened to cancel the employee's attendance, the employee must seek recovery of charges and remit the full refunded amount to the City.

A. Requesting an Advance

1. Requests for an advance must be submitted to Finance – Accounts Payable at least 10 working days before the event start date. Employees are expected to familiarize themselves with any additional internal deadlines or procedures their departments may require.
2. Requests for an advance must include:
3. Approved Attendance and Travel Request, with documentation showing dates and time, and rates offered for travel and accommodations, including meals provided with the event.
4. Completed FN-024 Payment Voucher (current version on Groupware) with required signatures of approval and all specified back-up documentation. See AR 3.14 for details.

B. Reconciling an Advance

1. Each travel advance must be reconciled before an employee can request another; employees are not eligible for multiple advances.
2. Attendance must be documented in the form of a receipt, sign in sheet, or certificate of attendance.
3. Employees must submit a Statement of Expense and receipts to appropriate department staff within 60 calendar days of conclusion of the event (30 days for Council/Commission, unless revised). Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred. If an employee fails to reconcile an advance within this timeframe, the City may take disciplinary action.

4. When an advance exceeds the expenses incurred, the employee is responsible for paying the difference by cash or check payable to the City of Berkeley for the balance at the time of reconciliation. Payment is submitted to the City Treasury and a copy of the CR edit report must be attached to the employee's Statement of Expense, in addition to all required original receipts.
5. When an advance is less than the expenses incurred, departments submit an FN-024 Payment Voucher payable to the employee for the difference, along with the employee's Statement of Expense and original receipts for expenses incurred.

VI. EXPENSE REIMBURSEMENT

See Allowable Expenses, above, for expenses that qualify for reimbursement, and the acceptable rates and limitations for those expenses. To obtain reimbursement of approved expenses incurred:

- A. Employees must submit a completed FN-024 Payment Voucher, and Statement of Expense, and receipts to appropriate department staff within 60 calendar days after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred.
- B. Reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- C. Tips, except where documented, are not reimbursable.
- D. Reimbursements are processed by FN-024 Payment Voucher (see AR 3.14) and must include:
 1. Authorized signature/s (see AR 3.12).
 2. Attendance and Travel Request approved by Supervisor &/or Department Director.
 3. Documentation of attendance at the event or meeting (receipt, certificate, sign-in sheet).
 4. Statement of Expense, completed with all required original receipts.
 5. Auto Record for Mileage Reimbursement, if use of a private vehicle was authorized (see AR 7.2 for details and instructions) and these are the only expenses for reimbursement associated with the event.

VII. OTHER EXCEPTIONS

Any exception not already identified within other sections of this AR must be submitted to, and approved by the employee's Department Director. For Mayor, Council, Legislative Assistants, Rent Stabilization Board or Board of Library Trustees, exceptions must be approved as set forth in the appropriate Resolution.

Employees may request an exception to the reimbursement rules when original receipts, or other proof of payment such as a canceled check, cannot be provided to verify expenses. The Supervisor and Department Director (or designee) must approve requests for an exception that require the "Approval of Payment Exception" portion of the Statement of Expense and state the necessity for the exception. In addition, the Finance Director must also approve any payment exceptions.

VIII. DEFINITIONS (related to Attendance at Conferences, Workshops, Training, Seminars, Meetings)

Advance: Payment to an employee with an approved Attendance & Travel Request to purchase air/train travel and qualifying lodging reservations and incur expenses associated with attending the forthcoming event or meeting. See procedures for Requesting an Advance, and Reconciling an Advance.

Event: Conference: A gathering of persons associated with a professional, membership or support organization for discussing matters of common concern, which may include presentations, programs and exhibits related to municipal government &/or related functions.

Event: Workshop, Training Session, or Seminar: A usually brief intensive educational program for a relatively small group of people that focuses on techniques and skills in a particular field.

Meeting: Non-Routine Meeting: A formally arranged gathering for a common purpose that the City will derive a specific benefit from staff attendance.

