



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

**TUESDAY, OCTOBER 13, 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, this 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://us02web.zoom.us/j/84345655218>. 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 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **843 4565 5218**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

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: September 29, 2020**
- 2. Review and Approve Draft Agenda:**
 - a. 10/27/20 – 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 Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**

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. Commission Reorganization for Post-COVID19 Budget Recovery**
From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)
Referred: June 15, 2020
Due: November 30, 2020
Recommendation: 1. Reorganize existing commissions with the goal of achieving 20 total commissions; 2. Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions; 3. Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions; 4. Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.
Financial Implications: See report
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

- 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: July 28, 2020
Due: January 29, 2021
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).
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Unscheduled Items

11. Relinquishments and grants from Councilmembers' office budgets

From: Open Government Commission

Referred: August 31, 2020

Due: February 15, 2021

Recommendation: Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

Financial Implications: None

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

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Monday, October 26, 2020

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 October 8, 2020.

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

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**

**TUESDAY, SEPTEMBER 29, 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**

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

Public Comment: 6 speakers.

Review of Agendas

1. Approval of Minutes: September 8, 2020

Action: M/S/C (Hahn/Wengraf) to approve the minutes of 9/8/2020.

Vote: All Ayes.

2. Review and Approve Draft Agenda:

a. 10/13/20 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Hahn/Wengraf) to approve the agenda of 10/13/2020 with the revisions noted below.

- *Item 11 Oppose Prop 22 (Davila) – revised item submitted; Councilmembers Bartlett and Hahn added as co-sponsors*
- *Item 12 Oppose Prop 22 (Bartlett) – item withdrawn by the author*
- *Item 13 Support Prop 16 (Bartlett) – Councilmembers Harrison, Robinson, and Hahn added as co-sponsors*
- *Item 20 UC Long Range Development Plan – rescheduled to a later date pending UC availability (10/20 or 10/27)*
- *Item 21a/b Commission Recommendations – moved to Consent Calendar; policy committee recommendation to be added to item on agenda*
- *Item 22 Council Rules (Davila) – moved to Consent Calendar; policy committee recommendation to be added to item on agenda*
- *Item 23 Security Cameras (Kesarwani) – revised item submitted; scheduled for 10/13 Consent Calendar*
- *Item 24 Less Lethal Weaponry (Davila) – referred to the Public Safety Committee*
- *Item 25 Step up Housing (Bartlett) – revised item submitted; scheduled for 10/13 Consent Calendar*
- *Item 26 Traffic Bollards (Bartlett) – revised item submitted;*
Action: M/S/C (Arreguin/Wengraf) to request changes to the recommendation to refer the item to the City Manager and to schedule the item for 10/13 Consent Calendar.
Vote: All Ayes
- *Item 27 Residential Cleaning (Bartlett) – Councilmember Hahn added as a co-sponsor; changed to be a referral to the City Manager; scheduled for 10/13 Consent Calendar*

Vote: All Ayes.

Order of Items on the Action Calendar

Item 16 Crime Report

Item 14 Bond Financing

Item 15 ZAB Appeal

Item 18 Community Refrigerators

Item 19 Breathe Act

Item 17 Navigable Cities

3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
 - None selected

4. **Adjournments In Memory – None**

Scheduling

5. **Council Worksessions Schedule**
 - Undergrounding Task force rescheduled to January 12
 - Vision 2020 moved to Unscheduled list
 - Navigable Cities and UC LRDP listed as tentative for October 20
 - StopWaste presentation removed from the list
6. **Council Referrals to Agenda Committee for Scheduling - Received and filed**
7. **Land Use Calendar - Received and filed**

Referred Items for Review

8. **Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**

Action: 5 speakers. Discussion held. Item continued to next meeting.

Unscheduled Items

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- 9. Commission Reorganization for Post-COVID19 Budget Recovery**
From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)
Referred: June 15, 2020
Due: November 30, 2020
Recommendation: 1. Reorganize existing commissions with the goal of achieving 20 total commissions; 2. Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions; 3. Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions; 4. Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.
Financial Implications: See report
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

Action: Continued to next meeting on Unscheduled Calendar.

- 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: July 28, 2020
Due: January 29, 2021
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).
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Action: Continued to next meeting on Unscheduled Calendar.

Unscheduled Items

11. Relinquishments and grants from Councilmembers' office budgets

From: Open Government Commission

Referred: August 31, 2020

Due: February 15, 2021

Recommendation: Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

Financial Implications: None

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

Action: Continued to next meeting on Unscheduled Calendar.

Items for Future Agendas

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

Adjournment

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

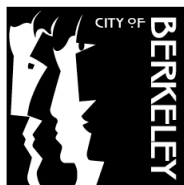
Vote: All Ayes.

Adjourned at 3:55 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on September 29, 2020

Mark Numainville
City Clerk

DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, October 27, 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

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

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

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

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

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

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

Preliminary Matters

Roll Call:

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

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

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

Consent Calendar

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

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

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

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

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

Consent Calendar

- 1. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the council meetings of September 15, 2020 (closed and regular), September 22, 2020 (closed and regular) and September 29, 2020 (closed and special).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 2. Annual Commission Attendance and Meeting Frequency Report**
From: City Manager
Recommendation: Adopt a Resolution approving the commission meeting frequency schedule and to accept the annual Commission Attendance and Meeting Frequency Report.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6908
- 3. Addendum to the Berkeley Revolving Loan Fund (RLF) Administrative Plan to augment the RLF with a COVID-19 Resiliency Loan Program**
From: City Manager
Recommendation: Adopt a Resolution approving temporary changes to the Administrative Plan of the Berkeley Revolving Loan Fund (RLF) to encompass the COVID-19 Resiliency Loan Program as financed by the CARES Act Recovery Assistance Grant.
Financial Implications: See report
Contact: Dave White, City Manager's Office, (510) 981-7000
- 4. Berkeley Economic Dashboards and Demographic Profile Update** *(Reviewed by the Land Use, Housing, & Economic Development Committee)*
From: City Manager
Recommendation: On September 17, 2020, the Land Use, Housing, & Economic Development Committee made a positive recommendation that this item be deemed received.
Financial Implications: None
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 27, 2020**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$1,067,302
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

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

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 12.70 to update Section 12.70.020 Definitions section V and repealing Section 12.70.035.E and 12.70.037.C and adjusting the definition of "smoke" or "smoking" to include medical cannabis to align with the State of California Health and Safety code.

Financial Implications: None

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

7. **Contract: Allana Buick & Bers, Inc. and Wiss, Janney, Elstner Associates, Inc. for On-Call Citywide Roof Assessment Services**

From: City Manager

Recommendation: Adopt two Resolutions authorizing the City Manager to execute a contract and any amendments with the following firms for On-Call Roof Assessment Services for City-owned facilities, each for the period July 1, 2020 through July 1, 2023.

1. Allana Buick & Bers, Inc. (ABB), for an amount not to exceed \$175,000.

2. Wiss, Janney, Elstner Associates, Inc. (WJE), for an amount not to exceed \$175,000.

Financial Implications: See report

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

8. **Contract Award: DMR Builders for the 125/127 University Avenue Tenant Improvement Project**

From: City Manager

Recommendation: Adopt a Resolution: 1. Approving plans and specifications for the 125/127 University Avenue Tenant Improvements Project, Specification No.19-11324; 2. Accepting the bid of DMR Builders as the lowest responsive and responsible bidder; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, for an amount not to exceed \$293,000.

Financial Implications: Various Funds - \$293,000

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

Consent Calendar

- 9. Contract No. 115731-1 Amendment: SKIDATA, Inc. (formerly Sentry Control Systems) for Extending Parking Access and Revenue Control System Maintenance Services and Warranties**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 115731-1 (Contract No. 10661B in FUND\$) with SKIDATA, Inc. (formerly Sentry Control Systems) to provide critical maintenance services and warranties for parking access and revenue control system equipment nearing the end of its useful life, extending the term to June 30, 2024 and increasing the contract amount by \$660,283 for a total not-to-exceed of \$1,995,540.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 10. Contract No. 112119-1 Amendment: Technology, Engineering, and Construction, Inc. for Tank Maintenance and Certification Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 112199-1 with Technology, Engineering and Construction, Inc. for the provision of tank maintenance and certification services, extending the term to June 30, 2022 and increasing the contract by \$100,000 for a total contract amount not to exceed \$250,000.
Financial Implications: Various Funds - \$100,000
Contact: Liam Garland, Public Works, (510) 981-6300
- 11. Contract No. 102354-1 Amendment: Direct Line Tele Response for Citywide After-Hours Answering Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment for up to \$150,000 to Contract No. 102354-1 with Direct Line Tele Response to provide continued customer service support after normal business hours, on weekends and holidays, for a total contract amount not to exceed \$432,750, and extending the contract term through December 31, 2022.
Financial Implications: Various Funds - \$150,000
Contact: Liam Garland, Public Works, (510) 981-6300
- 12. Referral Response: Game Day Parking – Minor Update to Include RPP Area K**
From: City Manager
Recommendation: Adopt a Resolution re-establishing parking restrictions on UC Berkeley football game days to include Residential Preferential Parking (RPP) Zone K (Panoramic Hill), and rescinding Resolution No. 69,089-N.S.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

13. **Renewal of the Elmwood Avenue BID for Calendar Year 2021**

From: Elmwood Advisory Board

Recommendation: Adopt a Resolution approving the Elmwood Business Improvement District Advisory Board's (hereafter "Elmwood BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2020 Annual Report and preliminary budget for proposed improvements in the District for calendar year 2021; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2021 and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 17, 2020.

Financial Implications: See Report

Contact: Kieron Slaughter, Commission Secretary, (510) 981-7530

14. **Renewal of the Solano Avenue BID for Calendar Year 2021**

From: Solano Avenue BID Advisory Board

Recommendation: Adopt a Resolution approving the Solano Avenue Business Improvement District Advisory Board's (hereafter "Solano BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2020 Annual Report and preliminary budget on proposed improvements in the District for calendar year 2021; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2021; and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 17, 2020.

Financial Implications: See report

Contact: Eleanor Hollander, Commission Secretary, (510) 981-7530

Council Consent Items

15. **Budget Referral: \$50,000 to UC Theatre Concert Career Pathways Education Program**

From: Mayor Arreguin (Author)

Recommendation: Refer to the November 2020 AAO budget process the allocation of \$50,000 to the UC Theatre Concert Career Pathways Education Program.

Financial Implications: \$50,000

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

16. **Equitable Clean Streets Budget Referral: Funding for Staff to Conduct Bi-Weekly (Once Every Two Weeks) Residential Cleaning Services**

From: Councilmember Bartlett (Author)

Recommendation: Refer to the November AAO budget process to allocate \$500,000 from the General Fund to require biweekly (once every two weeks) cleaning of populated encampment sites, major corridors, and encampments adjacent to residential neighborhoods throughout the City of Berkeley for approximately one year. The City should also partner with appropriate non-profit organizations to create work opportunities for homeless residents who can help City staff clean the streets on an ongoing basis.

Financial Implications: See report

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

Council Consent Items

- 17. Resolution Adopting the 2020 Traffic Circle Vegetation Policy and Maintenance Plan** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

From: Councilmember Harrison (Author)

Recommendation: Adopt the 2020 Traffic Circle Vegetation Policy and Maintenance Plan as revised by the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.

(On September 16, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to Council, as submitted by staff, and as further revised by the committee to include: 1. That this policy be reviewed every five (5) years. 2. Tree standards will be refined overtime to meet the needs of the traffic circles. 3. If any trees are to be removed, the policy is to replace the tree with a more appropriate tree when possible. 4. If a tree is to be removed and it can be successfully replanted, it shall be.)

Financial Implications: See report

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

Action Calendar

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

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

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

Action Calendar – New Business

- 18. COVID-19 Response 2020 Summary Report**

From: City Manager

Recommendation: Review and discuss the presentation on COVID-19 Response 2020 Summary Report.

Financial Implications: See report

Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000

Action Calendar – New Business

19a. Smoke-Free Multi-Unit Housing Ordinance Policy and Enforcement

Modifications *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*

From: Housing Advisory Commission

Recommendation: The Commission recommends that City Council:

1. Make a short term referral directing the City Manager to correct current City Policies for enforcing BMC 12.70.035 so that these policies do not contradict the ordinance and BMC 12.70.035 requires that second and third complaints must refer to a violation or violations that occur after the 12.70.035(C) notice has been made.
2. Modify BMC 12.70.035 so that the requirement that signs be posted is enforced as part of the Residential Safety ordinance. Failure to post signage may result in fines, accordingly.
3. Modify BMC 12.70.035 so that repeated failure to provide new tenants with the City's brochure shall be guilty of an infraction. It shall also be an infraction for landlords to tell new tenants, in contradiction to the law, that tobacco smoking by some tenants is permitted.
4. Obtain an analysis of the financial impacts of the recommended modifications to the BMC.

(On September 29, 2020, the Health, Life Enrichment, Equity & Community Committee made a qualified positive recommendation to send the item to Council including the following referrals: 1. Refer to staff to explore expanding the Ordinance to buildings with one unit; 2. Refer to staff to explore and consider improvements in the interface between the residential and commercial non-smoking Ordinances in mixed-use buildings; 3. Refer to staff to create a web-based complaint filing mechanism/service; 4. Refer to staff to create special protocols for chronic situations and to consider including requirements for better air filtration and purification as well as other measures to effectively manage chronic cases; 5. Refer to staff to study the infraction and enforcement mechanisms and determine if they have any benefits and to consider other potential enforcement end points; 6. Refer to staff to look for opportunities for bias in enforcement and mechanisms to better guard against bias while still allowing for maximum action to resolve legitimate complaints; 7. Refer to staff to propose funding sources for enforcement; 8. Refer to staff to collect demographic data around complaints and targets of complaints (as much as possible); and 9. To return to Council with Ordinance amendments to accomplish the following: (a) amend or remove the 10-day language element (b) modify or remove the 2-complainant rule if warranted (c) adjust for the medical cannabis state law changes, (d) propose any and all other improvements beneficial to the Ordinance.)

Financial Implications: See report

Contact: Mike Uberti, Commission Secretary, (510) 981-7400

Action Calendar – New Business

19b. Companion Report: Smoke-Free Multi-Unit Housing Ordinance Policy and Enforcement Modifications *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*

From: City Manager

Recommendation: The City Manager appreciates the Housing Advisory Commission's efforts to strengthen the implementation of the Smoke-free Multi-Unit Housing ordinance and recommends that the proposed modifications be referred to the City Manager Office for an analysis of the financial and legal feasibility of the proposed changes.

(On September 29, 2020, the Health, Life Enrichment, Equity & Community Committee made a qualified positive recommendation to send the item to Council including the following referrals: 1. Refer to staff to explore expanding the Ordinance to buildings with one unit; 2. Refer to staff to explore and consider improvements in the interface between the residential and commercial non-smoking Ordinances in mixed-use buildings; 3. Refer to staff to create a web-based complaint filing mechanism/service; 4. Refer to staff to create special protocols for chronic situations and to consider including requirements for better air filtration and purification as well as other measures to effectively manage chronic cases; 5. Refer to staff to study the infraction and enforcement mechanisms and determine if they have any benefits and to consider other potential enforcement end points; 6. Refer to staff to look for opportunities for bias in enforcement and mechanisms to better guard against bias while still allowing for maximum action to resolve legitimate complaints; 7. Refer to staff to propose funding sources for enforcement; 8. Refer to staff to collect demographic data around complaints and targets of complaints (as much as possible); and 9. To return to Council with Ordinance amendments to accomplish the following: (a) amend or remove the 10-day language element (b) modify or remove the 2-complainant rule if warranted (c) adjust for the medical cannabis state law changes, (d) propose any and all other improvements beneficial to the Ordinance.)

Financial Implications: See report

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

Action Calendar – New Business

20a. Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*

From: Housing Advisory Commission

Recommendation: Approve modifications to policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

1. Increase staffing to implement enforcement of the ordinance as part of the next budget;
2. Improve signage related to the ordinance in residential buildings;
3. Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge;
4. Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury); and
5. Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.

(No final action was taken by the Health, Life Enrichment, Equity & Community Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.)

Financial Implications: See report

Contact: Mike Uberti, Commission Secretary, (510) 981-7400

20b. Companion Report: Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*

From: City Manager

Recommendation: The City Manager appreciates the Housing Advisory Commission’s efforts to strengthen the implementation of the Smoke-free Multi-Unit Housing ordinance and recommends that the proposed modifications be referred to the City Manager Office for an analysis of the financial and legal feasibility of the proposed changes.

(No final action was taken by the Health, Life Enrichment, Equity & Community Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.)

Financial Implications: See report

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

Action Calendar – Policy Committee Track Items

- 21. Treatment of Horses at Golden Gate Fields**
From: Mayor Arreguin (Author)
Recommendation: Send a letter to the California Horse Racing Board to investigate the treatment and welfare of horses at Golden Gate Fields.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 22. Recognize the Rights of Nature**
From: Councilmember Davila (Author)
Recommendation: Adopt a resolution to recognize that the natural living world has a right to exist, thrive, regenerate and evolve its life cycles; to protect the ecosystems upon which our own vitality depends; and to transform our human relationship with nature from a property-based to a legal rights-bearing entity.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 23. Providing our Unhoused Community with Fire Extinguishers**
From: Councilmember Davila (Author)
Recommendation: Direct the City Manager to use existing homeless services funding to develop a program to provide fire extinguishers, fire prevention tools and deploy them through the community based homeless services providers to distribute to our unhoused community.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 24. Convert 62nd Street between King St, and Adeline St. into a One-Way Line that exits in the direction of Adeline St.**
From: Councilmember Bartlett (Author); Mayor Arreguin (Co-Sponsor)
Recommendation: Refer to the City Manager to convert 62nd Street between King St. and Adeline St. into a one-way lane that exits to Adeline and blocks motorists from entering 62nd Street through Adeline Street.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 25. Support for Berkeley Mutual Aid**
From: Councilmember Hahn (Author), Mayor Arreguin (Co-Sponsor)
Recommendation: Refer to the City Manager and to the November FY2020 AAO budget adjustment process to identify existing resources, or propose a new allocation of funds, to provide emergency financial support to Berkeley Mutual Aid (BMA) to allow the organization to continue its highly valued programs and services addressing the needs of Berkeley residents sheltering-in-place during the COVID-19 health emergency. Support required for BMA to continue providing critical services to the community is \$3,000 per month, starting as soon as possible and continuing until 3 months after the COVID-19 emergency order is lifted.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

Action Calendar – Policy Committee Track Items

26. Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration

From: Councilmember Droste (Author), Mayor Arreguin (Author), Councilmember Robinson (Author)

Recommendation: Refer to the City Manager and the Facilities, Infrastructure, Transportation, Environment and Sustainability Policy Committee to develop ordinance language to make the temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to become permanent. Ordinance language should include: -Merchant opt-out: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders should automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation. -Fee waivers: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits should be waived for all transitioning permits. -Protocols for transfer of parklets if businesses change, turn over, etc.

Financial Implications: See report

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

Information Reports

27. Police Review Commission Work Plan for 2020-2021

From: City Manager

Contact: Katherine Lee, Commission Secretary, (510) 981-4950

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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Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

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

to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>.

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

COMMUNICATION ACCESS INFORMATION:

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



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

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Elmwood BID Advisory Board

CONSENT CALENDAR

October 27, 2020

To: Honorable Mayor and Members of the City Council  
 From: Elmwood Business Improvement District Advisory Board  
 Submitted by: Joseph Aguiar, Chair, Elmwood BID Advisory Board  
 Subject: Renewal of the Elmwood Avenue BID for Calendar Year 2021

RECOMMENDATION

Adopt a Resolution approving the Elmwood Business Improvement District Advisory Board's (hereafter "Elmwood BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2020 Annual Report and preliminary budget for proposed improvements in the District for calendar year 2021; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2021 and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 17, 2020.

FISCAL IMPACTS OF RECOMMENDATION

Projected BID revenue of approximately \$30,000 will be deposited into the Elmwood BID Fund, and expensed from budget code 782-21-208-251-0000-000-446-636110. The BID constitutes an independent funding source that must be targeted to commercial revitalization efforts that are recommended by the Advisory Board. The City of Berkeley operates a parking lot within the district and will thus be assessed \$1,000, paid through the Off-Street Parking Fund. To the extent that the work of the Elmwood BID enhances the development of the Elmwood and its business climate over the long term, the BID contributes towards improving City revenues through increased sales and property taxes.

CURRENT SITUATION AND ITS EFFECTS

Under the State of California Parking and Business Improvement Area law of 1989 (California Streets and Highways Code section 36500 et.seq.) the City Council must approve an Annual Report prepared by the BID Advisory Board with a proposed budget for the next year as a requirement to levy new assessments. Accordingly, at its meeting of August 21, 2020, the Elmwood BID Advisory Board voted to recommend that the City Council approve the Annual Report and budget for 2021 and adopt a Resolution of Intention to renew the assessment for that year (M/S-Aguiar/Hunka; Ayes: Aguiar, Hunka, Leyhe; Nays: none). The Resolution of Intention also sets a public hearing date for November 17, 2020 where affected Elmwood businesses can express support or opposition to renewal of the BID for 2021. If written and/or oral protests are received

from businesses proposed to pay a majority of the assessment, Council cannot vote to levy assessments for 2021. If no majority protest is received the Council may renew the assessment.

BACKGROUND

The Elmwood BID was established in November 2013 to provide the Elmwood Business Association with a sustainable, predictable source of funding for its activities to promote, maintain and beautify the Elmwood commercial district. The Elmwood Business Association has used the funds raised through the BID to implement a variety of activities such as marketing and branding, events, and capital improvements.

RATIONALE FOR RECOMMENDATION

State law requires that the City Council annually renew the Elmwood BID by first passing a resolution stating Council's intention to levy an annual assessment and scheduling a public hearing on the proposed renewed assessment for the coming year.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Kieron Slaughter, Secretary to the Elmwood BID Advisory Board, 510-981-2490

Attachments:

1: Resolution

- Exhibit A: Elmwood BID Annual Report and proposed budget for 2021
- Exhibit A1: Map of the Elmwood BID
- Exhibit A2: Assessment Rates



RESOLUTION NO. -N.S.