Meeting: Routine or Recurring Meeting: A gathering that occurs in predictable intervals for a common purpose, where attendance is part of the employee's usual role and responsibilities.

Overnight Stay: Out-of-town accommodations (room and specified meals) required for an employee to attend an approved event or eligible meeting (see Allowable Expenses for details).

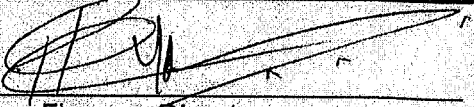
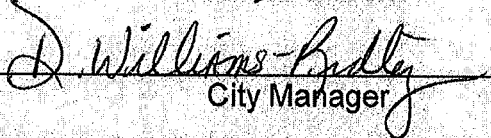
Payment Documentation: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, cancelled checks (copies of front and back), proof of credit card charge and payment (receipt and copy of statement), and printed online payment confirmation with name and amount. Photocopies of receipts are not acceptable.

Point of Origin: Location, if other than Worksite, from which authorized travel may originate or to which travel may conclude, related to attendance at an approved event and calculation of expenses for reimbursement.

Worksite: Main office or work location where an employee usually performs her/his regular job duties with the City of Berkeley.

IX. ATTACHMENTS/LINKS

- A. Classifications NOT eligible for advances
- B. Resolution 66,295 (Mayor/Council Departments)
- C. Resolution 63,413 (Rent Board/Library Trustees)
- D. Attendance & Travel Request
- E. Statement of Expense
- F. AR 7.2 Use of Private Vehicles & Mileage Reimbursement
- G. Auto Record for Mileage Reimbursement
- H. FN-024 Payment Voucher

RESPONSIBLE DEPARTMENT: Finance Department	Approved by: 
TO BE REVIEWED/REVISED: Every year	 City Manager

Attachment A

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE	JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1350	M	Accounting Manager	1374	Z1	Economic Development Manager
1317	M	Animal Services Manager	2923	M	Economic Development Project Mgr.
1213	Z1	Assistant City Attorney	1417	Z1	Emergency Services Manager
1118	Z1	Assistant City Manager	1402	Z1	Employee Relations Officer
8174	Z1	Assistant Fire Chief	1426	M	Energy Officer
1801	Z1	Assistant to the City Manager	1348	M	Equipment Superintendent
1301	Z1	Audit Manager	1121	Z5	Executive Director of Rent Board
1323	Z1	Budget Manager	1344	M	Facilities Maintenance Superintendent
1306	M	Building and Safety Manager	8155	B	Fire Apparatus Operator EMT
1320	Z1	Capital Improvement Programs Manager	8167	B	Fire Captain EMT
1107	Z1	City Attorney	1105	Z1	Fire Chief
1102	Z1	City Auditor	8158	B	Fire Lieutenant EMT
1120	Z1	City Clerk	8164	B	Fire Lieutenant Training EMT
1101	Z1	City Manager	8160	B	Fire Prevention Inspector I EMT
1315	M	Customer Services Manager	8161	B	Fire Prevention Inspector II EMT
2303	Z2	Deputy City Attorney II	1418	Z1	Fire Prevention Manager
2311	Z2	Deputy City Attorney III	1321	M	General Services Manager
1366	Z1	Deputy City Auditor for Payroll Mgmt.	1377	M	Hazardous Materials Manager
1219	Z1	Deputy City Clerk	1223	Z1	Health Officer
1103	Z1	Deputy City Manager	1224	Z1	Health Officer (Cert)
1227	Z1	Deputy Director of Finance	1363	M	Housing Authority Manager
1229	Z1	Deputy Director of Health & Human Services	1352	M	Housing Services Manager
1211	Z1	Deputy Director of Library Services	1380	Z1	Human Resources Manager
1228	Z1	Deputy Director of Parks, Recreation & Waterfront	1221	Z1	Information Systems Manager
1230	Z1	Deputy Director of Planning	1354	M	Land Use Planning Manager
1205	Z1	Deputy Director of Public Works	1803	Z5	Library Building Project Manager
1209	Z1	Deputy Director of Public Works (Reg)	1466	Z2	Library Financial Manager
1204	Z1	Deputy Fire Chief	1465	Z5	Library Network Administrator
8182	B	Deputy Fire Marshal EMT	1373	M	Manager of Economic Development
1203	Z1	Deputy Police Chief	1310	M	Manager of Engineering
1123	Z1	Director of Community Development	1368	M	Manager of Environmental Health
1104	Z1	Director of Finance	1360	M	Manager of Health Promotion
1125	Z1	Director of Health and Human Services	1339	M	Manager of Mental Health Services
1126	Z1	Director of Housing	1362	M	Manager of Program Planning and Administration
1108	Z1	Director of Human Resources	8186	Z1	Paramedic Program Supervisor
1127	Z1	Director of Information Technology	8111	B	Paramedic Supervisor I
1115	Z1	Director of Library Services	8113	B	Paramedic Supervisor II
1112	Z1	Director of Parks, Recreation & Waterfront	1327	M	Parking Services Manager
1124	Z1	Director of Planning	1332	M	Parks Superintendent
1111	Z1	Director of Public Works	1326	M	Planning Manager

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE	JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1307	M	Disability Programs Manager			
8148	E	Police Captain	1353	M	Revenue Collection Manager
1110	Z1	Police Chief	2716	Z2	Senior Human Resources Analyst
8145	F	Police Inspector	1325	M	Seniors Program Administrator
8147	F	Police Lieutenant	1314	M	Solid Waste and Recycling Manager
1473	Z1	Police Review Commission Officer	2316	Z2	Staff Attorney II
8142	F	Police Sergeant	2317	Z2	Staff Attorney III
2458	Z1	Psychiatrist Supervisor	1404	M	Supervising Civil Engineer
1322	M	Public Safety Business Manager	1476	M	Supervising Systems Analyst
1312	M	Public Works Maintenance Superintendent	1340	M	Supervising Traffic Engineer
1475	M	Real Property Administrator	2712	Z2	Training Officer
2890	M	Recycling Program Manager	1369	M	Waterfront Manager

RESOLUTION NO. 66,295–N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412–N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

A. Authorized Activities.

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

F. Audits of Expense Reports

All expenses are subject to verification by the City Auditor of compliance with this policy.

G. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

H. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

I. Violation of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, City Clerk

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR
BOARD AND COMMISSION MEMBERS

WHEREAS, AB 1234, a new state law, requires that all cities adopt an expense reimbursement policy before a legislative body member may receive reimbursement for necessary expenses of office; and

WHEREAS, the Rent Stabilization Board and Board of Library Trustees occasionally authorize their Board members to attend specific training seminars and meetings which are designed to facilitate the Board members' performance of their duties; and

WHEREAS, the City Manager will occasionally authorize the use of City funds for a board or commission member from other boards or commissions to attend training programs or conferences designed to improve that official's skill and information level; and

WHEREAS, the Council has adopted an Expenditure and Reimbursement Policy for the Council and Mayor that sets forth those travel and training expenses for which Council will be reimbursed.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the following policy is adopted for reimbursement of board and commission members for travel and training expenses.

TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS

A. Authorized Activities.

Travel, meals and lodging incurred in connection with attending educational seminars designed to improve officials' skill and information levels constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled. For members of most of the City's boards and commission, other than the Board of Library Trustees and Rent Stabilization Board, such activities will occur only on rare occasions when approved by the City Manager and determined to be within the City's budget. The member of the body attending the educational event shall provide a brief report of the activity to the legislative body at a public meeting subsequent to the seminar. The Rent Stabilization Board may also receive travel meals and lodging incurred in connection with communicating with representatives of local, regional, state and national government on Board policy positions to the extent permitted by the Board.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;

3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business. Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelmart.com/default.htm>) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.