APPROVING THE ANNUAL REPORT AND PROPOSED BUDGET OF THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT FOR 2021; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2021; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR NOVEMBER 17, 2020 REGARDING LEVYING OF A RENEWED ASSESSMENT FOR 2021

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on November 19, 2013 the Berkeley City Council established such an area known as the Elmwood Business Improvement District (the "District"); and

WHEREAS, the City Council established a Elmwood Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the Advisory Board has submitted an Annual Report to the Berkeley City Council that outlines the activities of the District proposed for 2021 as required by the California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report is clear and complete and found to comply with the interests of Elmwood BID assessees; and

WHEREAS, the annual process for levying assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to levy such an assessment and then set a date for a public hearing where interested parties may be heard on the issue.

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

Section 1. The City Council hereby approves the Elmwood Business Improvement District Annual Report for 2020-21 (Exhibit A) as submitted to the City Clerk by the Elmwood Business Improvement District Advisory Board.

Section 2. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to levy an annual assessment for the parking and business improvement area known as the Elmwood Business Improvement District.

Section 3. The boundaries of the District are set forth in Exhibit A1 to the 2020-21 Annual Report which is attached hereto and incorporated herein by reference.

Section 4. The improvements and activities proposed for the District are as described in the Report and budget (Exhibit A) and appended hereto.

Council intends that these funds be used for designated activities and improvements in the Elmwood commercial area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City.

Section 5. The City Council intends to levy assessments on businesses located within the boundaries of the District shown Exhibit A1 and according to the business classifications and rates set forth in Exhibit A2 which is attached hereto and incorporated herein by reference.

Section 6. A public hearing shall be held before the City Council on November 17, 2020, virtually on a publicly accessible Zoom conference call. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology. Following the hearing the Council will consider adoption of a resolution levying an assessment as recommended by the Elmwood Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the levying of such an assessment.

Formal protests against the levying of the District assessment must be made in writing. All written and oral protests should contain the following certification: "I certify that I am the owner of the business listed below, and that the business is located or operates within the boundaries of the Elmwood Business Improvement District." Protests should also contain the following information: business name (printed), business address (printed), City Business License Tax Registration number, name of protester (printed), signature of protester, date of protest and the reason(s) the protester is against the levying of the District assessment. Protests will not be considered valid unless signed and submitted by the owner of a business located within the boundaries of the proposed District. Written protests shall be filed with the City Clerk, First Floor, City Hall, at 2180 Milvia Street, Berkeley, California, 94704, prior to the close of the public hearing on November 17, 2020 and shall contain a description of the business sufficient to identify the business, and if the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person subscribing the protest is the owner of the business. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from the owners of businesses in the District which will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated.

Section 7. The City Clerk is directed to give notice of said public hearing by publishing the Resolution of Intention in a newspaper of general circulation.

#### Exhibits

A: Annual Report for the Elmwood Business Improvement District for 2020-21

A1: Map of the Elmwood BID

A2: Assessment Rates

**EXHIBIT A**

Annual Report for the Elmwood Business Improvement District for 2020-21

August 11, 2020

To: Members of the Berkeley City Council  
From: The Elmwood Business Improvement District Advisory Board  
Re: 2021 Elmwood BID Renewal

We respectfully request that the Elmwood Business Improvement District be renewed for the 2021 fiscal year, without any changes to the assessment method or amount. The Elmwood BID was established in November 2013 to promote, maintain and beautify the Elmwood commercial district. Revenues of roughly \$32,000 per year provide a regular, predictable source of funding for the activities of the Elmwood Business Association (EBA). The Elmwood BID has allowed the EBA to expand its activities into areas such as maintenance and capital improvements.

The Elmwood Business Association is continuing to be the catalyst for Elmwood Business District's on-going vitality.

Here are some highlights of our projects:

- Permanent year-round lighting installation on district buildings
- Website: [www.shoptheelmwood.com](http://www.shoptheelmwood.com) serves as one of the district's main marketing tool – District Events, Introducing New Businesses, and on-going marketing updates
- Hired a landscaping contractor to maintain 70 tree wells – currently on a bi-monthly maintenance schedule
- Quarterly weeding and cleaning of Russell St. parking lot partnering with UC Berkeley
- On-going feasibility study of installation of security camera at Russell St. parking lot
- Maintaining a part-time Administrative Assistant to:
  - Post on social media
  - Manage merchant communications
  - Promote monthly happenings/specials among Elmwood Merchants
  - Updating the website to keep it current
- Sponsored the following events:
  - October 2019: 5<sup>th</sup> Elmwood Wine Walk in The Elmwood w/ 28 merchants participating
  - October 2019: The Elmwood Trick or Treating
  - December 2019: Tap Dancing Christmas Trees, 27<sup>th</sup> Annual Christmas Caroling in the Elmwood, Pet Photos with Santa
- Held a Merchant Social in conjunction with our Annual Meeting
- Members of the board active in other Berkeley commercial and residential neighborhoods to promote harmony and cooperation
- Planned Elmwood District Shopping Guide/Map

Below for your review is a summary of our current financial position and our proposed budget for 2020-21

## 2020 - 21 Projected Expenditures

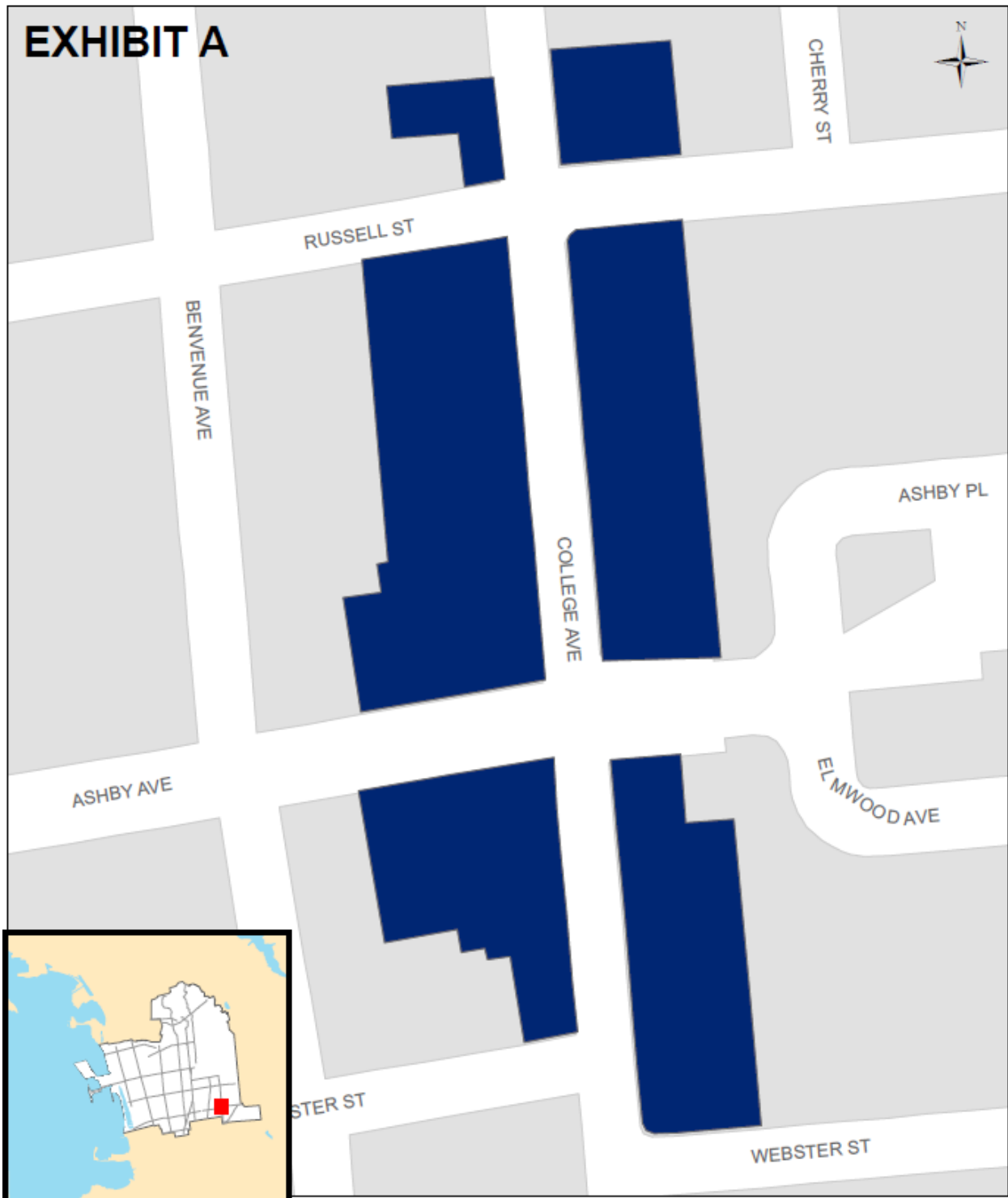
### Income Statement

#### Elmwood Business Association For the 12 months ended 30 June 2020

|                                       | Jun-20          | Jun-19          | YTD            |
|---------------------------------------|-----------------|-----------------|----------------|
| <b>Revenue</b>                        |                 |                 |                |
| Merchant Dues                         | 31,482          | 30,000          | -              |
| Other Revenue                         | 8,023           | 9,607           | -              |
| <b>Total Revenue</b>                  | <b>39,504</b>   | <b>39,607</b>   | -              |
| <b>Gross Profit</b>                   | <b>39,504</b>   | <b>39,607</b>   | -              |
| <b>Operating Income / (Loss)</b>      | <b>39,504</b>   | <b>39,607</b>   | -              |
| <b>Other Income and Expense</b>       |                 |                 |                |
| Advertising                           | -               | (5)             | -              |
| Charitable Donation                   | (1,500)         | (1,000)         | -              |
| Consulting & Accounting               | (99)            | (108)           | (45)           |
| Dues & Subscriptions                  | (3)             | (405)           | (3)            |
| Events - Marketing                    | (4,005)         | (5,620)         | -              |
| General Expenses                      | (134)           | (246)           | (134)          |
| Holidays - Marketing                  | (1,204)         | (12,151)        | (335)          |
| Insurance                             | (1,191)         | (1,143)         | -              |
| Licenses & Permits                    | (30)            | (80)            | (30)           |
| Marketing - General                   | (67)            | (593)           | (25)           |
| Office Supplies                       | (136)           | -               | -              |
| Printing & Stationery                 | (524)           | (422)           | (87)           |
| Repairs and Maintenance               | (430)           | (3,675)         | -              |
| Security                              | (5,000)         | (6,400)         | -              |
| Wages and Salaries                    | (9,000)         | (9,000)         | (4,500)        |
| Web Site - Marketing                  | (693)           | (611)           | (645)          |
| <b>Total Other Income and Expense</b> | <b>(24,015)</b> | <b>(41,459)</b> | <b>(5,804)</b> |
| <b>Net Income / (Loss) before Tax</b> | <b>15,489</b>   | <b>(1,852)</b>  | <b>(5,804)</b> |
| <b>Net Income</b>                     | <b>15,489</b>   | <b>(1,852)</b>  | <b>(5,804)</b> |
| <b>Total Comprehensive Income</b>     | <b>15,489</b>   | <b>(1,852)</b>  | <b>(5,804)</b> |

Thank you for your attention to this matter. We look forward to an equally productive year for the BID in 2021.

Exhibit A1: Elmwood Business Improvement District, Map



## Exhibit A2: Elmwood Business Improvement District, Assessment Rates

| <b>Classifications</b>                                                                                                                                                                                                                                                                                          | <b>Rates</b>                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Retail including jewelers and groceries but not restaurants<br>(Tax Codes R, M and G but without NAICS 722, Food Services and Drinking Places) <ul style="list-style-type: none"> <li>Gross receipts under \$350,000</li> <li>Gross receipts \$350,000=\$999,000</li> <li>Gross receipts \$1,000,000</li> </ul> | \$250.00 per year<br>\$350.00 per year<br>\$500.00 per year |
| Restaurants, including all businesses that prepare and serve food at the request of customers (NAICS 722)                                                                                                                                                                                                       | \$500.00 per year                                           |
| Professionals including offices of real estate brokers (Tax Code P) <ul style="list-style-type: none"> <li>Gross receipts under \$100,000</li> <li>Gross receipts over \$100,000</li> </ul>                                                                                                                     | \$300.00 per year<br>\$400.00 per year                      |
| Entertainment and Recreation (Tax Code E)                                                                                                                                                                                                                                                                       | \$450.00 per year                                           |
| Business, Personal and Repair Services (Tax Code B) except Hair, Nail and Skin Cares Services (NAICS 81211)                                                                                                                                                                                                     | \$200.00 per year                                           |
| Hair, Nail and Skin Care Services (NAICS 81211)                                                                                                                                                                                                                                                                 | \$250.00 per year                                           |
| Parking lot operators                                                                                                                                                                                                                                                                                           | \$1,000.00 per year                                         |
| Financial Institutions                                                                                                                                                                                                                                                                                          | \$2,500.00 per year                                         |

Any business that is classified as a nonprofit (Tax Code N) for business license purposes shall nevertheless pay the assessment at the rate that corresponds to its North American Standard Industrial Classification if it is engaged in the sale of products or services and occupies a space zoned for commercial purposes.



Office of the City Manager

CONSENT CALENDAR

October 27, 2020

To: Honorable Mayor and Members of the City Council

From: Solano Avenue Business Improvement District Advisory Board

Submitted by: Kate King, Chair, Solano Avenue BID Advisory Board

Subject: Renewal of the Solano Avenue BID for Calendar Year 2021

RECOMMENDATION

Adopt a Resolution approving the Solano Avenue Business Improvement District Advisory Board's (hereafter "Solano BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2020 Annual Report and preliminary budget on proposed improvements in the District for calendar year 2021; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2021; and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 17, 2020.

FISCAL IMPACTS OF RECOMMENDATION

Projected BID revenue of approximately \$25,000 will be deposited into the Solano Avenue BID Fund, revenue budget code 783-21-208-251-0000-000-000-412110- and expensed from budget code 783-21-208-251-0000-000-446-636110-. The BID constitutes an independent funding source that must be targeted to commercial revitalization efforts that are recommended by the Solano BID Advisory Board. To the extent that the work of the Solano BID enhances the economic development of Solano Avenue and its business climate over the long term, the BID contributes towards improving City revenues through increased sales and property taxes.

CURRENT SITUATION AND ITS EFFECTS

Renewal of the Solano BID is a Strategic Plan Priority Project, advancing our goal to foster a dynamic, sustainable, and locally-based economy. Under the State of California Parking and Business Improvement Area law of 1989 (California Streets and Highways Code section 36500 et.seq.) the City Council must approve an Annual Report prepared by the Solano BID Advisory Board with a proposed budget for the next year as a requirement to levy new assessments. Accordingly, at its meeting of September 15, 2020, the Solano BID Advisory Board voted to recommend that the City Council approve the Report for the Solano Avenue Business Improvement District for 2020-21 and adopt a Resolution of Intention to renew the assessment for that year (Ayes: Campbell, Smith; Nays: Andrews). The Resolution of Intention also sets a public hearing date for November 17, 2020 where affected Solano businesses can express support or opposition to renewal of the BID for calendar year 2021. If written and/or oral

protests are received from businesses proposed to pay a majority of the assessment, Council cannot vote to levy assessments for 2021. If no majority protest is received the Council may renew the assessment.

### BACKGROUND

Since its revival in May 2012, the Solano BID Advisory Board has used Solano BID revenues to finance three programs: 1) a tree watering contract to ensure the health of 48 young street trees on Solano; 2) installing a program of 40 hanging planter baskets on light poles; and 3) sponsorship of events that attract customers to the district and improvements that enhance the pedestrian experience. In 2020, the BID program has focused on sponsoring activities and improvements intended to market and promote the Solano Avenue business district. In the wintertime, the BID in conjunction with the Solano Avenue Association (which represents both Albany and Berkeley businesses along Solano Avenue) pays a contractor to erect holiday lights and decorations on City street light poles. This will continue for the 2020-21 season. Although the BID will spend a good portion of its funds on the holiday décor program, in 2020 it also plans to establish an expanded landscaping program for merchants to clean and level tree wells. Also, the BID will support local marketing and local merchants impacted by COVID-19 with support of group outdoor commerce installations. BID expenditures are to be made through an established fiscal agency contract with Telegraph Property and Business Management Corporation (Telegraph PBMC).

### ENVIRONMENTAL SUSTAINABILITY

By maintaining and enhancing the district, the Solano BID creates shopping opportunities for residents and visitors alike while encouraging alternative forms of transportation. The environmental enhancements such as the added street trees, hanging planters, parklet, and holiday decorations contribute to making Solano a more pleasant walking destination. Because the District is well served by public transportation and biking infrastructure, these services indirectly support environmental sustainability goals of encouraging alternative transportation choices and decreasing vehicle miles traveled.

### RATIONALE FOR RECOMMENDATION

State law requires that the City Council annually renew the Solano BID by first passing a resolution stating Council's intention to levy an annual assessment and scheduling a public hearing on the proposed renewed assessment for the coming year.

### ALTERNATIVE ACTIONS CONSIDERED

None.

### CONTACT PERSON

Eleanor Hollander, Secretary to the Solano BID Advisory Board, (510) 981-7536.



Attachments:

1: Resolution

Exhibit A: Report for the Solano Avenue Business Improvement District 2020-21

Exhibit A1: Map of the Solano BID

Exhibit A2: Assessment Rate

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

APPROVING THE ANNUAL REPORT AND PROPOSED BUDGET OF THE SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT FOR 2020-21; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2021; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR NOVEMBER 17, 2020 TO CONSIDER LEVYING A RENEWED ASSESSMENT FOR 2021.

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on December 9, 2003 the Berkeley City Council established such an area known as the Solano Avenue Business Improvement District (the "District"); and

WHEREAS, the City Council established a Solano Avenue Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the City Council established a Solano Avenue Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the Advisory Board has submitted an Annual Report to the Berkeley City Council that outlines the activities of the District proposed for 2021 as required by the California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report is clear and complete and found to comply with the interests of Solano Avenue assessees; and

WHEREAS, the annual process for levying assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to levy such an assessment and then set a date for a public hearing where interested parties may be heard on the issue.

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

Section 1. The City Council hereby approves the Solano Avenue Business Improvement District Annual Report 2020 and Budget for the year 2021 (Exhibit A) as submitted to the City Clerk by the Solano Avenue Business Improvement District Advisory Board.

Section 2. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to levy an annual

assessment for the parking and business improvement area known as the Solano Avenue Business Improvement District.

Section 3. The boundaries of the District are set forth in Exhibit A1 to the 2020-21 Annual Report which is attached hereto and incorporated herein by reference.

Section 4. The improvements and activities proposed for the District are as described in the Report and budget (Exhibit A) and appended hereto.

Council intends that these funds be used for designated activities and improvements in the Solano Avenue commercial area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City.

Section 5. The City Council intends to levy assessments on businesses located within the boundaries of the District shown Exhibit A1 and according to the business classifications and rates set forth in Exhibit A2 which is attached hereto and incorporated herein by reference.

Section 6. A public hearing shall be held before the City Council on November 17, 2020 virtually on a publicly accessible Zoom conference call. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology. Following the hearing the Council will consider adoption of a resolution levying an assessment as recommended by the Solano Avenue Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the levying of such an assessment.

Formal protests against the levying of the District assessment must be made in writing. All written and oral protests should contain the following certification: "I certify that I am the owner of the business listed below, and that the business is located or operates within the boundaries of the Solano Avenue Business Improvement District." Protests should also contain the following information: business name (printed), business address (printed), City Business License Tax Registration number, name of protester (printed), signature of protester, date of protest and the reason(s) the protester is against the levying of the District assessment. Protests will not be considered valid unless signed and submitted by the owner of a business located within the boundaries of the proposed District. Written protests shall be filed with the City Clerk, First Floor, City Hall, at 2180 Milvia Street, Berkeley, California, 94704, prior to the close of the public hearing on November 17, 2020 and shall contain a description of the business sufficient to identify the business, and if the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person subscribing the protest is the owner of the business. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from the owners of businesses in the District which will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or

types of improvements or activities within the District, those types of improvements or activities shall be eliminated.

Section 7. The City Clerk is directed to give notice of said public hearing by publishing the Resolution of Intention in a newspaper of general circulation seven days prior to the public hearing.

Exhibits

A: Report for the Solano Avenue Business Improvement District 2020-21

A1: Map of the Solano BID

A2: Assessment Rates

Report for the Solano Avenue Business Improvement District for 2020 and Budget for 2021**Background**

The first version of the Solano Business Improvement District (BID) operated from 2002-2007 with administration of the BID headed by the Solano Avenue Association. In January, 2012, the Council appointed the Solano BID Advisory Board to administer the Solano Avenue BID, to fund physical improvements to the street and dedicate marketing and promotion efforts towards the businesses on the portion of Solano Avenue that lies in Berkeley. This Annual report and budget updates the 8th full year of operational programs and progress on the revived Solano BID.

**Landscape program**

In 2013, the Solano BID financed a tree watering program for young street trees along upper Solano Avenue. In 2016, per the City of Berkeley arborist, the trees were mature enough to not require additional water services. In early 2016, the board voted to enhance Solano's landscape by installing a program of 41 hanging planter baskets on light poles distributed throughout the district; utilizing the Downtown Berkeley Association's (DBA) services. The DBA watered and maintained the baskets through the end of calendar year 2018, but has declined to continue this contract. In 2019 and 2020, rainwater alone supported the baskets, and the Solano BID started a conversation with The Downtown Streets Team (DST) to supplement other efforts to clean, weed, and level the tree wells through the district, and to develop an ongoing watering and maintenance system for the hanging flower baskets. This work was challenging to get started because of the need to identify a storage place for DST's tools, and the impacts of COVID-19 since March 2020, but now a storage location has been identified and this program should provide support for 2021 and beyond.

In late 2019, early 2020 funds were approved and RFP and selection process was conducted for a public realm plan study on Solano. The BID was supportive of the process and was deeply committed to involving both local merchants and local residents in the effort to re-imagine Solano Avenue in a way that brings more vitality to the Avenue in concert with the efforts of the City of Albany with the intention of strengthening the Solano Avenue 'brand' overall. Sadly, the funding for this project was repurposed for the emergency response to the COVID-19 pandemic. The future of this project still remains unclear and the project is "on hold" for now.

**Marketing and promotion of Solano**

Marketing and promotion of Solano Avenue constitutes the second priority of the Solano BID. To promote the avenue during the holiday season, a holiday light display program was established by the Solano BID. In 2016 and 2017 the BID contracted with a vendor, the Christmas Light Pros of SF, to deploy decorative unlit multi-colored garlands. In 2018 and 2019, the board approved funding for a new vendor which, under direction of the Solano Avenue Association (SAA), covered more poles and provided greater decoration coordination opportunities with neighboring Albany, all at a lower cost than previous seasons. The intention for the holiday season in 2020-21 is to use the same vendor and reimburse the SAA after the lights are installed. This partnership underscores the leverage that the SAA organization has been able to provide to support BID efforts for the Berkeley portion of Solano Avenue.

In June of 2020, the Solano BID Advisory Board voted to support to merchants on Solano during the global pandemic. The BID Advisory Board considered whether a group application for a limited engagement of street closure dedicated to outdoor commerce would be helpful to Solano Avenue Merchants. Provided that the outdoor commerce installation provided for adequate access for delivery/food pick up and safe outdoor dining, personal service, fitness and retail installations. Consequently the group voted to allocate up to \$35,000 total to support efforts related to outdoor commerce/street closure in the public ROW. The \$35,000 is to be roughly allocated as such: \$25,000 for program start up and design, \$10,000 for operations through the end of calendar year 2020. The effort is currently in the initial planning and design phases.

In the remainder of 2020, the Advisory Board may again decide to participate in the development of virtual or otherwise safe holiday campaigns and activities (i.e. supporting the Solano Avenue Association in socially distant gatherings or events 'Online Santa on Solano' event or similar). The details of the overall 2020 (and the future 2021) event and marketing program will be developed over the remainder of the year, with a possible coordinated launch party for the new Touchstone Oaks bouldering gym at the top of the Avenue once it is safe to gather again and construction is complete.

Expanded landscaping improvements (including porous pavement in tree wells) have yet to be determined by the board. It is presumed that provided a successful demonstration of landscaping maintenance this fall/winter season (2020-21), a multi-year contract could be extended accordingly.

**Solano BID Administration**

The Solano BID has one existing contract; a fiscal agent contract with the Telegraph Property and Business Management Corporation (Telegraph PBMC), who charges a 5% fee on their total contract size annually.

**FINANCIAL STATUS OF THE SOLANO BID, SEPTEMBER 2020**

|                                                                                                                                               |                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| Solano BID Revenue, as of 9/13/2020                                                                                                           | \$54,881.76              |
| Less fiscal agent fee to Telegraph PBMC (5%)                                                                                                  | (\$1,250.00)             |
| Less funds allocated for Solano Ave Assn 2019-20 Holiday Events (Sept 2019 allocation)                                                        | (\$2,000.00)             |
| Less funds allocated for Outdoor Commerce Installations/Business Support (June 2020 allocation)                                               |                          |
| Outdoor Commerce operations through 12/ 2020                                                                                                  | (\$10,000.00)            |
| Outdoor Commerce program start up and design                                                                                                  | (\$25,000.00)            |
| Less funds allocated for decorative holiday garlands (anticipated Sept 2020 allocation) + Installation + Removal + Storage Nov '20 to Jan '21 | (\$5,710.00)             |
| <b><i>Unallocated as of 9/13/2020</i></b>                                                                                                     | <b><i>\$9,881.00</i></b> |

Renewal of the Solano Avenue BID for Calendar Year 2021

CONSENT CALENDAR  
October 27, 2020

**BUDGET FOR THE SOLANO BID FOR 2021 (Calendar Year)**

|                                         |   |                   |
|-----------------------------------------|---|-------------------|
| Estimated new revenue                   | = | \$22,000.00       |
| <u>Carryover from 2020 (estimated)</u>  | = | <u>\$9,881.00</u> |
| Total available for expenditure in 2021 | = | \$31,881.00       |

*PROPOSED EXPENDITURES FOR 2021 (Calendar Year)*

|                                                                     |   |                   |
|---------------------------------------------------------------------|---|-------------------|
| Landscaping installation/tree well porous pavement                  | = | \$12,000.00       |
| Watering and Maintenance for hanging flower baskets                 | = | \$5,000.00        |
| Installation, removal and storage of holiday decor 2021-22 season   | = | \$5,000.00        |
| <u>Other marketing expenditure (branding/business support etc.)</u> | = | <u>\$9,000.00</u> |
| Total projected expenditure                                         | = | \$31,000.00       |

**Recommendations**

The Advisory Board recommends that the Council approve the Annual Report and Budget for 2021.

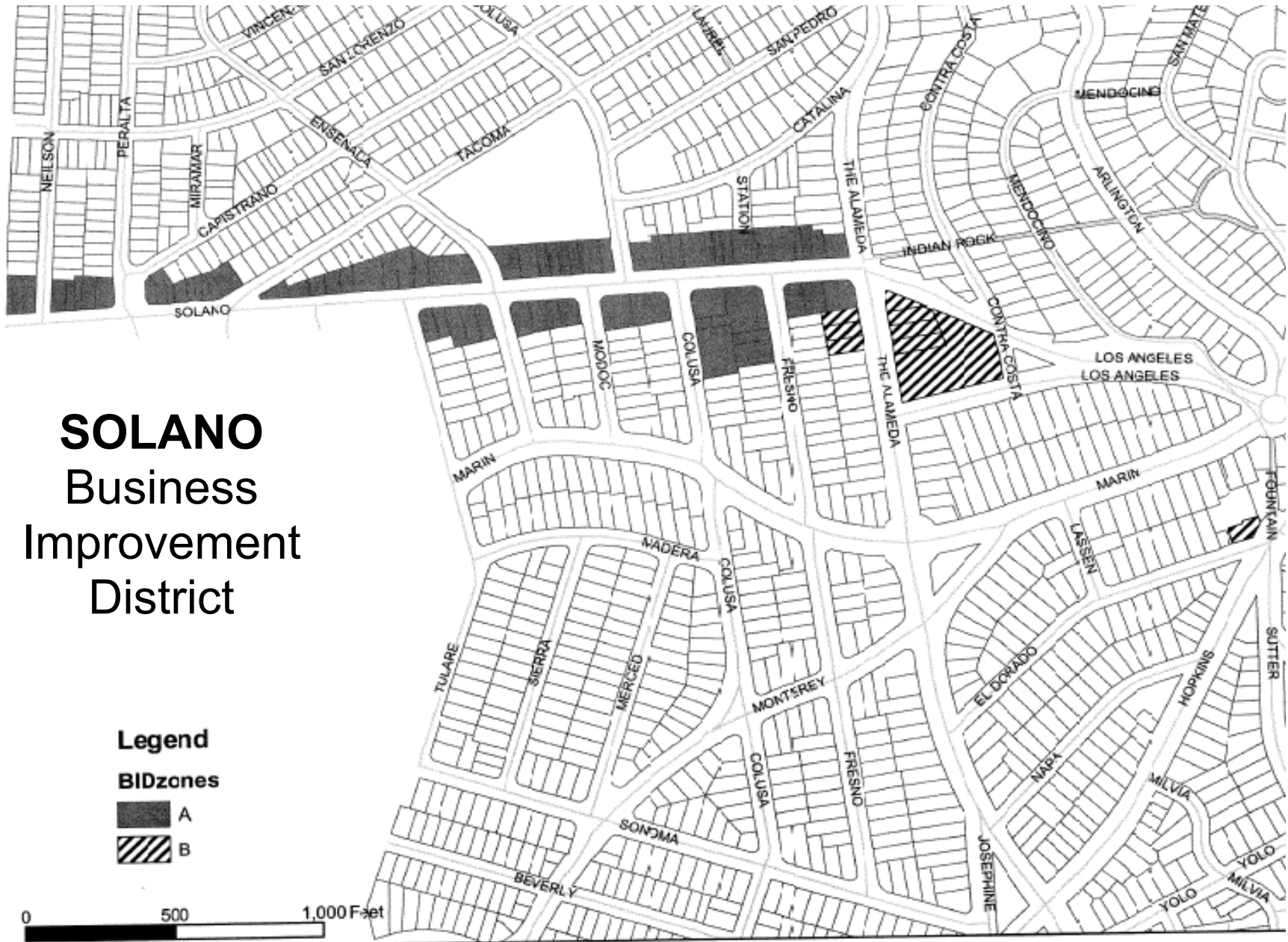
The Advisory Board recommends that the Council make no changes in the boundaries of the Solano Business Improvement District or in the two Benefit Zones, A & B.

The recommended improvements and activities for 2021 are those stated in the Report. The cost for providing them is stated in the Budget for 2021.

The method and basis for the assessment is as stated in Exhibit A2.

The estimate for surplus revenues to be carried over from 2020 is as stated in the Budget for 2021

Exhibit A1





October 27, 2020

Exhibit A2

**Berkeley Solano Avenue Business Improvement District Annual Assessment Formula**

| Type of Business             |               | Annual Assessments |        |
|------------------------------|---------------|--------------------|--------|
|                              |               | Zone A             | Zone B |
| a. Retailers and Restaurants | 1-5 employees | \$200              | \$125  |
|                              | 6-9 employees | \$300              | \$175  |
|                              | 10+ employees | \$400              | \$225  |
| b. Service Businesses        |               | \$175              | \$100  |
| c. Professional Services     |               | \$100              | \$65   |
| d. Financial Institutions    |               | \$500              | \$500  |





Office of the Mayor

CONSENT CALENDAR

October 27, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Budget Referral: \$50,000 to UC Theatre Concert Career Pathways Education Program

RECOMMENDATION

Refer to the November 2020 AAO budget process the allocation of \$50,000 to the UC Theatre Concert Career Pathways Education Program.

BACKGROUND

The UC Theatre is an independent non-profit music venue with youth education programs operated by the Berkeley Music Group (BMG). The UC Theatre Concert Career Pathways Education Program (CCP) develops critical and creative thinking skills necessary to become successful in the workplace, offering youth passionate about music jobs an opportunity to develop a career in the field. CCP teaches young people ages 17 to 25 the technical, creative, and business aspects of concert and event promotion. This nine-month program provides a hands-on work-based learning model in combination with free workshops and paid internships. UC Theatre offers these programs to youth attending local schools, underserved youth through partnerships with established non-profit community organizations, and to the public.

Over the last few years, the City Council has voted to provide funding to this program. In FY 2020, the City Council allocated \$40,000 to the UC Theatre Concert Career Pathways Education Program. Due to the City's contribution, UC Theatre was able to receive matching funds. The 2019/20 cohort represented a diverse range of identities and education levels, including 57% women, 9% nonbinary people, 62% people of color, 19% LGBTQ+ individuals, 19% people with disabilities, and 66% from low-income households.

While the COVID-19 crisis has dramatically and disproportionately impacted the live entertainment industry, UC Theatre is continuing its commitment to the community through continuing this program. Their goal for the 2020/21 Cohort is to deliver the most productive and rewarding internship training experience for participants by transitioning to a hybrid learning model. Starting in October they are rolling out a new Mentorship Education Program to complement their CCP Internship Program – effectively broadening the range of communities they engage and train.

When reaching out to partners to support this program, a commonly asked question is “what is the level of support you are currently receiving from the City of Berkeley?”, which serves as a barometer for the feasibility of the program. Increased support from the City of Berkeley will help them leverage additional Foundation support for their youth education programming.

FINANCIAL IMPLICATIONS

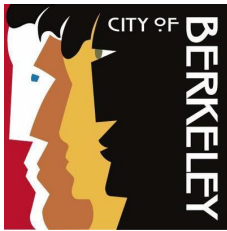
\$50,000

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100



Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR

October 27th, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Equitable Clean Streets Budget Referral: Funding for Staff to Conduct Bi-Weekly (Once Every Two Weeks) Residential Cleaning Services

RECOMMENDATION

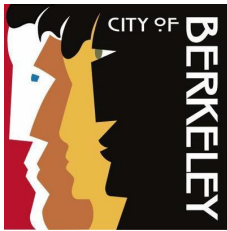
Refer to the November AAO budget process to allocate \$500,000 from the General Fund to require biweekly (once every two weeks) cleaning of populated encampment sites, major corridors, and encampments adjacent to residential neighborhoods throughout the City of Berkeley for approximately one year. The City should also partner with appropriate non-profit organizations to create work opportunities for homeless residents who can help City staff clean the streets on an ongoing basis.

CURRENT SITUATION

On September 21, 2020, Councilmember Bartlett submitted an item that would require bi-weekly (once every two weeks) cleaning of populated encampment sites and adjacent residential neighborhoods in Berkeley. On September 29, the Agenda and Rules Committee approved the Consent Calendar item to be discussed at the October 13 Council meeting. However, the aforementioned item does not specify if the City has the appropriate staff and financial capacity to implement additional street cleaning measures at this time. This item serves as a budgetary companion piece that will allocate \$500,000 from the General Fund to fund the costs of essential staff and supplies for these street cleaning services for at least one year.

Specifically, the goals of this equitable street cleaning initiative are to:

1. Promote public health and safety by mitigating trash hot spots and addressing the increased amount of trash in our community;
2. Reduce trash loads from municipal storm water sewer systems by complying with the San Francisco Regional Water Quality Board's MRP and trash requirements;
3. Create work opportunities for homeless residents and build staff capacity by partnering with non-profit organizations.



Councilmember Ben Bartlett  
City of Berkeley, District 3

## BACKGROUND

The City of Berkeley currently mandates residential cleaning once a month and follows a sweeping schedule according to the street name. Residents are encouraged to rake their leaves for composting and avoid sweeping materials into streets or curbsides where debris could impede people's ability to safely travel along the sidewalks. However, our current sweeping schedule has not been sufficient in addressing issues of littering, illegally dumped materials, and encampments in certain areas throughout Berkeley, especially in the South Berkeley neighborhood.

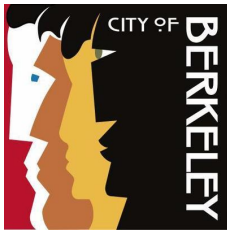
According to South Berkeley residents, their neighborhood has been littered with trash, which has become a safety and sanitary concern. Reports of discarded clothing and illegally dumped materials, such as couches and televisions, are common in South Berkeley, especially along the block of Martin Luther King Jr. Way in the corner between Alcatraz Avenue and 62nd Street. Other encampments, trash, and debris have also been located in the BART-owned area.

To promote health, safety, and cleanliness in Berkeley, the Council should allocate sufficient funding to hire additional street sweeping staff and provide more frequent residential cleaning services throughout the City. Since each neighborhood has different needs, the City and the street sweeping staff must use an equity lens to prioritize their cleaning services for areas with a greater number of encampments, such as South Berkeley. In addition to cleaning the surrounding area of encampments, the proposed biweekly (once every two weeks) cleaning services should focus on cleaning the individual camps as well. The City should also partner with non-profit organizations to build staff capacity, create work opportunities for homeless residents, and provide additional services to adjacent residential neighborhoods.

The City should also employ its services at encampments on nearby non-City owned property, such as Caltrans. However, in these cases, the City should have the authority to bill the appropriate agency for the cost of staff and materials.

## REVIEW OF EXISTING LAWS

The California State Water Board is one of six environmental entities operating under the authority of the California Environmental Protection Agency. The Board includes the



Councilmember Ben Bartlett  
City of Berkeley, District 3

State Water Resources Control Board and nine Regional Boards, including the San Francisco Regional Water Quality Control Board.<sup>1</sup>

In 2009, the San Francisco Regional Board issued a Municipal Regional Stormwater NPDES Permit (MRP).<sup>2</sup> The MRP covers stormwater discharges from municipalities and local agencies in Alameda, Contra Costa, San Mateo, and Santa Clara counties, and the cities of Fairfield, Suisun City, and Vallejo. Specifically, the permit requires local governments to implement best management practices to control pollutants in stormwater. In addition, the permit includes Provision C.10, which requires permittees to implement trash load reduction control actions. The goal of this provision is to help reduce trash loads from municipal separate storm sewer systems by 40% by 2014, 70% by 2017, 80% by July 1, 2019, and 100% by 2022.<sup>3</sup>

The Regional Board has specified two methods for reducing trash discharge. The most direct means is the installation and maintenance of full trash capture devices, such as storm drain inlet screens and in-ground hydrodynamic separators. The other approach is to implement cleanup actions, such as street sweeping, installing and maintaining trash receptacles, and regularly sending crews to pick up litter.

In order to comply with the MRP and meet the trash requirements of Provision C.10, the Council must adopt this equitable street cleaning initiative and work towards reducing the debris and litter in our communities.

#### RATIONALE FOR RECOMMENDATION

Debris and illegal dumping have exacerbated the safety, sanitary, and environmental issues of the Berkeley community. To protect the safety and health of our residents, residential cleaning of the camps and the adjacent neighborhoods of the encampments in the city should be conducted at least once every two weeks. Equitable residential cleaning services would ensure that Berkeley residents, especially those in South Berkeley, have safe and sanitary areas for residential and commercial purposes.

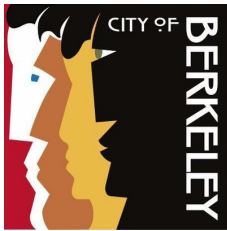
In addition, the City must comply with the San Francisco Regional Water Quality Board's MRP and effectively control pollutant discharge. Compliance with the MRP will

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<sup>1</sup> [https://www.waterboards.ca.gov/waterboards\\_map.html](https://www.waterboards.ca.gov/waterboards_map.html)

<sup>2</sup> [https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/stormwater/mrp.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/mrp.html)

<sup>3</sup> [https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/stormwater/MRP/Prov\\_C10.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/MRP/Prov_C10.html)



Councilmember Ben Bartlett  
City of Berkeley, District 3

mitigate trash hot spots, enhance water quality, and benefit our city's ecosystems and surrounding communities.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time and General Fund impact of \$500,000. The funding is expected to cover the cost of staff and supplies for additional cleaning services for at least one year. For encampments on non-City owned property, the City would save on financial resources by billing the appropriate agency for the cost of staff and materials.

#### ENVIRONMENTAL SUSTAINABILITY

Bi-weekly (once every two weeks) residential cleanings would remove the litter populating the camps and streets, which would reduce the risk of trash clogging storm drain systems or polluting the waterways. This initiative works towards meeting the trash requirements of the San Francisco Regional Water Quality Board's MRP. Compliance with the MRP will enhance water quality, benefit the City's ecosystems and surrounding communities, and minimize the impacts of trash discharges on our environment. Litter can also carry unsanitary germs and thus, increase the ability to contract diseases. These issues must be prevented and mitigated, especially during a time when people are vulnerable to becoming infected with coronavirus.

#### CONTACT PERSON

Councilmember Ben Bartlett  
James Chang  
Katie Ly

510-981-7130  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)  
[kly@cityofberkeley.info](mailto:kly@cityofberkeley.info)





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
October 27, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Resolution Adopting the 2020 Traffic Circle Vegetation Policy and Maintenance Plan

RECOMMENDATION

1. Adopt the 2020 Traffic Circle Vegetation Policy and Maintenance Plan as revised by the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.

POLICY COMMITTEE RECOMMENDATION

On September 16, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item to Council with a positive recommendation, as submitted by staff, and as further revised by the committee to include: 1. That this policy be reviewed every five (5) years. 2. Tree standards will be refined overtime to meet the needs of the traffic circles. 3. If any trees are to be removed, the policy is to replace the tree with a more appropriate tree when possible. 4. If a tree is to be removed and it can be successfully replanted, it shall be. Vote: All Ayes.

BACKGROUND

On November 12, 2019, the City Council referred the following language from the proposed Traffic Circle Policy to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee for consideration: "New trees proposed by traffic circle coordinators or volunteers will be approved by the City Forester, with a preference for natives and a focus on maximizing ecosystem services. The Task Force recommends revisiting trunk size considerations every five years as the implications of climate change and autonomous vehicles become clearer. In the interim, large trunked trees such as redwoods will not be planted."

The Public Works Department together with key community members of the former Traffic Circle Policy Task Force have completed their work on developing an additional

Traffic Circle Policy entitled the *2020 Traffic Circle Vegetation Policy and Maintenance Plan*.

The *2020 Traffic Circle Vegetation Policy and Maintenance Plan* addresses the referral by including the frequency of inspection and the requirements for consideration of new trees utilizing the Urban Forestry Unit's current process and requirements.

On September 16, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee voted to send the policy to Council with a positive recommendation, as submitted by staff, and as further revised by the committee to include:

1. a requirement that the policy will be reviewed every five (5) years;
2. clarification that if a tree must be removed from a circle and can be transplanted it shall be transplanted.
3. Clarification that the City's policy shall be to place a more location-appropriate tree in the circle where a tree has been removed, if possible; and,
4. clarification that Tree Planting Location Standards shall be refined over time to be more specific for traffic circle locations.

Public Works staff indicate that they are in the process of recruiting new volunteers for unadopted circles by sending mailers to all addresses within 300 feet of the unadopted circle. Staff will also work with existing volunteers to ensure compliance with the new Policy and address any traffic circle issues on a case by case basis (see Attachment 2).

In addition, staff indicate that the City's Adopt-a-Spot website will serve as resource for this program and as a starting point for future volunteer opportunities including adopting and maintaining storm drains. The Public Works Department will continue to work with the City Manager's Office on a long term funding strategy of the Adopt-a-Spot program and with other Departments to identify opportunities to support Community Common Space Stewardship.