6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.
8. **Meals.** Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher costs locations (*see* Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem).
9. **Telephone/Fax/Cellular.** Officials will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

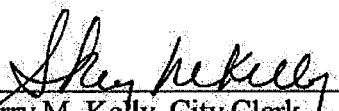
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Attest:



 Sherry M. Kelly, City Clerk



 Tom Bates, Mayor

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

A.R. NUMBER: 3.14
ORIGINAL DATE: 03/01/96
POSTING DATE: 08/30/07
PAGE 1 of 7 PAGES

SUBJECT: FN-024 Voucher Processing

PURPOSE

This AR establishes criteria and procedures for payments using an FN-024.

POLICY

It is the policy of the City Manager that an FN-024 Payment Vouchers (see Groupware – Finance) is limited to making payments for the following purposes.

- A. City Employees, Mayor and Councilmembers, Commissioners¹, or Library Trustees:
 - 1. Employee travel advances and reimbursements (see AR 3.9 and forms in Groupware – Finance)
 - 2. Employee reimbursements for authorized use of a private vehicle (see AR 7.2 &/or AR 3.19 in process and form Auto Record for Mileage Reimbursement published in Groupware – Finance)
 - 3. Mayor and Council reimbursement for authorized expenses² (see Resolution 63,412-NS)
 - 4. Commissioner and Library Trustee³ payments^{Note} (see AR 3.2 for eligibility criteria; and Resolution 63,413-NS)
- B. Refunds
- C. Other Designated Payments:
 - 1. State and Federal taxes
 - 2. Loan repayment
 - 3. Various payments associated with payroll and employee benefits
 - 4. Certain 1-time miscellaneous items under \$5,000
 - 5. Police Department Special Enforcement Unit Cash Fund (Special Investigative Bureau/SIB)*

¹ “Commissioner” includes Rent Stabilization Board Commissioners for reimbursements or other approved payments.

² Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

³ These payments to Commissioners (not including Rent Board) and Library Trustees, are for “... authorized payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain criteria ...” See AR 3.2 for complete details.

All other goods and services, including subscriptions and membership dues, must be paid by Purchase Order (see AR 3.4 and the online Purchasing Manual). The Director of Finance must approve any exceptions before purchases are made on behalf of the City.

See AR 3.3, Petty Cash Accounts and forms in Groupware – Finance, for reimbursement for purchases \$50 and under.

PROCEDURE

These steps take you through how to make correct entries and complete an FN-024 Payment Voucher; note that WORDS PRINTED LIKE THIS designate a field for your entries on the Voucher form.

- FN-024 Payments
- Payments to City Employees, Elected Officials, or Qualifying Commissioners
- Payments for Refunds
- Other Designated Payments
- Additional Instructions for all FN-024 Payment Vouchers
- Check Printing & Disbursement
- Related items on Groupware – Finance

FN-024 Payments

Use FUNDS\$ GMBA Master Inquiry [FUNDS\$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUNDS\$ screen.

1. For an existing vendor/payee: if there are any differences between the data in GMBA Vendor Master file and the remittance information: please notify Finance – General Services: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and use this form to update/correct the vendor information, and submit it to General Services.
2. For any new vendor or payee: an original and signed Vendor Information Application and/or W-9 (as applicable for vendor/payment) must be on file with Finance – General Services. In the interim, fax a copy to General Services; then attach a copy of completed Vendor Application and/or W-9 to the FN-024; the signed original/s must be mailed within 3 days.
 - a. Vendor Information Application: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and have the vendor/payee complete this form.
 - b. Tax Payer ID & Certification Form W-9, or go to <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

Payments to City Employees, Elected Officials, Qualifying Commissioners, or Library Trustees

A. Vendor Information

1. VENDOR NAME: enter the name of individual, followed by "EMPLOYEE," "MAYOR," "COUNCIL," "COMMISSIONER," "RENT BOARD" or "LIBRARY TRUSTEE," as applicable, and highlight the individual's designation.