#### ENVIRONMENTAL SUSTAINABILITY

Healthy trees sequester carbon dioxide and support myriad species. The revised policy seeks to avoid tree removal wherever possible and supports safe tree maintenance and planting procedures, in support of City climate and ecological goals.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary to administer the new policy.

CONTACT PERSON

Councilmember Kate Harrison  
510-981-7140

ATTACHMENTS

1. Resolution Adopting the 2020 Traffic Circle Vegetation Policy and Maintenance Plan
2. September 8, 2020 Memo to the FITES Committee from Public Works Director Liam Garland Re: Traffic Circle Policy and Program Recommendations
3. Traffic Circle Policy Task Force Traffic Circle Policy and Program Recommendations

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

ADOPTING THE 2020 TRAFFIC CIRCLE VEGETATION POLICY AND  
MAINTENANCE PLAN

WHEREAS, The City Council established the Traffic Circle Task Force on February 26, 2019 with the charge of evaluating the current traffic circle vegetation policy, recommending appropriate characteristics for allowed plantings, and a policy that ensures sight lines for visibility, pedestrian, bicycle and vehicle safety, as well as beautification of the circles; and

WHEREAS, The City Council adopted the Traffic Circle Policy, Resolution No. 69,164-N.S., on November 12, 2019 and referred to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee to further consider certain traffic circle policies; and

WHEREAS, The Public Works Department together with key community members of the former Traffic Circle Policy Task Force have completed their work on developing an additional Traffic Circle Policy entitled the *2020 Traffic Circle Vegetation Policy and Maintenance Plan*; and

WHEREAS, the Committee voted on September 16, 2020 to send the plan to Council with a positive recommendation, as submitted by staff, and as further revised by the committee; and

WHEREAS, The purpose of the 2020 Traffic Circle Vegetation Policy and Maintenance Plan is to identify the appropriate type of vegetation and its maintenance for traffic circles that provide traffic calming, beautification, environmental, and other benefits while promoting visibility and enhancing neighborhood safety; and

NOW THEREFORE, BE IT RESOLVED that the Berkeley City Council adopts the 2020 Traffic Circle Vegetation Policy and Maintenance Plan in Exhibit A.

Exhibits:

A: 2020 Traffic Circle Vegetation Policy and Maintenance Plan



## City of Berkeley – Public Works

### 2020 Traffic Circle Vegetation Policy and Maintenance Plan

*Based on Resolution 69,164-N.S. and the Annotated Agenda of the Special Meeting of the Berkeley City Council on 11/12/2019<sup>1</sup>, and replaces the 2012 Traffic Circle Planting Policy*

**The purpose of this new policy is to identify the appropriate type of vegetation and its maintenance for traffic circles that provide traffic calming, beautification, environmental, and other benefits while maintaining pedestrian safety.** The goal of this policy is to develop guidelines ensuring that traffic circle vegetation and trees are maintained to conform to safety standards to promote visibility and enhance neighborhood safety. This policy will be reviewed every five (5) years.

#### Ongoing Vegetation Maintenance:

Vegetation shall be maintained to not exceed a maximum height of 24 inches from the top of the traffic circle planter curb.

Vegetation Maintenance includes:

- Weeding
- Debris and trash removal
- Pruning to maintain 24" height

#### New Vegetation Plantings:

Traffic Circle plantings should be durable, diverse, and attractive. New plantings must be drought-tolerant and fully grown be 24 inches or less above the traffic circle curb. Good examples are plants from California and other Mediterranean climates around the world. Plantings should conform to Bay-Friendly Landscape Guidelines<sup>2</sup> and support pollinators. Plantings with spines or thorns (e.g. cacti), vegetables, or fruits are not permitted. Hoses are considered a trip hazard and a road hazard, and are not permitted for irrigation of traffic circles. No use of pesticides or herbicides will be allowed for maintenance.

Traffic circles should be planted with consideration of sightlines and vegetation size and shape at maturity. In addition, a simple Planting Guide for native and pollinator friendly plants was created by the Traffic Circle Task Force. Plants that are on the Planting Guide do not require submittal of a plant list for approval. New proposed Planting List must be submitted to [adoptaspot@cityofberkeley.info](mailto:adoptaspot@cityofberkeley.info) for review and approval when significant revegetation of an existing traffic circle is proposed.

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<sup>1</sup> The adopted resolution was based on community input gathered before and as part of the Traffic Circle Policy Task Force who met regularly from June 2019 through November 2019 and included subcommittees on Vegetation, Operation and Maintenance, and Policy Alignment.

<sup>2</sup> Bay-Friendly Landscape Guidelines from ReScape can be found here: <https://rescapeca.org/resources/for-community-leaders-landscape-professionals/landscape-standards/>

Traffic circles with Green Infrastructure<sup>3</sup> will be planted and maintained by the City of Berkeley or their designated representatives to ensure compliance with engineered planting plans to support water quality. Future green infrastructure installations will be communicated to the neighboring community with opportunities for community input.

Vegetation Maintenance and Planting activities will be performed according to the Traffic Circle Vegetation Policy and Maintenance Agreement and Resolution 69,194-N.S. from the City of Berkeley. Traffic Circles are in the public right of way and may require traffic control for volunteer safety. Maintenance and planting activities can be performed as part of scheduled volunteer events and on an as needed basis. Additionally, in some Traffic Circles, there is City and other Utility infrastructure including maintenance holes. To avoid any incidental damage to plantings, the 1.5 feet around the maintenance hole should be free of vegetation and crews will need a clear path to walk to the maintenance hole. In addition, prior to planting, volunteers will need to contact 811 to avoid disturbing underground utilities - <https://www.usanorth811.org/>.

#### **Ongoing Existing Tree Maintenance:**

All tree work will be performed by City Staff or their contractors. Trees with trunks wider than 20 inches will be evaluated for structural safety every three (3) years. Mature tree canopies will be trimmed to provide a minimum height of 7 feet above the top of the traffic circle planter curb. Tree Limbs that extend beyond the curb will be trimmed to provide a minimum height of 14 feet above the road surface.

Traffic Circles with single tree trunks that are less than 20 inches in width, as measured at the point 4 feet above the ground, do not require any additional traffic calming devices at this time. Single tree trunks wider than 20 inches may be permitted with additional traffic calming measures.

Low branches on young trees and/or flower stalks extending above the 24 inch maximum height above the traffic circle curb shall be permitted as long as the total visual obstruction above 24 inches is no more than 20 inches across the circle. If a tree must be removed from a circle and can be transplanted it shall be transplanted. In any event, the City's policy shall be to place a more location-appropriate tree in the circle where a tree has been removed, if possible.

City of Berkeley will inspect Traffic Circles every six (6) months for compliance with this policy, and will inspect community complaints regarding Traffic Circles within two (2) business days of receipt of complaint.

#### **New Trees:**

Planting of new trees will be considered for traffic circles that do not have utility conflicts. In addition, any proposed locations must adhere to the [Tree Planting Location Standards](#). These standards shall be refined over time to be more specific for traffic circle locations. A [Tree](#)

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<sup>3</sup> Green Infrastructure maintenance and planting guidelines are identified in the City's Green Infrastructure Plan as required by the City's Municipal Regional Stormwater Permit. [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/06\\_June/Documents/2019-06-18\\_WS\\_Item\\_01\\_City\\_of\\_Berkeley\\_Green\\_Infrastructure\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/06_June/Documents/2019-06-18_WS_Item_01_City_of_Berkeley_Green_Infrastructure_pdf.aspx)

[Planting Application](#) must be completed and submitted to [adoptaspot@cityofberkeley.info](mailto:adoptaspot@cityofberkeley.info) for initial review before it is forwarded on to Forestry for final review.

**Volunteer Maintenance and Requirements:**

Landscaped neighborhood traffic circles in Berkeley add beauty, support the environment, and help slow down traffic to make Berkeley a safer place to live. The City wants to continue to engage existing and new community volunteers to maintain traffic circles. All existing volunteers will be required to sign a Volunteer Agreement and Release from Liability within 30 days from publication of this plan and submit to [adoptaspot@cityofberkeley.info](mailto:adoptaspot@cityofberkeley.info) . All new volunteers will also be required to sign the volunteer agreement and release before performing any maintenance activities at a traffic circle.

Traffic Circle volunteers will be responsible for caring for the traffic circle vegetation including weeding, pruning and other routine maintenance; being cautious and visible to traffic while in or near the traffic circle; comply with requirements outlined in this document; ensure traffic circle vegetation adheres to sightline requirements; and adopt a traffic circle for at least six months.

Traffic Circles without volunteers will be planted and maintained by the City until volunteers are in place following the Planting Guide.

City will notify volunteers via mail and a courtesy email if corrective action is needed. Volunteers will have seven (7) days<sup>4</sup> from the date on the mailed notification letter from the City to bring the Traffic Circle into compliance. For any questions, the volunteer should email [adoptaspot@cityofberkeley.info](mailto:adoptaspot@cityofberkeley.info) If not corrected, City Staff or their designee will take corrective action to bring the vegetation into compliance, which may include pruning or removal of vegetation that violates this policy.

In keeping with Title 20 of the Berkeley Municipal Code, no signs are permitted in a Traffic Circle with the exception of City authorized traffic control devices signs. Traffic Circle volunteers may move temporary signage to the parking strips adjacent to the Traffic Circle.

Traffic Circles primary function is for traffic calming, and they are not to be used as parks or for any form of recreation.

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<sup>4</sup> <https://www.codepublishing.com/CA/Berkeley/html/Berkeley12/Berkeley1244/Berkeley1244070.html>

**Adopt a Spot Traffic Circle Volunteers will:**

- Call 911 in the event of an emergency or 510-981-5900 for non-emergencies.
- Work only between sunrise and sunset.
- Wear appropriate protective clothing that could include: work gloves, eye protection, sturdy closed toed shoes, and long pants to prevent injury from sharp objects, insect stings, and sunburn.
- Wear a reflective vest required for working in the public right-of-way. The City will provide one to volunteers if requested.
- Will not plant vegetation that is not on the recommended list without prior authorization from the City.
- Will not wear ear buds or headphones while performing maintenance activities.
- Will not use power tools.
- Will not pick up sharp objects with bare hands.
- Will not touch medical or hazardous waste (including hypodermic needles, automotive fluids, unknown fluids and materials). Report hazardous waste in the public right of way to the City of Berkeley Public Works at 510-981-6620.
- Separate collected materials into recycling, green waste, and garbage cart.
- Dispose of recycling in your residential blue recycling cart or agreed upon cart.
- Dispose of small amounts of trash in your residential grey garbage cart or agreed upon cart.
- Larger amounts of trash placed in orange plastic City-issued bags will be picked up by Public Works if requested. Bags will be supplied upon request.
- Dispose of small amounts of green waste, such as leaves and trimmings, in your residential green cart or agreed upon cart. Larger amounts of green waste placed in City-issued paper bags will be picked up by Public Works. Bags will be supplied upon request.
- Will provide adult supervision at all times to any volunteer under the age of 18.
- Individuals who have not signed a volunteer agreement are prohibited from the Traffic Circle.

Note: The City reserves the right to immediately withdraw support for any volunteer if, at the sole discretion of the City, the volunteer's conduct while participating in volunteer activities on City property or right-of-way is determined to be inconsistent with this Policy or violates any local, state or federal law.





Public Works Department

02

September 8, 2020

To: Members of the City Council Facilities, Infrastructure, Transportation, Environment & Sustainability Committee

From: Liam Garland, Director of Public Works

Re: Traffic Circle Policy and Program Recommendations

The Public Works Department together with key community members of the former Traffic Circle Policy Task Force have completed their work on developing a new Traffic Circle Policy entitled *2020 Traffic Circle Vegetation Policy and Maintenance Plan* (attached).

On November 12, 2019, the City Council referred the following language from the proposed Traffic Circle Policy to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee for consideration: “New trees proposed by traffic circle coordinators or volunteers will be approved by the City Forester, with a preference for natives and a focus on maximizing ecosystem services. The Task Force recommends revisiting trunk size considerations every five years as the implications of climate change and autonomous vehicles become clearer. In the interim, large trunked trees such as redwoods will not be planted.”

The *2020 Traffic Circle Vegetation Policy and Maintenance Plan* addresses the referral by including the frequency of inspection and the requirements for consideration of new trees utilizing the Urban Forestry Unit’s current process and requirements which can be found here [https://www.cityofberkeley.info/tree\\_planting/](https://www.cityofberkeley.info/tree_planting/).

In addition, the Traffic Circle Task Force members created for the City and the community a wonderful *Planting Guide* (attached) to encourage the planting of native species in Traffic Circles

As previously requested attached is a copy of the traffic controls and existing crash data<sup>1</sup> for the Traffic Circles. The City does not have traffic volumes, condition of tree at time of collisions, condition of vegetation, or other conditions impacting visibility, which inhibits the ability to draw conclusions regarding the impact of vegetation or trees.

<sup>1</sup> <https://www.chp.ca.gov/programs-services/services-information/switrs-internet-statewide-integrated-traffic-records-system>

Page 2  
September 9, 2020  
Re: Traffic Circle Policy and Program Recommendations

Public Works staff will now begin the process of recruiting new volunteers for unadopted circles by sending mailers to all addresses within 300 feet of the unadopted circle. Please see the attached map of adopted and unadopted traffic circles.

Staff will also work with existing volunteers to ensure compliance with the new Policy and address any traffic circle issues on a case by case basis. The Adopt-a-Spot website will be live this month on the City's website as a resource for this program and as a starting point for future volunteer opportunities including adopting and maintaining storm drains.

The Public Works Department will continue to work with the City Manager's Office on a long term funding strategy of the Adopt-a-Spot program and with other Departments to identify opportunities to support Community Common Space Stewardship.

Attachments:

1. 2020 Traffic Circle Vegetation Policy and Maintenance Plan
2. Planting Guide
3. Map of Traffic Circles
4. Crash and Traffic Control data

cc:

Paul Buddenhagen, Deputy City Manager  
Mark Numainville, City Clerk



## City of Berkeley – Public Works

### 2020 Traffic Circle Vegetation Policy and Maintenance Plan

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#### **New Vegetation Plantings:**

Traffic Circle plantings should be durable, diverse, and attractive. New plantings must be drought-tolerant and fully grown be 24 inches or less above the traffic circle curb. Good examples are plants from California and other Mediterranean climates around the world. Plantings should conform to Bay-Friendly Landscape Guidelines<sup>2</sup> and support pollinators. Plantings with spines or thorns (*e.g.* cacti), vegetables, or fruits are not permitted. Hoses are considered a trip hazard and a road hazard, and are not permitted for irrigation of traffic circles. No use of pesticides or herbicides will be allowed for maintenance.

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## Suggestions for Traffic Circle Plantings

In an effort to support city staff, contractors hired to maintain unadopted circles, and the public, members of the former Traffic Circles Task Force reviewed and culled the original list of suggested plantings for traffic circles. The resulting suggestions below are intended for those circles that the city will plant and maintain or for adopted circles where volunteers might want additional suggestions for plantings that provide valuable habitat for insects and birds.











The plants below are suggestions and do not represent a finite prescriptive list. Volunteers may and can use other plants as long as they adhere to height specifications.

All plants are California natives, often native to our region. They have been selected for height requirements, drought-tolerance, and habitat value. They should thrive in full sun with little- to no-water (once established). All plants were checked to be widely available from local nursery and seed supply resources.

There are two lists of plants: Tier One and Tier Two. Each Tier contains 10 suggestions and has been formatted to print on a single sheet, double-sided.

In line with urgings from the Audubon Society, the Xerces Society, the National Wildlife Federation, the California Native Plant Society, and other organizations addressing alarming species decline, Tier One plants focus heavily on CA-native butterfly (caterpillar, or “larval”) host plants. These plants are also valuable sources of pollen and nectar for native bees and hummingbirds. Like most insects, caterpillars are host-plant specific. Since caterpillars are the primary food of most baby birds, planting for caterpillars supports birds. Tier Two suggestions are less focused on butterfly host plants and offers plants that provide valuable pollen and nectar sources for native bees and hummingbirds.


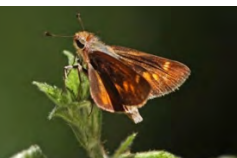






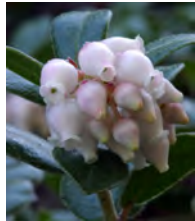

Suggested Plants for Traffic Circles – Tier One (#1-5 of 10)

|   | Bloom                                                                               | Plant                                               | Scientific Name                                  | Height  | Width | Notes                                                                                                                                                                                                                                                                                             | Wildlife Supported                                                                                        |
|---|-------------------------------------------------------------------------------------|-----------------------------------------------------|--------------------------------------------------|---------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| 1 |    | <b>Buckwheat, Coast</b>                             | Eriogonum latifolium                             | 12-20in | 2ft   | Compact mound of softly felted blue grey spoon shaped leaves topped by pale pink 1" clusters of flowers blooming summer into fall. Used for erosion control, drought tolerant. Ground nesting native bees scrape fuzz off leaves to use in nest. Loved by bees, butterflies and many pollinators. | <br>Acmon Blue         |
| 2 |    | <b>Buckwheat, Naked</b>                             | Eriogonum nudum                                  | 12-20in | 2-3ft | Another keystone Buckwheat. Late blooming, short growing. Drought tolerant, attractive to butterflies and bees.                                                                                                                                                                                   | <br>Mormon Metalmark   |
| 3 |    | <b>Buckwheat, Red</b>                               | Eriogonum grande var. rubescens                  | 12-20in | 2-3ft | Another keystone Buckwheat. Late blooming, short growing. Drought tolerant, attractive to butterflies and bees.                                                                                                                                                                                   | <br>Silvery Blue       |
| 4 |   | <b>California Aster, Point Saint George</b>         | Symphotrichum chilensis, 'Point Saint George'    | 6in     | 2ft   | A low growing vigorous native perennial, reaching up to 6 inches in height and spreading widely. Covered with soft lavender daisies over a long period, summer through fall, often into winter.                                                                                                   | <br>Field Crescent    |
| 5 |  | <b>California Lilac</b><br>(low growing selections) | ex. Ceanothus hearstiorum - San Simeon Ceanothus | 3-12in  | 6ft   | Many species and varieties, choose low growing selections. Ceanothus hearstiorum is flat growing, with dark green crinkled leaves and 1" deep blue flower clusters in the spring.                                                                                                                 | <br>Pale Swallowtail |

**Photo Credits** (from Calscape.org unless otherwise noted): (1) **Coast Buckwheat** (2013 John Doyen)/**Acmon Blue** (2008 Ron Wolf); (2) **Naked Buckwheat** (2016 Steve Matson)/**Mormon Metalmark** (Bill Bouton); (3) **Red Buckwheat** (2006 Steve Matson)/**Silvery Blue** (2014 Ron Wolf); (4) **Aster** (2007 Neal Kramer)/**Field Crescent** (Willem9); (5) **Ceanothus** (2007 Stan Shebs)/**Pale Swallowtail** (2013 Ron Wolf)


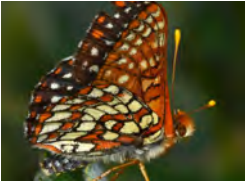
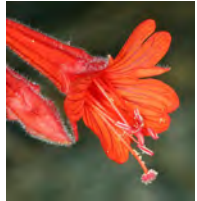









## Suggested Plants for Traffic Circles – Tier One (#6-10 of 10)

|    | Bloom                                                                               | Plant                                                                           | Scientific Name                                                                                                          | Height  | Width | Notes                                                                                                                                                                                                                                                                                                              | Wildlife Supported                                                                                      |
|----|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|---------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| 6  |    | <b>California Native Bunch Grasses</b><br>(ex. Creeping Red Fescue, Blue Grama) | ex. Festuca rubra (Molate Pt), Bouteloua gracilis                                                                        | 1-2ft   | 2-3ft | CA native and non-native grasses support a wide variety of Skipper butterflies (e.g. Umber Skipper, Fiery Skipper, Rural Skipper, and many more). In urban areas mostly on Bermuda Grass.                                                                                                                          | <br>Umber Skipper    |
| 7  |    | <b>Gumweed</b>                                                                  | Grindelia stricta var. platyphylla                                                                                       | 1-1.6ft | 1-2ft | Low herbaceous perennial, 2" sunny yellow daisies, summer to fall. Drought tolerant, but best with some summer water. Valuable pollen and nectar source.                                                                                                                                                           | <br>Native Bees      |
| 8  |    | <b>Lippia</b>                                                                   | Lippia nodiflora                                                                                                         | 1-4in   | 2ft   | Evergreen perennial flat groundcover. 1/2" flower clusters like tiny lantana in pink and white. Host for Buckeye Butterfly. Attractive to pollinators.                                                                                                                                                             | <br>Common Buckeye   |
| 9  |   | <b>Lupine, dwarf</b>                                                            | Lupinus nanus, Lupinus bicolor (or any short lupine)                                                                     | 12-18in | 1ft   | Also called "Sky Lupine". Annual wildflower that turns California fields blue in the spring. Reseeds. Seeds need moisture to germinate, available at Larners Seeds                                                                                                                                                 | <br>Gray Hairstreak |
| 10 |  | <b>Manzanita</b>                                                                | Low growing selections (exs. Arctostaphylos 'Emerald Carpet', Arctostaphylos edmundsii 'Carmel Sur', see Notes for more) | 6-12in  | 6ft   | Low tidy evergreen groundcovers that are drought tolerant with pink to white small urn shaped flowers winter into spring provide bees with nectar early in season. Edible red berries good for migrating birds. Low growing selections (Low growing: Arctostaphylos uva ursi 'Point Reyes'- Point Reyes Bearberry) | <br>Bumble Bee     |




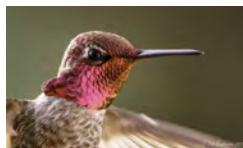






**Photo Credits** (from *Calscape.org* unless otherwise noted): ; (6) **California Red Fescue** (2018 Robert Steers/NPS)/**Umber Skipper** (2011 Ron Wolf); (7) **Gumweed** (2008 Stickpen)/**Dianthidium** (Rusty Burlew, honeybeesuite.com); (8) **Lippia** (2013 Ron Wolf)/**Buckeye** (2015 Gary McDonald); (9) **Lupine** (Lynn Watson)/**Gray Hairstreak** (2014 Ron Wolf); (10) **Manzanita** (2006 Steve Matson)/**Bombus vosnesenskii** (LasPalitas Nursery)

**Suggested Plants for Traffic Circles – Tier Two (#11-15 of 20)**

|    | Bloom                                                                               | Plant                        | Scientific Name                                                                                          | Height  | Width | Notes                                                                                                                                                                                                                            | Wildlife Supported                                                                                          |
|----|-------------------------------------------------------------------------------------|------------------------------|----------------------------------------------------------------------------------------------------------|---------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| 11 |    | <b>Bush Monkey Flower</b>    | Mimulus aurantiacus                                                                                      | 2-3ft   | 3ft   | Very drought tolerant. No water once established. Copious blooms. Hummingbirds attracted. Tends to lean but may need some pruning to keep low growing. Pinch to encourage more compact growth.                                   | <br>Variable Checkerspot |
| 12 |    | <b>California Fuchsia</b>    | Zauschneria or Epilobium canum. (Use Low growing selections, such as 'Everett's Choice' or 'Cloverdale') | 1-2ft   | 2-3ft | Fine textured gray green to silver leaves, mounding habit and bright red orange tubular flowers in clusters later summer into fall. Can be winter deciduous. Best hummingbird attracting plant. Drought tolerant.                | <br>Allen's Hummingbird  |
| 13 |    | <b>California Poppy</b>      | Eschscholzia californica                                                                                 | 1-1.5ft | 1ft   | Perennial grown as Annual. Reseeds. Start from seeds or plants. The state flower of California. Mainstay pollen source for many native bees.                                                                                     | <br>Bumble Bee           |
| 14 |   | <b>Checkerbloom</b>          | Sidalcea malviflora                                                                                      | 2ft     | 1ft   | Perennial wildflower. Dense low 6" mound of small round scalloped leaves, 12-20" spikes of bright to dark pink 1" flowers in spring. Native larval host plant for Westcoast Lady Butterfly.                                      | <br>West Coast Lady     |
| 15 |  | <b>Daisy, Wayne Roderick</b> | Erigeron glaucus 'Wayne Roderick'                                                                        | 1ft     | 1-2ft | Pollen and Nectar source for bees. Profusion of 2" lavender daisies with golden centers, easy tough and reliably perennial. Long blooming Spring to Fall with some deadheading. Drought tolerant. Better with some summer water. | <br>Sweat Bee          |

**Photo Credits** (from Calscape.org unless otherwise noted): (11) **Monkeyflower** (2017 Margo Bors)/**Variable Checkerspot** (2017 Gary McDonald); (12) **Fuchsia** (2015 Steve Matson)/**Allen's Hummingbird** (ca.audubon.org); (13) **Poppy** (2012 Gary McDonald)/**Yellow-faced Bumble Bee** (Sean McCann, ibycter.com); (14) **Checkerbloom** (2010 Gary A. Monroe)/**West Coast Lady** (David Hofmann); (15) **Daisy Wayne Roderick** (2010 Calscape)/**Sweat Bee** (Kathy Keatley Garvey, homeorchard.ucanr.edu)

**Suggested Plants for Traffic Circles – Tier Two (#16-20 of 20)**

|    | Bloom                                                                               | Plant                         | Scientific Name                                            | Height  | Width | Notes                                                                                                                                                                                                                                                   | Wildlife Supported                                                                                        |
|----|-------------------------------------------------------------------------------------|-------------------------------|------------------------------------------------------------|---------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| 16 |    | <b>Farewell-to-Spring</b>     | ex. <i>Clarkia amoena</i> ,<br><i>Clarkia williamsonii</i> | 1-2ft   | 12in  | Magenta, lavender, pink silky cup shaped flowers in late Spring into Summer. Annual that actively reseeds. Needs good drainage. Appreciates a little supplemental water.                                                                                | <br>Leafcutter Bee     |
| 17 |    | <b>Bee's Bliss Sage</b>       | <i>Salvia</i> x. <i>Bee's Bliss</i>                        | 1-2ft   | 6-8ft | A beautiful hybrid sage. Excellent ground cover and habitat plant. Grows to around 2 feet high and 6-8 feet wide. Handsome gray foliage topped with a profusion of lavender flowers. A bee and hummingbird favorite. Drought tolerant once established. | <br>Anna's Hummingbird |
| 18 |    | <b>Phacelia, Bolander's</b>   | <i>Phacelia bolanderi</i>                                  | 1-1.5ft | 0.5ft | Papery inch wide lavender flowers that bloom later than others, late spring thru summer. Perennial groundcover, appreciates some summer water and some shade. Bee pollen and nectar source.                                                             | <br>Mason Bee          |
| 19 |   | <b>Phacelia, Great Valley</b> | <i>Phacelia ciliata</i>                                    | 4-18in  | 16in  | Beautiful self-sowing annual. Clusters of cupped lavender blue flowers over ferny foliage. Good for bees.                                                                                                                                               | <br>Membrane Bee      |
| 20 |  | <b>Western Yarrow</b>         | <i>Achillea millefolium</i>                                | 1-3ft   | 1-2ft | Choose low growing cultivars. Usually a low spreading ferny leaved perennial with 3-4" clusters of white to pink flowers. Usually full sun, edge of shade under oaks. Attractive to pollinators. Will need pruning if growth gets too high.             | <br>Long-Horned Bee  |

**Photo Credits** (from *Calscape.org* unless otherwise noted): (16) **Clarkia** (2017 John Doyen)/**Leafcutter Bee** (2014 Linda Dahlbert, [bugguide.net](http://bugguide.net)); (17) **Bee's Bliss Sage** ([calfloranursery.com](http://calfloranursery.com))/**Anna's Hummingbird** (Bob Gunderson, [goldengateadubon.org](http://goldengateadubon.org)); (18) **Bolander's Phacelia** (2010 Stickpen)/**Mason Bee** ([progardentips.com](http://progardentips.com)); (19) **Great valley Phacelia** (2006 Steve Matson)/**Membrane Bee** (Colletidae; [planetbee.org](http://planetbee.org)); (20) **Yarrow** (2009 H. Zell)/**Long-horned Bee** (*Melissodes*, [laspilitas.com](http://laspilitas.com))





# Traffic Circles

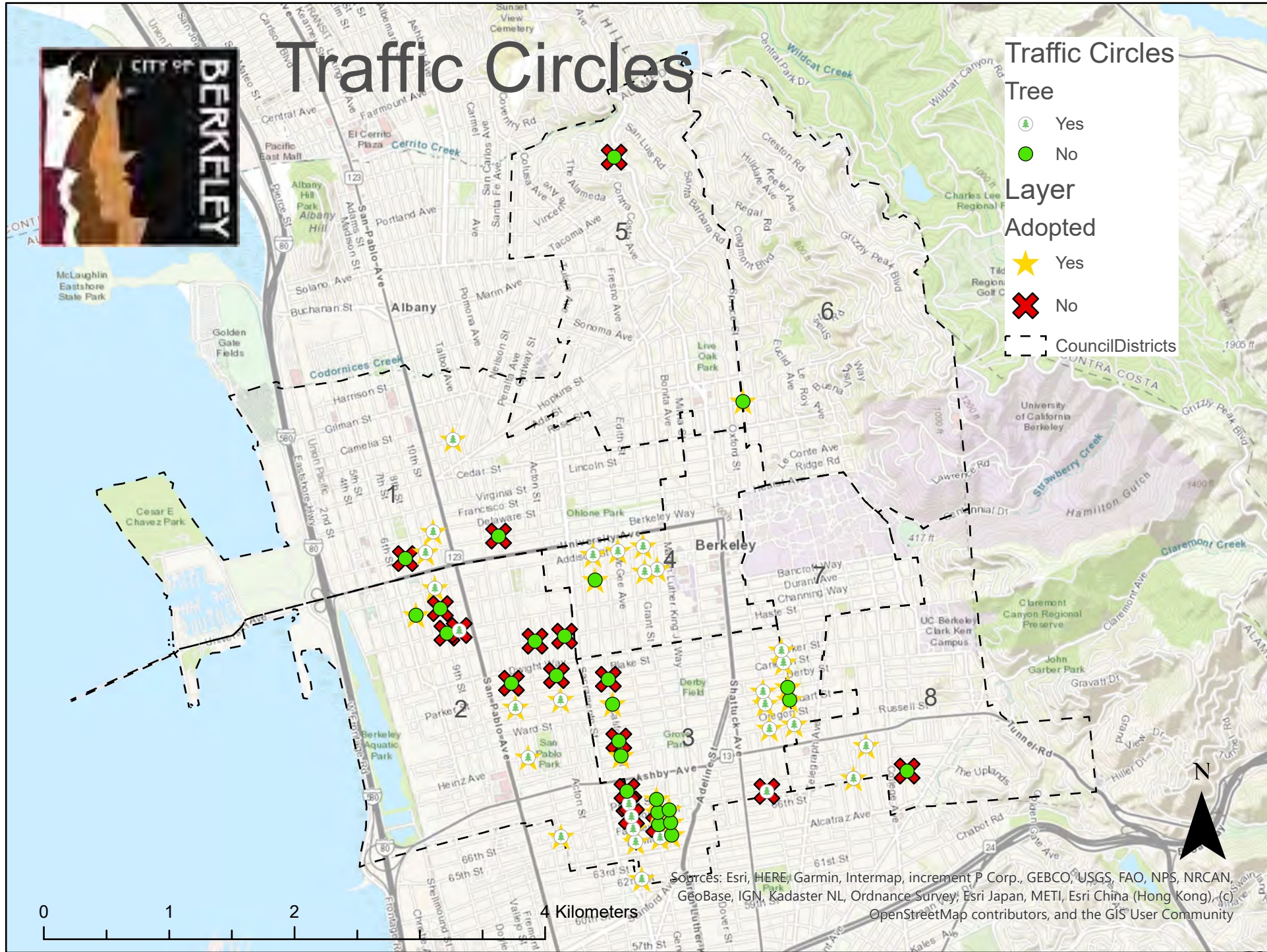
## Traffic Circles

- Yes (Green tree icon)
- No (Green circle icon)

## Layer

- Adopted (Yellow star icon)
- No (Red X icon)

## Council Districts



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

| Traffic Circle | N/S Street     | E/W Street    | # Crashes | Traffic Volume | Traffic Controls | Presence of Tree | Width of Tree within Sight Line | Height of vegetation at time of crash |
|----------------|----------------|---------------|-----------|----------------|------------------|------------------|---------------------------------|---------------------------------------|
| 1              | 10th St.       | Bancroft Way  | 1         | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |
| 2              | 10th St.       | Delaware St.  | 1         | Unknown        | 2-way            | Yes              | Unknown                         | Unknown                               |
| 3              | 7th St.        | Allston Way   | 2         | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 4              | 7th St.        | Hearst Ave.   |           | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 5              | 9th St.        | Addison St.   | 2         | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |
| 6              | 9th St.        | Allston Way   | 1         | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 7              | 9th St.        | Bancroft Way  | 2         | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 8              | 9th St.        | Hearst Ave.   | 2         | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |
| 9              | Acton St.      | Blake St.     |           | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 10             | Acton St.      | Carleton St.  |           | Unknown        | 2-way            | Yes              | Unknown                         | Unknown                               |
| 11             | California St. | 62nd St.      |           | Unknown        | 2-way            | Yes              | Unknown                         | Unknown                               |
| 12             | California St. | Addison St.   | 1         | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |
| 13             | California St. | Allston Way   | 6         | Unknown        | 2-way            | No               | Unknown                         | Unknown                               |
| 14             | California St. | Derby St.     | 2         | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 15             | California St. | Fairview      |           | Unknown        | 2-way            | Yes              | Unknown                         | Unknown                               |
| 16             | California St. | Harmon        |           | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |
| 17             | California St. | Oregon        | 1         | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 18             | California St. | Parker St.    |           | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 19             | California St. | Prince St.    |           | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |
| 20             | California St. | Russell St.   | 2         | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 21             | California St. | Tyler St.     | 2         | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 22             | California St. | Woolsey St.   |           | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |
| 23             | Chestnut St.   | Hearst Ave.   | 2         | Unknown        | 4-way            | No               | Unknown                         | Unknown                               |
| 24             | Cornell        | Page/Santa Fe | 1         | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |
| 25             | Edwards St.    | Channing Way  | 3         | Unknown        | 2-way            | No               | Unknown                         | Unknown                               |
| 26             | Ellis          | Fairview      |           | Unknown        | 2-way            | No               | Unknown                         | Unknown                               |
| 27             | Ellis          | Harmon        | 1         | Unknown        | 2-way            | No               | Unknown                         | Unknown                               |
| 28             | Ellis          | Woolsey St.   |           | Unknown        |                  | No               | Unknown                         | Unknown                               |
| 29             | Ellsworth      | Carleton      |           | Unknown        | 2-way            | Yes              | Unknown                         | Unknown                               |
| 30             | Ellsworth      | Parker St.    | 3         | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |
| 31             | Ellsworth      | Russell St.   | 1         | Unknown        | 4-way            | Yes              | Unknown                         | Unknown                               |

| Traffic Circle | N/S Street     | E/W Street        | # Crashes | Traffic Volume | Traffic Controls            | Presence of Tree | Width of Tree within Sight Line | Height of vegetation at time of crash |
|----------------|----------------|-------------------|-----------|----------------|-----------------------------|------------------|---------------------------------|---------------------------------------|
| 32             | Ellsworth      | Stuart            | 1         | Unknown        | 4-way                       | Yes              | Unknown                         | Unknown                               |
| 33             | Ellsworth      | Ward              |           | Unknown        | 2-way                       | No               | Unknown                         | Unknown                               |
| 34             | Fulton         | Russell St.       |           | Unknown        | 4-way                       | Yes              | Unknown                         | Unknown                               |
| 35             | Fulton         | Stuart            | 2         | Unknown        | 2-way                       | Yes              | Unknown                         | Unknown                               |
| 36             | Fulton         | Ward              |           | Unknown        | 2-way                       | Yes              | Unknown                         | Unknown                               |
| 37             | Grant St.      | Addison St.       | 2         | Unknown        | 4-way                       | Yes              | Unknown                         | Unknown                               |
| 38             | Grant St.      | Allston Way       | 2         | Unknown        | 2-way                       | Yes              | Unknown                         | Unknown                               |
| 39             | Hillegass St.  | Webster St.       |           | Unknown        | 2-way                       | Yes              | Unknown                         | Unknown                               |
| 40             | King St.       | Fairview          |           | Unknown        |                             | No               | Unknown                         | Unknown                               |
| 41             | King St.       | Harmon            | 1         | Unknown        |                             | Yes              | Unknown                         | Unknown                               |
| 42             | King St.       | Prince St.        | 1         | Unknown        | 4-way                       | No               | Unknown                         | Unknown                               |
| 43             | King St.       | Woolsey St.       |           | Unknown        |                             | No               | Unknown                         | Unknown                               |
| 44             | Lewiston       | Woolsey St.       |           | Unknown        | no control                  | No               | Unknown                         | Unknown                               |
| 45             | Mabel          | 66th St.          |           | Unknown        | T-intersection / 1-way stop | Yes              | Unknown                         | Unknown                               |
| 46             | Mathews St.    | Blake St.         |           | Unknown        | 4-way                       | No               | Unknown                         | Unknown                               |
| 47             | Mathews St.    | Carleton St.      |           | Unknown        | 2-way                       | Yes              | Unknown                         | Unknown                               |
| 48             | Mathews St.    | Oregon            |           | Unknown        | 2-way                       | Yes              | Unknown                         | Unknown                               |
| 49             | McGee Ave.     | Addison St.       | 3         | Unknown        | 4-way                       | Yes              | Unknown                         | Unknown                               |
| 50             | McKinley Ave.  | Allston Way       | 3         | Unknown        | 4-way                       | Yes              | Unknown                         | Unknown                               |
| 51             | Regent         | Woolsey St.       | 1         | Unknown        | no control                  | Yes              | Unknown                         | Unknown                               |
| 52             | San Ramon Ave. | San Fernando Ave. | 1         | Unknown        | T-intersection / 3-way      | No               | Unknown                         | Unknown                               |
| 53             | Spruce         | Vine              | 4         | Unknown        | 4-way                       | No               | Unknown                         | Unknown                               |
| 54             | West St.       | Channing Way      |           | Unknown        | 2-way                       | No               | Unknown                         | Unknown                               |
| 55             | Wheeler        | Woolsey St.       |           | Unknown        | no control                  | Yes              | Unknown                         | Unknown                               |
| 56             | King St.       | 62nd Street       |           | Unknown        | 2-way                       | No               | Unknown                         | Unknown                               |