-
2. VENDOR NO.: enter the number for the individual, as found in FUNDS\$ GMBA Vendor Master Inquiry.
 3. ADDRESS: enter the department and division of payee or Commissioner's mailing address.
 4. Payments to employees, Mayor and Council must be picked up from AP: complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.
Payments to qualifying Commissioners⁴ or Library trustees will be mailed. If payment will be picked up rather than mailed out, complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.

NOTE: FN-024s for Mayor/Council official reimbursements, qualifying Commissioner stipends, and Library Trustees must be reviewed by the City Auditor prior to submitting to Accounts Payable for payment processing. SIB payments must be reviewed and approved by the City Auditor.

- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
 1. DESCRIPTION 1: enter conference name, period/s of mileage reimbursement, or Board or Commission meeting date/s.
 2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.
- C. Invoice Information
 1. INVOICE #: enter conference invoice # or date/s. (FUNDS\$ limit of approximately 15 characters)
 2. INVOICE DATE: for advances or reimbursements to an employee, Mayor, Councilmember or Commissioner*, enter the date of the conference or the last date of the reimbursement period.

Payments for Refunds

- A. Vendor Information
 1. VENDOR NAME: enter payee name followed by "MISC REFUND" and **highlight** it.
 2. VENDOR NO.: enter the assigned miscellaneous vendor number.
 3. ADDRESS: enter the payee mailing address.
 4. Requests for refunds that include deductions for fees should clearly state the original amount paid to the City, the reason for the deduction, and the balance for the refund owed to payee.
 5. Original receipts must be submitted for a refund. If an original receipt is not available, a completed and signed Customer Request for Refund Without Receipt must be attached.
- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
 1. DESCRIPTION 1: enter nature of purchase or service.

⁴ Including members of the Rent Stabilization Board for reimbursements or other approved payments.

-
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for refund is being made.

C. Invoice Information

1. INVOICE #: for refunds, use the receipt number. (FUNDS\$ limit of approximately 15 characters)
2. INVOICE Date: for refunds, enter the original payment date from the original receipt.

Other Designated Payments (see list under Policy on 1st page)

A. Vendor Information

FIRST – For all FN-024 Payments: follow instructions for the initial procedure, above. Then:

1. VENDOR NAME: enter the payee name as it appears in FUNDS\$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUNDS\$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

B. Description & Purpose (FUNDS\$ limits these to approximately 25 characters per description field)

1. DESCRIPTION 1: enter nature of purchase or service.
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.

C. Invoice Information

1. INVOICE #: enter exactly as it appears on the vendor invoice, with dashes, hyphens, etc; if there is no invoice number, use the statement date as the invoice number (FUNDS\$ has a limit of approximately 15 characters).
2. INVOICE Date: enter the invoice or statement date.

Additional Instructions for all FN-024 Payment Vouchers

A. Account Codes & Project Code

1. Prior to submitting an FN-024, departments must confirm the account codes and project code used are active, correct for the expenditure, and have sufficient, unencumbered balances.
2. If needed, departments must process any budget adjustments prior to submitting the FN-024.
3. Accounts Payable will return FN-024s to departments for inactive budget or project codes, and/or improper budget codes, or insufficient funds.

B. Authorized Signatures

Each department must complete an Authorized Signatures Card with the designated staff authorized to approve invoices and FN-024s (see AR 3.12 and the Authorized Signatures Card form on Groupware – Finance). When there are changes in personnel authorized to approve an FN-024, the Authorized Signatures Card must be updated with Accounts Payable. 1.

PREPARED BY: signature of the person responsible for completing the FN-024.