| OBJECTID | AccidNo        | ID | LOCATION                          | DIST | DIRECTION  | DATE       | TIME     | COLL_TYPE            | INVOLVED             | EXTENT               | TRAVERSE | REPNO   | PRIMARY CONTRIBUTING FACTOR | LIGHTING                | NUMO_I | NUMO_KL | PARTY1     | PARTY2         | DOT1       | DOT2       | MPC1                | MPC2                | X      | Y       |
|----------|----------------|----|-----------------------------------|------|------------|------------|----------|----------------------|----------------------|----------------------|----------|---------|-----------------------------|-------------------------|--------|---------|------------|----------------|------------|------------|---------------------|---------------------|--------|---------|
| 5818     | 12246215100009 | 0  | 9th St at Addison St              | 0    | Not Stated | 7/12/2013  | 09:51 PM | Rear-End             | Other Motor Vehicle  | Property Damage Only |          | 6177594 | Driving Under Influence     | Dark - Street Lights    | 0      | 0       | Driver     | Driver         | South      | South      | Stopped in Road     | Proceeding Straight | 562097 | 4191334 |
| 5860     | 12260210000111 | 0  | Parker St at Ellsworth St         | 0    | Not Stated | 7/26/2013  | 09:00 PM | Other                | Other Motor Vehicle  | Property Damage Only |          | 6177329 | Unknown                     | Dark - Street Lights    | 0      | 0       | Not Stated | Driver         | Not Stated | South      | Proceeding Straight | Proceeding Straight | 564861 | 4190844 |
| 5964     | 12301184600137 | 0  | Chestnut St at Hearst Ave         | 0    | Not Stated | 9/5/2013   | 06:46 PM | Hit Object           | Fixed Object         | Complaint of Pain    |          | 6251942 | Unsafe Speed                | Daylight                | 1      | 0       | Driver     |                | North      |            | Proceeding Straight |                     | 562604 | 4191754 |
| 6078     | 12334200200016 | 0  | California St at Allston Way      | 0    | Not Stated | 10/8/2013  | 08:02 PM | Vehicle - Pedestrian | Pedestrian           | Severe Injury        |          | 6294617 | Ped R/W Violation           | Dark - Street Lights    | 1      | 0       | Driver     | Pedestrian     | South      | West       | Proceeding Straight | Proceeding Straight | 563375 | 4191403 |
| 6106     | 12343115400144 | 0  | California St at Allston Way      | 0    | Not Stated | 10/17/2013 | 11:54 AM | Vehicle - Pedestrian | Pedestrian           | Complaint of Pain    |          | 6294560 | Ped R/W Violation           | Daylight                | 1      | 0       | Driver     | Pedestrian     | South      | Not Stated | Proceeding Straight | Not Stated          | 563375 | 4191403 |
| 6114     | 12344143200057 | 0  | California St at Allston Way      | 0    | Not Stated | 10/18/2013 | 02:32 PM | Broadside            | Bicycle              | Other Visible Injury |          | 6279724 | Auto R/W Violation          | Daylight                | 1      | 0       | Bicyclist  | Driver         | South      | East       | Proceeding Straight | Proceeding Straight | 563375 | 4191403 |
| 6152     | 12356112100160 | 0  | Bancroft Way at 9th St            | 0    | Not Stated | 10/30/2013 | 11:21 AM | Vehicle - Pedestrian | Pedestrian           | Complaint of Pain    |          | 6279743 | Ped R/W Violation           | Daylight                | 1      | 0       | Driver     | Pedestrian     | South      | West       | Proceeding Straight | Proceeding Straight | 562192 | 4190979 |
| 6157     | 12356173500010 | 0  | Stuart St at Fulton St            | 0    | Not Stated | 10/30/2013 | 05:35 PM | Sideswipe            | Bicycle              | Complaint of Pain    |          | 6279746 | Auto R/W Violation          | Daylight                | 1      | 0       | Bicyclist  | Driver         | West       | South      | Proceeding Straight | Proceeding Straight | 564732 | 4190414 |
| 6248     | 12380100700126 | 0  | Stuart St at Regent St            | 0    | Not Stated | 11/23/2013 | 10:07 AM | Broadside            | Other Motor Vehicle  | Property Damage Only |          | 6305855 | Unknown                     | Daylight                | 0      | 0       | Driver     | Driver         | East       | North      | Making Left Turn    | Proceeding Straight | 564732 | 4190414 |
| 6311     | 12405184100099 | 0  | Woolsey St at Regent St           | 0    | Not Stated | 12/18/2013 | 06:41 PM | Broadside            | Bicycle              | Complaint of Pain    |          | 6375111 | Auto R/W Violation          | Dusk - Dawn             | 1      | 0       | Driver     | Bicyclist      | East       | South      | Proceeding Straight | Proceeding Straight | 565438 | 4189817 |
| 6316     | 12407115000057 | 0  | King St at Prince St              | 0    | Not Stated | 12/20/2013 | 11:50 AM | Broadside            | Bicycle              | Complaint of Pain    |          | 6375119 | Unknown                     | Daylight                | 1      | 0       | Bicyclist  | Driver         | South      | East       | Proceeding Straight | Making Right Turn   | 563865 | 4189652 |
| 6490     | 12463183700098 | 0  | California St at Allston Way      | 0    | Not Stated | 2/14/2014  | 06:37 PM | Broadside            | Bicycle              | Complaint of Pain    |          | 6450174 | Auto R/W Violation          | Dark - Street Lights    | 1      | 0       | Bicyclist  | Driver         | South      | East       | Proceeding Straight | Proceeding Straight | 563375 | 4191403 |
| 6545     | 12486194400098 | 0  | Mcgee Ave at Addison St           | 0    | Not Stated | 3/9/2014   | 07:44 PM | Broadside            | Bicycle              | Complaint of Pain    |          | 6526441 | Unknown                     | Daylight                | 1      | 0       | Driver     | Bicyclist      | East       | South      | Proceeding Straight | Not Stated          | 563556 | 4191637 |
| 6617     | 12508213900109 | 0  | 9th St at Allston Way             | 0    | Not Stated | 3/31/2014  | 09:39 PM | Head-On              | Fixed Object         | Property Damage Only |          | 6468753 | Driving Under Influence     | Dark - No Street Lights | 0      | 0       | Driver     |                | North      |            | Making Left Turn    |                     | 562139 | 4191175 |
| 6781     | 12569055600157 | 0  | Allston Way at Mckinley Ave       | 0    | Not Stated | 5/31/2014  | 05:56 AM | Head-On              | Fixed Object         | Property Damage Only |          | 6530477 | Unsafe Speed                | Dark - Street Lights    | 0      | 0       | Driver     |                | North      |            | Proceeding Straight |                     | 563870 | 4191489 |
| 6792     | 12573142900008 | 0  | Russell St at Ellsworth St        | 0    | Not Stated | 6/4/2014   | 02:29 PM | Broadside            | Bicycle              | Other Visible Injury |          | 6541992 | Auto R/W Violation          | Daylight                | 1      | 0       | Driver     | Bicyclist      | North      | East       | Proceeding Straight | Proceeding Straight | 564963 | 4190250 |
| 6803     | 12578082100003 | 0  | Allston Way at Mckinley Ave       | 0    | Not Stated | 6/9/2014   | 08:21 AM | Sideswipe            | Parked Motor Vehicle | Property Damage Only |          | 6541894 | Other Than Driver or Ped    | Daylight                | 0      | 0       | Driver     | Parked Vehicle | East       | Not Stated | Proceeding Straight | Parked              | 563870 | 4191489 |
| 6882     | 12606200200033 | 0  | Oregon St at California St        | 0    | Not Stated | 7/7/2014   | 08:02 PM | Other                | Non-Collision        | Complaint of Pain    |          | 6594854 | Unsafe Speed                | Daylight                | 1      | 0       | Bicyclist  |                | East       |            | Making Left Turn    |                     | 563563 | 4190118 |
| 7037     | 12665120400122 | 0  | Mcgee Ave at Addison St           | 0    | Not Stated | 9/4/2014   | 12:04 PM | Sideswipe            | Other Motor Vehicle  | Property Damage Only |          | 6682823 | Improper Turning            | Daylight                | 0      | 0       | Driver     | Parked Vehicle | South      | South      | Parking Maneuver    | Parked              | 563556 | 4191637 |
| 7190     | 12708231500106 | 0  | Spruce St at Vine St              | 0    | Not Stated | 10/17/2014 | 11:15 PM | Hit Object           | Fixed Object         | Property Damage Only |          | 6734651 | Unsafe Speed                | Dark - Street Lights    | 0      | 0       | Driver     |                | North      |            | Proceeding Straight |                     | 564553 | 4192828 |
| 7192     | 12709093900149 | 0  | Spruce St at Vine St              | 0    | Not Stated | 10/18/2014 | 09:39 AM | Head-On              | Fixed Object         | Property Damage Only |          | 6734659 | Unsafe Speed                | Daylight                | 0      | 0       | Driver     |                | East       |            | Proceeding Straight |                     | 564553 | 4192828 |
| 7259     | 12729184800009 | 0  | Parker St at Ellsworth St         | 0    | Not Stated | 11/7/2014  | 06:48 PM | Sideswipe            | Bicycle              | Complaint of Pain    |          | 6796776 | Traffic Signals and Signs   | Dark - Street Lights    | 1      | 0       | Driver     | Bicyclist      | South      | West       | Proceeding Straight | Proceeding Straight | 564861 | 4190844 |
| 7753     | 12907130100144 | 0  | Allston Way at Mckinley Ave       | 0    | Not Stated | 5/4/2015   | 01:01 PM | Vehicle - Pedestrian | Pedestrian           | Complaint of Pain    |          | 6998001 | Pedestrian Violation        | Daylight                | 1      | 0       | Driver     | Pedestrian     | West       | West       | Making Left Turn    | Other               | 563870 | 4191489 |
| 7769     | 12912172100128 | 0  | Allston Way at Grant St           | 0    | Not Stated | 5/9/2015   | 05:21 PM | Vehicle - Pedestrian | Pedestrian           | Other Visible Injury |          | 6998013 | Ped R/W Violation           | Daylight                | 1      | 0       | Driver     | Pedestrian     | North      | East       | Proceeding Straight | Proceeding Straight | 563771 | 4191472 |
| 7859     | 12949200400015 | 0  | Channing Way at Edwards St        | 0    | Not Stated | 6/15/2015  | 08:04 PM | Head-On              | Fixed Object         | Property Damage Only |          | 7003935 | Unsafe Speed                | Dusk - Dawn             | 0      | 0       | Driver     |                | West       |            | Proceeding Straight |                     | 563131 | 4190955 |
| 7976     | 12987035400086 | 0  | Delaware St at 10th St            | 0    | Not Stated | 7/23/2015  | 03:54 AM | Broadside            | Parked Motor Vehicle | Property Damage Only |          | 7046655 | Driving Under Influence     | Dark - Street Lights    | 0      | 0       | Driver     | Parked Vehicle | West       | Not Stated | Proceeding Straight | Not Stated          | 562082 | 4191788 |
| 8075     | 13022110600128 | 0  | Parker St at Ellsworth St         | 0    | Not Stated | 8/27/2015  | 11:06 AM | Sideswipe            | Other Motor Vehicle  | Property Damage Only |          | 7090937 | Improper Passing            | Daylight                | 0      | 0       | Driver     | Driver         | West       | West       | Proceeding Straight | Proceeding Straight | 564861 | 4190844 |
| 8107     | 13029073200148 | 0  | Derby St at California St         | 0    | Not Stated | 9/3/2015   | 07:32 AM | Broadside            | Bicycle              | Complaint of Pain    |          | 7117374 | Traffic Signals and Signs   | Daylight                | 1      | 0       | Bicyclist  | Driver         | North      | West       | Proceeding Straight | Proceeding Straight | 563513 | 4190415 |
| 8513     | 13143155000103 | 0  | Stuart St at Ellsworth St         | 0    | Not Stated | 12/26/2015 | 03:50 PM | Vehicle - Pedestrian | Pedestrian           | Other Visible Injury |          | 7181633 | Ped R/W Violation           | Daylight                | 1      | 0       | Driver     | Pedestrian     | West       | North      | Proceeding Straight | Not Stated          | 564928 | 4190448 |
| 8547     | 13156112500026 | 0  | Allston Way at Grant St           | 0    | Not Stated | 1/8/2016   | 11:25 AM | Broadside            | Other Motor Vehicle  | Property Damage Only |          | 8009365 | Unsafe Starting or Backing  | Daylight                | 0      | 0       | Driver     | Driver         | South      | Not Stated | Proceeding Straight | Not Stated          | 563771 | 4191472 |
| 8611     | 13181232800149 | 0  | Spruce St at Vine St              | 0    | Not Stated | 2/2/2016   | 11:28 PM | Vehicle - Pedestrian | Pedestrian           | Complaint of Pain    |          | 8012246 | Ped R/W Violation           | Dark - Street Lights    | 1      | 0       | Driver     | Pedestrian     | South      | West       | Proceeding Straight | Not Stated          | 564553 | 4192828 |
| 8670     | 13200114400128 | 0  | Addison St at Grant St            | 0    | Not Stated | 2/21/2016  | 11:44 AM | Vehicle - Pedestrian | Pedestrian           | Other Visible Injury |          | 8319210 | Ped R/W Violation           | Daylight                | 1      | 0       | Driver     | Pedestrian     | South      | Not Stated | Making Right Turn   | Proceeding Straight | 563753 | 4191671 |
| 8782     | 13234125300038 | 0  | California St at Allston Way      | 0    | Not Stated | 3/26/2016  | 12:53 PM | Head-On              | Bicycle              | Other Visible Injury |          | 8036930 | Traffic Signals and Signs   | Daylight                | 2      | 0       | Bicyclist  | Driver         | North      | West       | Proceeding Straight | Proceeding Straight | 563375 | 4191403 |
| 8875     | 13262185700028 | 0  | Tyler St at California St         | 0    | Not Stated | 4/23/2016  | 06:57 PM | Other                | Non-Collision        | Other Visible Injury |          | 8050057 | Unsafe Speed                | Dusk - Dawn             | 1      | 0       | Bicyclist  |                | North      |            | Proceeding Straight |                     | 563627 | 4189714 |
| 8993     | 13297164600066 | 0  | 10th St at Bancroft Way           | 0    | Not Stated | 5/28/2016  | 04:46 PM | Rear-End             | Parked Motor Vehicle | Property Damage Only |          | 8074835 | Driving Under Influence     | Daylight                | 0      | 0       | Driver     | Parked Vehicle | North      | North      | Making Left Turn    | Parked              | 562289 | 4191004 |
| 9476     | 13454100000051 | 0  | Hearst Ave at Chestnut St         | 0    | Not Stated | 11/1/2016  | 10:00 AM | Sideswipe            | Other Motor Vehicle  | Property Damage Only |          | 8195465 | Unsafe Starting or Backing  | Daylight                | 0      | 0       | Driver     | Driver         | Not Stated | West       | Proceeding Straight | Proceeding Straight | 562604 | 4191754 |
| 9477     | 13454161400009 | 0  | Spruce St at Vine St              | 0    | Not Stated | 11/1/2016  | 04:14 PM | Sideswipe            | Parked Motor Vehicle | Property Damage Only |          | 8293275 | Unknown                     | Dark - Street Lights    | 0      | 0       | Driver     | Parked Vehicle | Not Stated | West       | Proceeding Straight | Parked              | 564553 | 4192828 |
| 9515     | 13466210000015 | 0  | Hillegass Ave at Parker St        | 0    | Not Stated | 11/13/2016 | 09:00 PM | Rear-End             | Parked Motor Vehicle | Property Damage Only |          | 8293243 | Unsafe Starting or Backing  | Dark - Street Lights    | 0      | 0       | Driver     | Parked Vehicle | Not Stated | Not Stated | Backing             | Parked              | 565415 | 4190925 |
| 9574     | 13484093000002 | 0  | Hearst Ave at 9th St              | 0    | Not Stated | 12/1/2016  | 09:30 AM | Broadside            | Bicycle              | Complaint of Pain    |          | 8293025 | Auto R/W Violation          | Not Stated              | 1      | 0       | Driver     | Bicyclist      | South      | West       | Proceeding Straight | Proceeding Straight | 562022 | 4191623 |
| 9672     | 13513092900111 | 0  | Grant St at Addison St            | 0    | Not Stated | 12/30/2016 | 09:29 AM | Sideswipe            | Parked Motor Vehicle | Property Damage Only |          | 8319273 | Improper Turning            | Daylight                | 0      | 0       | Driver     | Parked Vehicle | North      | Not Stated | Parking Maneuver    | Not Stated          | 563753 | 4191671 |
| 9691     | 13519120700085 | 0  | 9th St at Addison St              | 0    | Not Stated | 1/5/2017   | 12:07 PM | Broadside            | Bicycle              | Complaint of Pain    |          | 8308103 | Auto R/W Violation          | Daylight                | 1      | 0       | Driver     | Bicyclist      | East       | South      | Stopped in Road     | Proceeding Straight | 562097 | 4191334 |
| 9706     | 13525224200035 | 0  | Harmon St at Ellis St             | 0    | Not Stated | 1/11/2017  | 10:42 PM | Broadside            | Bicycle              | Complaint of Pain    |          | 8332365 | Traffic Signals and Signs   | Dark - No Street Lights | 1      | 0       | Bicyclist  | Driver         | South      | East       | Proceeding Straight | Not Stated          | 563983 | 4189366 |
| 9916     | 13594083600012 | 0  | Cornell Ave at Page St            | 0    | Not Stated | 3/21/2017  | 08:36 AM | Rear-End             | Other Motor Vehicle  | Property Damage Only |          | 8375743 | Unsafe Speed                | Daylight                | 0      | 0       | Driver     | Driver         | South      | South      | Stopped in Road     | Proceeding Straight | 562240 | 4192524 |
| 9939     | 13599114700111 | 0  | Addison St at Mcgee Ave           | 0    | Not Stated | 3/26/2017  | 11:47 AM | Broadside            | Bicycle              | Other Visible Injury |          | 8375521 | Traffic Signals and Signs   | Daylight                | 1      | 0       | Bicyclist  | Driver         | Not Stated | South      | Proceeding Straight | Proceeding Straight | 563556 | 4191637 |
| 9961     | 13605103900122 | 0  | San Ramon Ave at San Fernando Ave | 0    | Not Stated | 4/1/2017   | 10:39 AM | Sideswipe            | Not Stated           | Complaint of Pain    |          | 8375781 | Unknown                     | Daylight                | 1      | 0       | Driver     |                | West       |            | Making Right Turn   |                     | 563526 | 4194779 |
| 9975     | 13610201600007 | 0  | Russell St at California St       | 0    | Not Stated | 4/6/2017   | 08:16 PM | Vehicle - Pedestrian | Pedestrian           | Complaint of Pain    |          | 8375594 | Unsafe Speed                | Dark - Street Lights    | 1      | 0       | Driver     | Pedestrian     | West       | Not Stated | Making Right Turn   | Not Stated          | 563581 | 4189999 |
| 9997     | 13616223900022 | 0  | Allston Way at 7th St             | 0    | West       | 4/12/2017  | 10:39 PM | Head-On              | Parked Motor Vehicle | Property Damage Only |          | 8398081 | Unknown                     | Dark - Street Lights    | 0      | 0       | Driver     | Parked Vehicle | West       | East       | Proceeding Straight | Parked              | 561945 | 4191122 |
| 10001    | 13617171000047 | 0  | Channing Way at Edwards St        | 0    | Not Stated | 4/13/2017  | 05:10 PM | Broadside            | Other Motor Vehicle  | Property Damage Only |          | 8398089 | Auto R/W Violation          | Daylight                | 0      | 0       | Driver     | Driver         | West       | North      | Proceeding Straight | Proceeding Straight | 563131 | 4190955 |
| 10030    | 13627024600006 | 0  | Woolsey St at Regent St           | 0    | Not Stated | 4/23/2017  | 02:46 AM | Overturned           | Fixed Object         | Complaint of Pain    |          | 8398217 | Driving Under Influence     | Dark - Street Lights    | 1      | 0       | Driver     |                | East       |            | Proceeding Straight |                     | 565438 | 4189817 |
|          |                |    |                                   |      |            |            |          |                      |                      |                      |          |         |                             |                         |        |         |            |                |            |            |                     |                     |        |         |





Traffic Circle Policy Task Force

ACTION CALENDAR  
November 12, 2019

To: Honorable Mayor and Members of the City Council  
From: Traffic Circle Policy Task Force  
Submitted By: Diane Ross-Leech, Chairperson, Traffic Circle Policy  
Subject: Traffic Circle Policy and Program Recommendations

RECOMMENDATIONS

Adopt a resolution to approve the Traffic Circle Policy as outlined below and refer to the traffic engineer for codification.

Integrate the Community Common Space Stewardship Program into the “Adopt a Spot Initiative,” which the City Council approved on April 23, 2019 (Item #33), and request that the City Council refer it to the Traffic Circle Task Force, rather than the Parks and Public Works Commissions, for the purpose of development, outlining criteria and environmental benefits, program costs and staffing.

Refer additional traffic calming measures at Ellsworth for the intersections with Dawn Redwoods to the mid-year budget process and request mitigation funds from EBMUD due to the impact on these streets from their Wildcat Pipeline Project.

Refer to the City Manager:

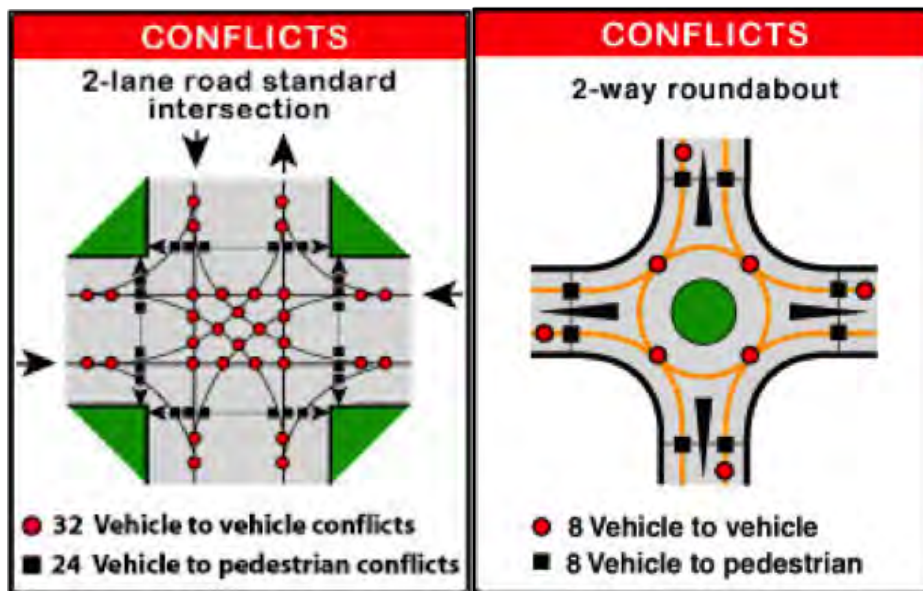
1. Create the Community Common Space Stewardship Program as described below
2. Refer the additional staff and material costs of this program to the budget process.

CURRENT SITUATION AND ITS EFFECTS

Berkeley’s traffic circle policy is being revised with the assistance of the Traffic Circle Policy Task Force, which was established by the Mayor of Berkeley on February 26, 2019 (Attachment 2). The Task Force is composed of interested community members from geographically diverse parts of the city, including Berkeley Partners for Parks, who maintain neighborhood traffic circles. The Task Force was charged with evaluating the current traffic circle vegetation policy, recommending appropriate characteristics for allowed plantings, recommending a policy that ensures sight lines for visibility, and working with the community to update the policy to ensure pedestrian, bicycle and vehicle safety, as well as beautification of traffic circles.



Neighborhood traffic circles are islands in the middle of intersections whose primary purpose is to calm and slow traffic. In contrast, larger circles such as the Marin circle, are designed to facilitate traffic flow and efficiency. Neighborhood traffic circles have been shown to reduce the speed of travel as well as reduce the number of collisions and injuries involving vehicles, pedestrians, and bicycles at these intersections. For example, “the Institute of Traffic Engineers (ITE) states that neighborhood traffic circles have been found to reduce...intersection collisions by up to 70%<sup>1</sup> Seattle WA, which has more than 1,200 circles and adds 5 each year, reports a roughly 90% reduction in collisions.<sup>2</sup> Similarly, Madison WI reports an average decrease of 70%<sup>3</sup>. A major benefit of traffic circles is that they reduce the number of conflict points, or locations where traffic crosses paths, as illustrated in the figures below. For example, vehicles do not need to cut directly in front of oncoming traffic to make a left turn. This tends to eliminate broadside hits, which are often the deadliest intersection crashes.



Comparing conflict points of a Traditional Intersection (left) with those of a Neighborhood Traffic Calming Circle (right).<sup>4</sup>

<sup>1</sup> Lupfer, Patrick. “Neighborhood Traffic Circles - Intersection of South Street and Intervale Road in Brookline, MA” ([Calm Streets Boston](#), April 24, 2012)

<sup>2</sup> Marek, John. “Neighborhood Mini Traffic Circles: Seattle Washington” a case study of Countermeasures on the webpages [BIKESAFE](#) ([pedbikesafe.org](#))

<sup>3</sup> [Neighborhood Traffic Management Plan](#) (City of Madison WI, November 2004)

<sup>4</sup> Lupfer, Patrick. “Neighborhood Traffic Circles - Intersection of South Street and Intervale Road in Brookline, MA” ([Calm Streets Boston](#), April 24, 2012)

Berkeley has 62 neighborhood traffic circles; they represent a significant component of our streetscapes, shaping the safety and character of many neighborhoods, and improving public health while removing a half acre of asphalt. From a national perspective, low plantings and central trees are usual and customary practice for neighborhood traffic circles in cities throughout the country. These cities' policies recommend, encourage and support the inclusion of traffic circles with well-maintained trees and vegetation for their benefits to traffic calming, making traffic circles more visible and contributing to beautification, neighborhood character, and other benefits urban greening provides. Berkeley has numerous policies and plans that support traffic circles for traffic calming and other environmental and community benefits. Traffic circle trees and low vegetation are also recommended in national guidance by the Federal Highway Association and the National Association of City Transportation Officials.

Traffic circles provide many important benefits, including traffic calming and street safety. They also make important contributions to the City's climate, quality of life and social equity goals. Districts 2 and 3 which have the highest number of traffic circles<sup>5</sup> are also the City's most densely populated neighborhoods<sup>6</sup> and have the lowest ratio of parks and open space. Traffic circles ameliorate some of these inequities in urban greening by 1) reducing stormwater runoff and the Urban Heat Island Effect; 2) ameliorating current and projected increases in Extreme Heat Events<sup>7</sup>; and 3) increasing the tree canopy<sup>8</sup> and vegetation diversity in south-side areas. In light of the City's Declaration of a Climate Emergency<sup>9</sup> the Task Force wishes to emphasize that traffic circles contribute to the planted green space of our densely populated City neighborhoods.

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<sup>5</sup> For a map of Berkeley traffic circles, see Appendix B in the Vegetation Subcommittee Report, Attachment 3.

<sup>6</sup> [Population Density in Berkeley](#) (Zip Atlas)

<sup>7</sup> "Extreme heat events are a newly-introduced hazard of concern for the 2019 LHMP... By the end of the century, Bay Area residents may average six heat waves annually, which will average a length of ten days... Berkeley's urban forest...helps to mitigate the impacts of extreme heat events by shading buildings and paved and dark-colored surfaces, such as roads and parking lots that absorb and store heat..." From the first complete draft of the [2019 Local Hazard Mitigation Plan](#) (p. ES-10, B-139, B-149; City of Berkeley)

<sup>8</sup> See Map 34 illustrating the inequitable distribution of tree canopy in Berkeley. "The areas shaded in darker green, predominately in the hills in east Berkeley, have the greatest percentage of tree canopy, while west and south Berkeley have the least, meaning that these buildings and communities will likely not benefit from reduced temperatures provided by urban tree cover." From the first complete draft of the [2019 Local Hazard Mitigation Plan](#) (p. B-154, B-155; City of Berkeley). Or page 6 of the attached Vegetation Subcommittee Report, Attachment 3.

<sup>9</sup> [Endorsing the Declaration of a Climate Emergency](#), Resolution No. 68-486-N.S. (June 12, 2018; City of Berkeley)

In the last five years there have been at least two serious collisions involving cars and pedestrians in the vicinity of traffic circle intersection.<sup>10</sup> In a lawsuit against the City of Berkeley in one case, the plaintiff's attorney alleged that the traffic circle vegetation obstructed the view of an approaching driver and contributed to the collision with a pedestrian. These accidents are the major reason the Task Force was established to develop an updated and well-founded set of policies to guide the establishment and maintenance of traffic circle vegetation.

At the meeting of October 2, 2019, the Traffic Circle Policy Task Force took the following action:

Action: M/S/C (Steere/Grossinger) to approve changes to policy as discussed by members.

Vote: Ayes: Wendy Alfsen, Steven Finacom, Robin Grossinger, Andrew Liu, Linda Franklin Diane Ross-Leech, John Steere, Diana Wood, Sally Hughes.

Noes: None. Abstain: None. Absent: Erin Diehm, Yolanda Huang, Fred Krieger.

## BACKGROUND AND RATIONALE FOR RECOMMENDATIONS

### A. Traffic Circle Task Force Process

The Mayor's office hosted two community meetings on May 15 and May 29, 2019 where all interested community members were invited to participate and learn about the proposed Traffic Circle Policy Task Force, responsibilities, goals, deadlines and how to apply to the Task Force.

The Traffic Circle Policy Task Force held meetings on June 19, July 10, July 31, August 21, September 11 and October 2, 2019 where members of the public, in addition to the Traffic Circle Commissioners, had the opportunity to make public comments and participate in the general discussion. Agendas and minutes from these meetings can be found on the Traffic Circle Policy Task Force page on the city's website.

At its first official meeting, the Traffic Circle Policy Task Force invited the city's Traffic Engineer, Hamid Mostowfi, to address questions from the Task Force Commissioners.

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<sup>10</sup> The Task Force notes that it received no data showing that Berkeley intersections that include traffic circles are associated with higher collision rates. In fact, based on data from other cities we would expect the collision rate to be significantly lower than traditional intersections. At writing no data has been provided to the Task Force comparing Berkeley's rate of collisions in traditional intersections (no circle) with those that have a circle (with and without a tree; before and after installation). We recommend the city conduct such an analysis to allow future iterations of the policy to be based on a better understanding of actual accident patterns.

The Traffic Engineer's primary concern with traffic circles is maintaining sight lines for visibility. With this background and the charge set out by the City Council and the Mayor, the Task Force set up three subcommittees to review Berkeley's own policies and plans as they relate to traffic circles and to gather additional information and research about traffic circles in other cities around the country. The Task Force also met twice with Farid Javandel, Traffic Division Manager.

The Vegetation Subcommittee examined the policies and characteristics of traffic circles in cities around the U. S. and Canada, reviewing standards for traffic circle vegetation in national guidance documents and in published policies of other cities and through interviews with traffic safety experts. In addition, the Vegetation Subcommittee interviewed traffic engineers, landscape architects, and traffic circle administrators from a number of other cities to understand perspectives on traffic circle landscaping. The Subcommittee found that landscaped plantings with trees are standard practice for neighborhood traffic circles in numerous cities across the country and are also recommended in the major national guidelines for traffic safety and urban design. For example, the U. S. Department of Transportation/Federal Highway Administration recommends including vegetation and trees to maximize the traffic calming effect:

*"A traffic circle can simply be a painted area, but it is most effective when it is defined by a raised curb and landscaped to further reduce the open feel of a street. A traffic circle can be landscaped with ground cover flowers, and street trees."*<sup>11</sup> (emphasis added)

Traffic circles planted with trees are considered to contribute to traffic calming by reducing the open feel of the street and increasing the visibility of the circle, particularly at night, resulting in slower traffic speeds. Specifications for the height and clearance of vegetation are generally recommended for low landscaping and trees that provide clear sight lines.

The vegetation subcommittee revealed that specifications for vegetation height ranged from 2 to 5 feet (with our neighbor San Francisco allowing 3 feet<sup>12</sup>) and with tree limbs above 7-8 feet (14 feet if the limbs extend beyond the traffic circle planter curb into the travel lane). Keeping in mind the importance of public safety, the Vegetation Subcommittee used this information to inform the policy described below. (See Attachment 3 for additional details, including photos of traffic circles across 9 cities in the U.S. and Canada)

<sup>11</sup> [Traffic Calming ePrimer – Module 3](#) (U.S. Department of Transportation/Federal Highway Administration)

<sup>12</sup> [SFBetter Streets: A guide to making street improvements in San Francisco](#) (City and County of San Francisco 2015)

The Operation and Maintenance Subcommittee focused its research on successful community volunteer programs in other cities that Berkeley could replicate, such as Oakland's "Adopt a Spot" initiative. The subcommittee relied on previous research prepared by Berkeley Partners for Parks titled "Expanded Berkeley Partners for Parks Proposal to City of Berkeley Regarding Strengthening Volunteer Engagement by Establishing Citywide *Adopt a Spot* Program," (see Attachment 6). The Subcommittee further reviewed websites from various cities, including Oakland, to view program documents. All of the community volunteer programs have a more formal structure for their programs and volunteers than Berkeley. Typical elements include: a volunteer job description used for recruiting purposes; volunteer application or agreement with a minimum term; maintenance rules and guidelines; planting guidelines; and safety rules and guidelines all on the city's websites with easy to use on-line applications and approvals (see Attachment 4 for additional details).

The Policy Alignment Issues Subcommittee reviewed all of the City of Berkeley's applicable plans, policies and programs found on the city's website, as well as some state and regional plans and policies, to determine how the proposed traffic circle policy and actions would intersect. This subcommittee found overwhelming support and alignment among these documents. In particular, the Berkeley Bicycle Plan recommends additional traffic calming improvements along the Bicycle Boulevard network by adding 42 new traffic circles by 2035 (see Attachment 5 for additional details).

The subcommittee's comprehensive reports are Attachments 3, 4, and 5.

Other San Francisco Bay Area (e.g., San Francisco, Palo Alto) and North American cities and expert analysts beyond Berkeley have identified trees as a welcome and useful component of traffic circles, particularly because they help slow traffic and identify for drivers the presence of a circle from a distance. For example, the City of San Francisco recommends that:

***"Traffic Calming Circles should be landscaped with trees or plantings. Shrubs and grasses should be planted up to 3 feet tall and trees should be appropriately pruned."***<sup>13</sup> (emphasis added)

These guidelines also allow for more than one tree, specifying the recommended number of trees in relation to circle size:

***"In traffic calming circles with a diameter of less than 15 feet, one tree should be planted in the center. On a traffic calming circle with a diameter greater than 15***

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<sup>13</sup> [SFBetter Streets: A guide to making street improvements in San Francisco](#) (City and County of San Francisco 2015)

*feet, more than 1 tree should be planted and should be equally spaced around the circles.” (emphasis added)<sup>14</sup>*

The Urban Street Design Guide, a manual developed by the National Association of City Transportation Officials (NACTO, an association of over 71 major North American Cities and 10 transit agencies) notes the value of trees and other vegetation not only for beautification, but also for their contribution to traffic calming. From the NACTO website:

*“Mini roundabouts and neighborhood traffic circles lower speeds at minor intersection crossings... **Shrubs or trees in the roundabout further the traffic calming effect and beautify the street, but need to be properly maintained so they do not hinder visibility.**”<sup>15</sup> (emphasis added)*

Whether community volunteers are experts or novices, everyone needs common sense guidelines for safely maintaining the traffic circles. Most of the cities that support volunteer programs have all of the documents on the city’s website. These guidelines and best practices are important to help ensure that vegetation in traffic circles continues to contribute to traffic calming even as the seasons pass, climate change becomes a greater global issue, and volunteers come and go.

The traffic circle policy emphasizes a strict standard for the height of shrubby and herbaceous vegetation across the traffic circle. Such vegetation has the potential to create a visual barrier to drivers and pedestrians, particularly at the margins of circles where parties are closer to each other. We found that trees in the center area of circles are not considered to be a safety concern in the many other cities examined. Tree trunks create relatively small and momentary visual barriers, and only when parties are on the opposite sides of a circle. However, out of an abundance of caution, we also established guidelines for the width of tree trunks and other narrow vertical vegetation.

With limited time, the Task Force prioritized the development of a vegetation policy and a maintenance program. The following categories represent a good starting point for some of the guidelines that will be needed to support the Traffic Circle Policy and Community Common Space Stewardship Program (traffic circles are only one component of the Program).

#### Guidelines and Best Practices for Traffic Circles:

- General conduct, safety, tools, watering
- Managing sightlines and vegetation
- General layout/design for traffic circles

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<sup>14</sup> Ibid.

<sup>15</sup> [Urban Street Design Guide](#) (National Association of City Transportation Officials 2013)

- Plant maintenance, pruning, weeding, new planting and tree replacement and/or removal
- Integrated Vegetation Management and Pest Control
- Garbage and Debris Removal
- Decorations, boulders, bird feeders, miscellaneous
- Coordinating with Public Works,
- Self-Certification of Compliance with Best Practices
- On-line Arc-GIS/Google Maps traffic circles GIS database

If authorized by Mayor and Council, The Traffic Circle Task Force will continue to work to develop recommended guidelines for many of these categories, relying on best practices and community knowledge and collaboration, and hopes to be able to do so as part of the integrated Community Common Space Stewardship Program / “Adopt a Spot Initiative”.

#### B. Review of Existing Plans, Policies and Programs

The City of Berkeley General Plan directly addresses landscaped traffic circles and encourages their construction for traffic calming.

The 2009 City of Berkeley Climate Action Plan identifies traffic circles as essential to slow or reduce automobile traffic and make walking and bicycling safer. Traffic circles are recognized traffic calming measures on a local street with a complementary benefit of sequestering carbon in trees and plantings.

The Berkeley Pedestrian Master Plan strongly supports the traffic calming benefits and safety improvements provided by traffic circles.

The Berkeley Bicycle Plan supports traffic calming through various measures, including additional traffic circles along major Bicycle Boulevards to slow traffic and improve safety. The Design Specifications of the Plan includes a broad canopy tree in the center of the circle. (See Attachment 3 for the associated illustration.)

The “Vision Zero” Policy initiative is intended to create a transportation system with no fatalities or serious injuries involving road traffic. The Task Force strongly recommends that traffic circles be a part of the pending plan.

There are additional City of Berkeley plans and policies that support traffic circles, and more detail can be found in Attachment 5.

#### C. Traffic Circle Policy

##### PURPOSE



The purpose of this new policy is to identify the appropriate design, vegetation and operation characteristics of traffic circles that provide traffic calming, beautification, climate change mitigation and other benefits while maintaining pedestrian safety.

As proposed and documented in numerous City of Berkeley plans, programs and policies, the primary purpose of neighborhood traffic circles is for calming traffic and not facilitating its flow, as excess speed causes one in three traffic deaths<sup>16</sup>, comparable to drunk driving. This purpose is important to highlight so that traffic circle elements, as well as additional, complementary safety measures are designed to support traffic calming and pedestrian safety goals. Many cities around the country and in California incorporate vegetation and trees in traffic circles as part of traffic calming measures. The goal of this policy is to develop guidelines ensuring that traffic circle vegetation and trees are maintained to conform to safety standards, thereby enhancing, rather than reducing, neighborhood safety.

#### GRANDFATHERING EXISTING TREES

Berkeley has a variety of existing trees in its traffic circles, such as Coast Live Oaks, California Buckeyes, Dawn Redwoods, Olives, and other trees. All existing trees that are structurally safe are permitted by this policy<sup>17</sup>. For trees with trunks that exceed 20" in diameter see the section "TREE TRUNKS WIDER THAN 20 INCHES" below, which outlines how additional traffic calming measures will be incorporated into the traffic circle intersection to ensure safety.

#### VEGETATION AND NEW TREES

Beautiful, healthy, and well-maintained vegetation and trees in traffic circles supports Berkeley's neighborhood quality of life and contributes to traffic calming. Circle plantings should be durable, diverse, attractive and planted and maintained by community volunteers. Volunteer participation adds to the unique character of our neighborhood and creates strong resident commitment to our urban communities. Planted circles improve storm water retention and are strongly encouraged to use native or other plant species that do not require pesticides or herbicides to maintain them. Traffic circles should be planted with consideration of vegetation and tree's mature shape and size and sightline requirements. There are several suggested palettes for those who find suggestions helpful (see Attachment 3).

<sup>16</sup> [Motor Vehicle Crash Deaths: How is the US doing?](#) (Centers for Disease Control and Prevention)

<sup>17</sup> Designated historic resources are regulated by the Landmarks Preservation Ordinance, and may have features that do not conform to these policies. In case of conflict, the city shall follow established procedures for alterations to a designated landmark. Landmarks Ordinance prevails.



New trees proposed by traffic circle coordinators or volunteers will be approved by the Forestry Supervisor, with a preference for natives and a focus on maximizing ecosystem services.

*The Task Force recommends revisiting trunk size considerations every five years as the implications of climate change and autonomous vehicles become clearer. In the interim, large trunked trees such as redwoods will not be planted.*

## SIGHTLINES

Visual sight lines – the unobstructed view of the driver<sup>18</sup> stopped before entering the near crosswalk to the corners of the opposite crosswalk [see Figure X below] – should guide all vegetation selection and maintenance criteria. Based on the City of Berkeley’s Traffic Engineer’s opinion and researched best practice, low vegetation should be maintained at a maximum height of 2.5 feet from the top of the traffic circle planter curb and a mature tree canopy should be pruned and trimmed up to and maintained at 7-8 feet height above the top of the traffic circle planter curb. Limbs that extend beyond the curb should be trimmed to 14 feet above the adjacent road surface within the road right-of-way. Single tree trunks that are less than 20” in width, as measured 4 feet above the ground, do not require any additional traffic calming devices. Low branches on young trees and/or flower stalks extending above the 2.5 feet maximum height shall be permitted as long as the total visual obstruction above 2.5 feet is no more than 20” across the circle.<sup>19,20</sup>

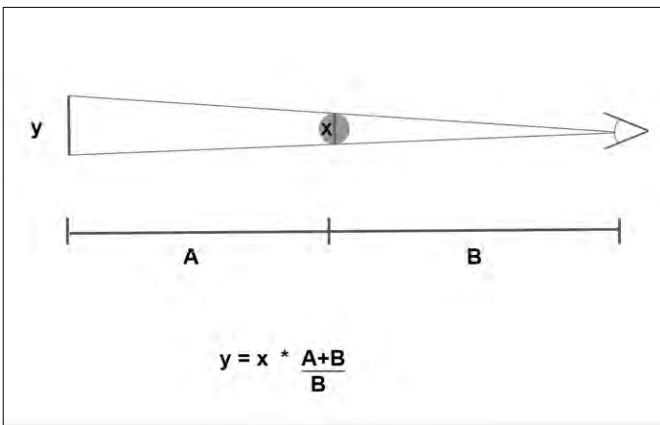
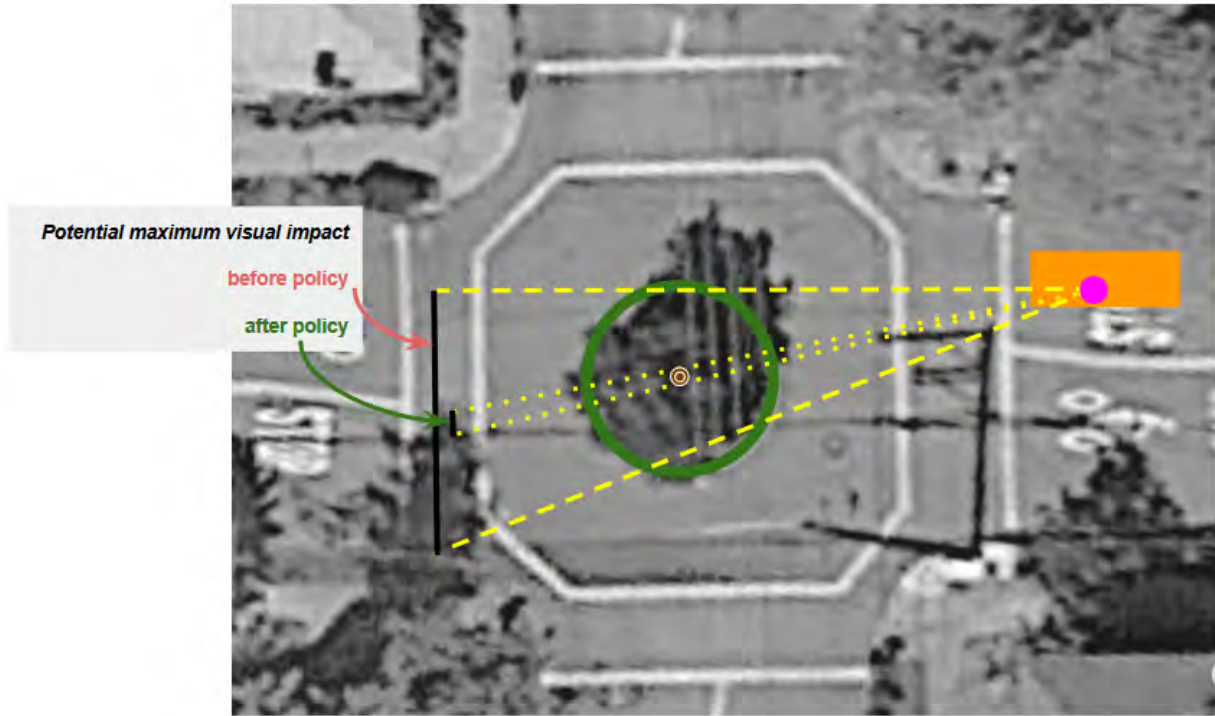
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<sup>18</sup> By national standards it is assumed that drivers’ eyes are at three and a half feet and ability to see an object one foot tall on the ground.[cite?]

<sup>19</sup> A tree in the center of a traffic circle can only create a visual impact when objects are on directly opposite sides of the circle. These specifications to trunk size and vegetation height provide a conservative safety margin for visual impacts.

<sup>20</sup> Sight lines are defined as that horizontal plane (called the sight triangle), from the view of the driver stopped before entering the crosswalk to the corners of the opposite intersection, from 2.5ft above the top of the traffic circle planter curb line to the height of 7-8 feet.

Figure x: Traffic Circle Sightlines and Geometry



TREE TRUNKS WIDER THAN 20 INCHES

Tree trunks wider than 20 inches will be permitted with additional traffic calming measures, such as speed tables or cushions, diagonal diverters or flashing beacons to

ensure slow speeds<sup>21</sup>, additional stop signs or traffic mirrors to increase visibility,<sup>22,23</sup> established around the intersection. City staff and neighborhood traffic circle volunteers will work together to determine what measures are needed and which ones are best suited for installation. Where funding restrictions are a significant restriction, traffic circle coordinators or volunteers will be given a reasonable amount of time for community fundraising to offset the cost of additional traffic calming measures.

## SUMMARY OF POLICY RECOMMENDATIONS

Neighborhood communities and traffic circle volunteers care a great deal for their circle plantings and should be provided an opportunity to bring their trees and vegetation into conformance with the sight line maintenance guidelines within 30 days following notice of adoption or, in the future, of non-compliance. The Forestry Supervisor may provide guidance on how best to prune vegetation and trees to accomplish the sight lines or to suggest alternative plantings whose growth patterns would naturally conform. The Urban Forestry Unit of the Parks Division, will maintain the tree branches above the travelled way to ensure they are at least 14 feet from the road surface.

The City supports community volunteer contributions and recognizes and acknowledges that community volunteers give a considerable amount of free time to maintain the City's open spaces, including traffic circles. Community volunteers are encouraged to contribute in a safe and reasonable manner and to follow guidelines developed by the Community Common Space Stewardship Program.

### Summary of Policy Recommendations for Traffic Circle Vegetation:

- The primary purpose of neighborhood traffic circles is for traffic calming.
- Sightlines should be maintained at a maximum height of 2.5 feet from the top of the traffic circle planter curb and a mature tree canopy should be pruned up to 7-8 feet above the traffic circle planter curb.
- Trees and other vegetation that conform to sightline and pruning maintenance are allowed. Total vegetation and signage extending above the 2.5 foot height maximum should not exceed a 20 inch wide solid sight obstruction.

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<sup>21</sup> The Federal Highway Administration website provides data summarizing studies on engineering countermeasures used to manage speeds and lists the speed reductions for different kinds of traffic calming measures. Per the extensive table, Speed Cushions and Tables reduce the 85th %tile Speed by 5 to 9 mph. (US Department of Transportation/Federal Highway Administration. Engineering Speed Management Countermeasures: A Desktop Reference of Potential Effectiveness in Reducing Speed, July 2014)

<sup>22</sup> <https://www.nationalsafetymirror.com/driveway-mirror-traffic-mirrors/>

<sup>23</sup> The trees in the traffic island at Woolsey & Wheeler should be exempted from these rules due to the unique shape of the traffic island, its location outside of the actual intersection, and the presence of traffic dividers.