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2. **AUTHORIZED DEPT SIGNATURE:** must be signed by authorized personnel, as reflected by the Authorized Signatures Card currently on file with Accounts Payable. FN-024s signed by unauthorized personnel will be returned.
- C. Limitations & Justification for 1-time Miscellaneous Items
1. A 1-time request for payment made on an FN-024, which would otherwise be made using a Purchase Order, means 1-time ever – not once a year or once-in-awhile. 1-time requests are only allowed for payments less than \$5,000.
 2. If a request for payment is being made on an FN-024 that would otherwise be made using a Purchase Order, there must be a justification provided on, or attached to, the FN-024. The Finance Director must approve the justification for use of an FN-024 prior to it being submitted for payment.
- D. Compiling the FN-024 Package: Form & Attachments
1. Place the FN-024 on top, with all required documentation stapled to the upper left-hand corner.
 2. If there is documentation required to be included with payment to the vendor, you must provide copies of this documentation, along with an envelope or mailing label addressed to the vendor. This is in addition to documentation required for Accounts Payable. Attach the documentation (duplicate copies and/or mailing stubs) to the upper right-hand corner.
 3. For payment of two or more items on a single FN-024, list each item separately, with its corresponding amount and account codes, on the FN-024. Attach an adding machine tape that totals the original items, and balances to the total on the FN-024.
 4. Employee reimbursements for authorized use of a private vehicle require an attached corresponding Auto Record for Mileage Reimbursement, available in Groupware. In addition, attach an adding machine tape totaling and balancing to the FN-024 for the period submitted.

Check Printing & Disbursement

1. Checks are usually printed weekly on Thursdays. FN-024s received in Accounts Payable by 5:00pm Monday will be processed for printing that week. Changes to this schedule will be emailed to departmental AP processing personnel and/or posted on the City's intranet.
2. Vendor checks will be mailed; see Compiling the FN-024 Package: Form & Attachments for specific requirements. If payment will be picked up rather than mailed, see instructions below.
3. Employee, Mayor, and Council checks will be available to pick up at Accounts Payable after 4:00pm on Thursday.
4. Pick Up Check at Accounts Payable: If it's been indicated on the FN-024 that a designated person will pick up the check, a City employee may sign for and pick up vendor checks. However, vendors may not pick up checks themselves from Finance – Accounts Payable. If payment will be picked up by an employee, rather than mailed out, complete the line in the upper right hand side of the FN-024 for Pick Up Check at AP: enter and **highlight** the name of authorized person the payment may be released to. This employee will be notified by email when the check is available to be picked up from Finance – Accounts Payable.

EXCEPTIONS

Any exceptions to this AR must be approved in writing by the Director of Finance.

<p>RESPONSIBLE DEPARTMENT: Finance Department</p>	<p>Approved by:  Finance Director</p>
<p>TO BE REVIEWED/REVISED: Every year</p>	<p> City Manager</p>

The following items are related to this AR, and can be found on Groupware – Finance:

1. FN-024 Payment Voucher – Excel file
2. FN-024 Payment Voucher – PDF file
3. AR 3.12 Authorized Signatures for Invoices and FN-024 Payment Vouchers
4. Authorized Signatures Card
5. Vendor Information Application
6. Tax Payer ID & Certification Form W-9
7. Customer Request for Refund Without Receipt
8. Attendance & Travel Expense Forms – web page with links to individual forms



Fair Campaign Practices Commission

PUBLIC HEARING

February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Fair Campaign Practices Commission
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See [Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission](#)).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, [Section 18531.62](#) (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's [Public Access Portal](#).) If, however, a complaint is filed that an Officeholder Account is used for

campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. ([Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10](#))

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

¹ Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPCC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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


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TITLE 9. POLITICAL REFORM [81000 - 91014] (Title 9 added June 4, 1974, by initiative Proposition 9.)

CHAPTER 5. Limitations on Contributions [85100 - 85802] (Chapter 5 added June 7, 1988, by initiative Proposition 73.)

ARTICLE 3. Contribution Limitations [85300 - 85321]

(Article 3 added June 7, 1988, by initiative Proposition 73.)

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

- (A) Paying outstanding officeholder expenses.
- (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on January 30, 2020.

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