- Trees with trunks wider than 20 inches will be permitted with additional traffic calming measures established around the intersection to ensure low speeds and safe intersections. City staff and neighborhood traffic circle volunteers will work together to determine what measures are needed and which ones are the most appropriate for installation.
- Traffic circle volunteers will be provided an opportunity to bring trees and vegetation into conformance with the sightline maintenance guidelines within 30 days following notice<sup>24</sup> of non-compliance, before the City undertakes maintenance to bring the circle vegetation or trees into sightline compliance.
- The City should develop and implement consistent traffic circle signing and speed limit standards for the Program which will be implemented as soon as feasible.

#### D. Community Common Space Stewardship Program

Berkeley has many engaged community members who volunteer their time and resources. Community volunteers and neighborhoods have been the mainstay of the traffic circles – generously buying plants and giving their time to water and maintain the traffic circles and other common space (i.e. Berkeley Path Wanderers) over the last two decades.

There is no formal mechanism for the City to engage these volunteers or to recruit new ones. There are many existing community-based partnership programs in the San Francisco Bay Area as well as around the country. The City of Oakland's "Adopt a Spot" is a long-standing and successful model that has also served as a template for similar programs in Livermore and Richmond, and is fortunately being considered as a template for the City of Berkeley's Program. A Berkeley Stewardship Program will encourage civic engagement and community improvement

The City can establish and operate a successful partnership program with community volunteers to provide coordination and guidance on safety and technical issues, hosting work days, developing discount programs, and supporting community improvement and agreed upon goals.

Berkeley City leaders expressed their willingness to work with the community and to develop a real partnership with the community by creating and supporting the establishment of the Traffic Circle Policy Task Force. A formal partnership needs a shared commitment and written guidelines, structure, budget and resources to deliver the benefits to both the City and the community.

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<sup>24</sup> Notice of non-compliance is a standard vegetation maintenance enforcement procedure. It is recommended that the notice be sent via the Stewardship Program.

The Traffic Circle Policy Task Force recommends that the Public Works Department, in no less than three months, formalize the existing traffic circle community volunteer program and establish it as a component of the Community Common Space Stewardship Program (Stewardship Program). It is recommended that the Stewardship Program be integrated into the “Adopt a Spot Initiative,” which the City Council approved on April 23, 2019 (Item #33), and that the City Council refer the Adopt a Spot Initiative to the Traffic Circle Task Force for the purpose of developing a coherent and consistent set of guidelines for City/volunteer partnership on volunteer efforts for not just traffic circles but also other City common space, such as medians, bulb-outs, mid-block curb extensions and pocket parks. This Stewardship Program will define responsibilities between City and community volunteers and provide guidance for volunteer responsibilities including selection of plants and trees, maintenance best practices and safety guidelines. The Stewardship Program will also investigate and develop a much needed program analysis including criteria, environmental benefits, program costs and staffing needs.

The goals of the Traffic Circle component of the Community Common Space Stewardship Program include:

- Ensure community engagement and partnership in complying with the Traffic Circle Policy
- Maximizing traffic calming benefits of traffic circles
- Maintain sightline visibility to protect pedestrians and bicyclists
- Expand the network of neighborhood traffic circles to underserved areas

And in addition, the Community Common Space Stewardship Program will:

- Help beautify Berkeley - *Greenery in and along streets makes Berkeley a more beautiful city and is critical to Berkeley’s livability and success as a place*
- Encourage joint activities by neighbors and friends for the betterment of Berkeley
- Provide spaces that capture and infiltrate rainfall and storm water
- Reduce noise pollution through the use of vegetation and trees
- Provide habitat for birds, butterflies, bees, and other native creatures
- Increase carbon sequestration
- Help cool the urban environment

In order to establish and operate a successful partnership program, staff resources are required. Staffing could be provided through the City or through an existing non-profit entity that would be contracted for staff resources (at this point it's not clear if this would be a full-time position or could be part time after the program is set up).

A Traffic Circle Community Engagement Coordinator would report to Public Works and be responsible for coordinating with all existing traffic circle volunteers, recruiting new volunteers, act as a liaison between community volunteers and City staff, coordinate between Public Works, Parks and Recreation and Planning Departments as well as third-party utilities, and develop and maintain an on-line tool for tracking traffic circle compliance and administration. The Coordinator would also be responsible for developing an annual budget, hosting annual work days, provide assistance with technical issues, and develop a plant discount program, free mulch delivery, tool and safety equipment lending library, seeking additional outside funding and a green infrastructure mini-grants program with matching funds and/or in-kind support.

The Coordinator and City leaders should explore consolidating all resources and responsibilities for traffic calming measures (traffic circles, bulb-outs, mid-block curb extensions, traffic diverter replacement/conversions, parklets and other speed calming treatments) as well as supporting the Berkeley Bicycle Plan under the Community Common Space Stewardship Program. The core goal of this position should be nurturing and supporting a Citywide and expanding program of traffic circles that are both beautiful and safe and that make use of community volunteer resources, while also coordinating City staff resources and interests as they apply.

It should be noted that this position could also be defined to coordinate City staff and volunteer stewardship resources (through friends of parks and creeks groups) and efforts associated with maintaining and enhancing city parks, creeks, and open spaces. In this case, additional staff capacity would likely be required.

All of the community volunteer programs that the Traffic Circle Policy Task Force reviewed have a more formal structure for their programs and volunteers. Typical elements include: a volunteer job description used for recruiting purposes, volunteer application or agreement with a minimum term, maintenance rules and guidelines, planting guidelines, and safety rules and guidelines. Public Works should borrow from the best programs, specifically Oakland's "Adopt a Spot," to develop the documents needed to support the program. All Program documents should be maintained on the City's website with easy to use on-line applications and approvals.

This proposed Program and its recommendations are designed in part to reduce City liability and risk from traffic circles. By the same token, the City should be willing to extend protection from liability to neighborhood volunteers who maintain traffic circles

and are in compliance with the Program. The advice of the City Attorney and specialized legal experts on municipal volunteer programs should be sought in formalizing this two-way arrangement.

### *Communication Plan*

The Traffic Circle Policy Task Force's report and recommendations and the City's approval and adoption is only the first step to implementation. Any changes to the status quo will be new and possibly startling to the community. A thoughtful and robust communication plan should be developed and implemented within a set time period in concert with rolling out the new policy and program. Particular attention should be paid to the initial effort to bring existing circles into compliance. Based on a recent photo survey, there are a few traffic circles that have vegetation that will not easily be brought into compliance. For example, some circles have large cacti that cannot be "pruned" to achieve the sightline requirements. The city should consider organizing a large work day to support the removal of non-compliant existing plants and provide support to community members in planting new, better suited vegetation.

The Task Force Commissioners should be given a prominent role to assist the City with explaining the Program through open houses, newsletters, press, social media and neighborhood meetings. This process may also be used to ensure current traffic circle volunteers are identified and new ones recruited.

### *Incentives for Recruiting Volunteers*

Public Works should strive to be seen as an ally and support for the community volunteers with expertise and resources to support them and the Program. Public Works and the Community Engagement Coordinator should investigate incentives to help recruit additional community volunteers, especially in under-represented neighborhoods of the City. These incentives could include: a plant discount program, free mulch delivery, tool and safety equipment lending library, green infrastructure mini-grants program with matching funds and/or in-kind support.

### *On-line GIS Tool*

Public Works and the Community Engagement Coordinator should develop and implement an on-line GIS tool to map all traffic circles and monitor overall compliance with the sight line maintenance guidelines, operation and maintenance guidelines and plant palette guidance.

*Advisory Board*

The Task Force recommends that Public Works establish an advisory board comprised of leaders within Public Works, Parks, Recreation and Waterfront, and Planning Departments and a representative group of relevant Commission representatives and community volunteers to meet periodically to review the Programs progress. Note, we are not suggesting a new commission.

*Annual Compliance Report*

Public Works and the Community Engagement Coordinator should produce an annual report to the Berkeley City Manager, City Council, and the public on overall progress and compliance.

*Additional Traffic Circle Safety Improvements*

The City should inventory all existing traffic circle intersections and develop and implement consistent traffic circle signing and speed limit standards. Effective and safe traffic circles don't end at the curb line. The City should work towards other holistic street improvements and modifications to continue to improve safety at traffic circle intersections. Pedestrians, bicyclists and motor vehicle drivers should be able to expect consistency in City traffic circles operations. It could often be this uncertainty – the driver, bicyclist or pedestrian who doesn't realize they've come to a two-way, not four-way stop sign circle intersection – that increases hazards, not the existence or character of the traffic circle itself or its vegetation.

ENVIRONMENTAL SUSTAINABILITY

The Task Force found overwhelming support and alignment for the recommended action and the city's existing environmental sustainability plans, programs and policies.

Promoting additional tree planting and native drought tolerant vegetation in existing neighborhood traffic circles directly supports the Berkeley Climate Action Plan to restore natural processes, provide habitat for birds and insects, reduce ambient temperatures by shading, intercepting and storing rainwater, improving community quality of life through beautification and by reducing noise pollution and encouraging pedestrian traffic. Increasing the number of neighborhood traffic circles and planting them with trees will help fulfill the stated goals to maximize tree plantings, sequester carbon and protect biodiversity.

Half an acre of forest land can absorb three tons of carbon dioxide annually and produce two tons of oxygen. Berkeley's 62 existing traffic circles cover about half an acre of land, all of it converted from asphalt. The City's Hazard Mitigation Plan and Climate Action Plan recommend more tree plantings in Berkeley to help fight climate



change and reduce the “heat island effect” in lower elevation neighborhoods. Tree plantings are also an economic and social equity issue. City mapping shows that tree cover is much higher in the Berkeley Hills than it is in the Flatlands.

The recommended action is consistent with Berkeley’s history of neighborhood partnership for creating and caretaking traffic circles, as is common in many other cities, and with the goal of increasing green space and tree canopy in neighborhoods with less access to parks and open space.

The recommended action enables neighborhood traffic circles to contribute to the support of native biodiversity within the City, through the habitat contributed by native plants and trees. The Task Force provides several plant palettes of native plant assemblages designed to maximize biodiversity as well as other valuable services such as pollinator support, water conservation, runoff reduction, and carbon sequestration.

#### ALTERNATIVE ACTIONS CONSIDERED

*No Action* Alternative isn’t viable because it doesn’t address traffic safety concerns or provide clarity to the volunteers currently maintaining the existing traffic circles. There’s confusion by the volunteer community about what the rules are for traffic circles, who is responsible for what and if trees in circles are allowed.

*No Trees* Alternative is not recommended because it is contrary to standard practice by many California and national cities, as well as Berkeley plans and policies. There are 37 existing traffic circles that have trees that are maintained by volunteers. The community has already expressed significant concern when the City proposed in the summer of 2018 to remove all trees and other large vegetation in existing traffic circles.

*No Volunteers* Alternative is not recommended because it goes against the spirit of how the City governs. The City has partnered with its citizens on their stewardship of the traffic circles for almost two decades. It is in the City’s interest to formalize and support community involvement to maintain the traffic circles.

*Administrative Department Move* Alternative – to move traffic circle administration from Public Works to Parks, Recreation and Waterfront Department - is not recommended because the Public Works Department is responsible for construction and maintenance of all streets and the right-of-way. The Public Works Department has oversight and approval responsibility for traffic circles including construction, maintenance (in coordination with local community groups), and vegetation.

#### FISCAL IMPACTS OF RECOMMENDATION

The recommended action to develop a formal Stewardship Program with one full time staff in the Public Works Department represents a new cost to the City. The cost will be

the salary and overhead for a full time Community Engagement Coordinator position and the costs to administer the program, including setting up an on-line GIS web-based tool, developing the community volunteer program, finalizing operation and maintenance guidelines, finalizing planting palette guidance, developing a self-certification process, and setting up discount and mini-grant programs. It should be recognized that in the long term, the Stewardship Program/Adopt a Spot will, in fact, be a net cost savings for the City for the maintenance and planting “services” rendered by volunteers that would otherwise have to be performed by City staff or contractors. Having this program would also be advantageous for the City whenever it pursues project grants, as a source of in-kind/match funding.

In the long term, through efficiencies and “normalizing” the work of the program, these start-up costs are anticipated to decrease.

The overall total costs to the City should substantially decrease due to the program reducing injuries and lawsuits, minimizing the safety risks and uncertainty associated with the existing traffic circles. The benefits to establishing a formal, staffed program should greatly outweigh these costs.

CONTACT PERSON

Tano Trachtenberg, Legislative Aide, Office of Mayor Arreguín, 510-981-7100

Attachments:

1. Resolution to Adopt Traffic Circle Policy and Exhibit A
2. February 26, 2019 Berkeley City Council Item
3. September 29, 2019 Vegetation Subcommittee Report
4. July 19, 2019 Operation and Maintenance Subcommittee Report
5. July 19, 2018 Policy Alignment Issues Subcommittee Report
6. Expanded Berkeley Partners for Parks Proposal
7. Draft “Best Practices” Guidelines - Operation and Maintenance Subcommittee

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

Traffic Circle Policy

WHEREAS, Berkeley has 62 neighborhood traffic circles, that constitute a half-acre of permeable green space that would otherwise be filled with asphalt; and

WHEREAS, Traffic circles have been shown to reduce the speed of travel as well as reduce the number of collisions involving vehicles, pedestrians, and bicycles at these intersections; and

WHEREAS, Across the country, traffic circles with well-maintained low plantings and central trees are widely encouraged due to their benefits to traffic calming, making circles more visible and their contribution to beautification, neighborhood character, urban greening; and

WHEREAS, The Urban Street Design Guide, a manual developed by the National Association of City Transportation Officials (an association of over 71 major North American Cities and 10 transit agencies) notes the value of trees and other vegetation not only for beautification, but for their contribution to traffic calming and

WHEREAS, Other San Francisco Bay Area and North American cities and expert analysts beyond Berkeley have identified trees as a welcome and useful component of traffic circles, particularly because they help slow traffic and identify for drivers the presence of a circle from a distance; and

WHEREAS, The climate and biodiversity crises, including recent recognition of bird and insect declines, necessitate the support of trees, native plants, and other high value habitat in city spaces.

WHEREAS, Berkeley has numerous policies and plans that support traffic circles for traffic calming and other environmental and community benefits such as the Climate Action Plan, General Plan, Pedestrian Plan and Bicycle Plan; and

WHEREAS, The City Council established the Traffic Circle Task Force on February 26, 2019 with the charge of evaluating the current traffic circle vegetation policy, recommending appropriate characteristics for allowed plantings, and a policy that ensures sight lines for visibility, pedestrian, bicycle and vehicle safety, as well as beautification of the circles.

NOW THEREFORE, BE IT RESOLVED that the Berkeley City Council adopts the Traffic Circle Policy in Exhibit A.

## Exhibits:

A: Traffic Circle Policy

**Exhibit A**

## Traffic Circle Policy

## PURPOSE

The purpose of this new policy is to identify the appropriate design, vegetation and operation characteristics of traffic circles that provide both traffic calming, beautification and other benefits while maintaining pedestrian safety.

As proposed and documented in numerous City of Berkeley plans, programs and policies, the primary purpose of neighborhood traffic circles is for traffic calming. This purpose is important to highlight so that traffic circle elements, as well as additional, complementary safety measures are designed to support traffic calming and pedestrian safety goals. Many cities around the country and in California incorporate vegetation and trees in traffic circles as part of traffic calming measures. Excess speed causes one in three traffic deaths<sup>25</sup>, comparable to drunk driving. The goal of this policy is to develop guidelines ensuring that traffic circle vegetation and trees are maintained to conform to safety standards, thereby enhancing, rather than reducing, neighborhood safety.

## GRANDFATHERING EXISTING TREES

Berkeley has a variety of existing trees in its traffic circles, such as Coast Live Oaks, California Buckeyes, Dawn Redwoods, Olives, and other trees. All existing trees that are structurally safe are permitted by this policy<sup>26</sup>. For trees with trunks that exceed 20" in diameter see the section "TREE TRUNKS WIDER THAN 20 INCHES" below, which outlines how additional traffic calming measures will be incorporated into the traffic circle intersection to ensure safety.

## VEGETATION AND NEW TREES

Beautiful, healthy, and well-maintained vegetation and trees in traffic circles supports Berkeley's neighborhood quality of life and contributes to traffic calming. Circle plantings should be durable, diverse, attractive and planted and maintained by community

<sup>25</sup> [Motor Vehicle Crash Deaths: How is the US doing?](#) (Centers for Disease Control and Prevention)

<sup>26</sup> Designated historic resources are regulated by the Landmarks Preservation Ordinance, and may have features that do not conform to these policies. In case of conflict, the city shall follow established procedures for alterations to a designated landmark. Landmarks Ordinance prevails.

volunteers. Volunteer participation adds to the unique character of our neighborhood and creates strong resident commitment to our urban communities. Planted circles improve storm water retention and are strongly encouraged to use native or other plant species that do not require pesticides or herbicides to maintain them. Traffic circles should be planted with consideration of vegetation and tree's mature shape and size and sightline requirements. There are several suggested palettes for those who find suggestions helpful (see Attachment 3).

New trees proposed by traffic circle coordinators or volunteers will be approved by the City Forester, with a preference for natives and a focus on maximizing ecosystem services.

*The Task Force recommends revisiting trunk size considerations every five years as the implications of climate change and autonomous vehicles become clearer. In the interim, large trunked trees such as redwoods will not be planted.*

## SIGHTLINES

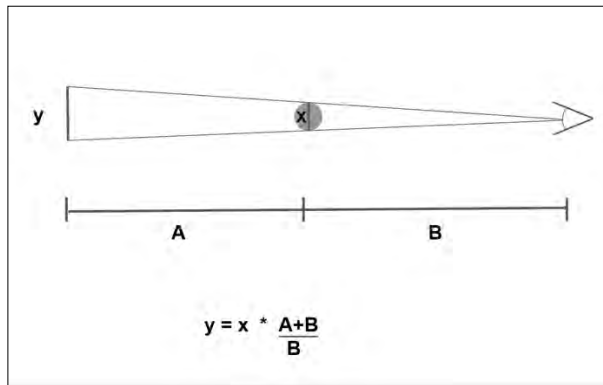
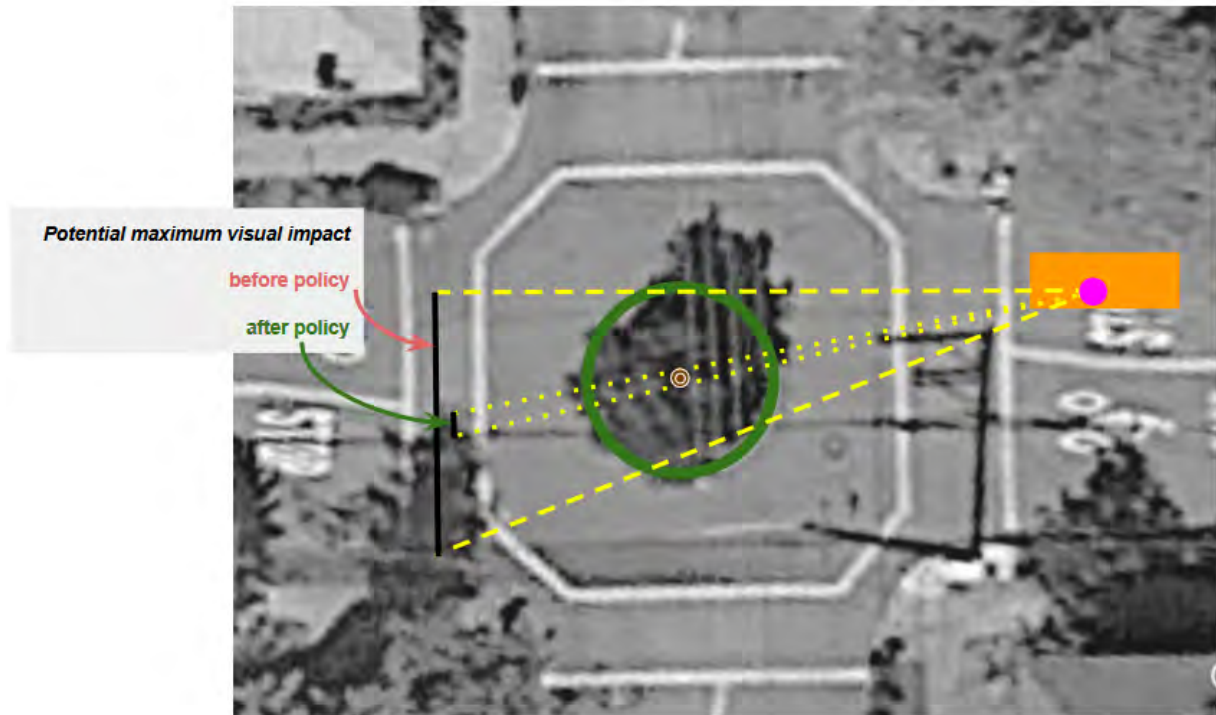
Visual sight lines – the unobstructed view of the driver<sup>27</sup> stopped before entering the near crosswalk to the corners of the opposite crosswalk [see illustration below] – should guide all vegetation selection and maintenance criteria. Based on the City of Berkeley's Traffic Engineer's opinion and researched best practice, low vegetation should be maintained at a maximum height of 2.5 feet from the top of the traffic circle planter curb and a mature tree canopy should be pruned and trimmed up to and maintained at 7-8 feet height above the top of the traffic circle planter curb. Limbs that extend beyond the curb should be trimmed to 14 feet above the adjacent road surface within the road right-of-way. Single tree trunks that are less than 20" in width, as measured 4 feet above the ground, do not require any additional traffic calming devices. Low branches on young trees and/or flower stalks extending above the 2.5 feet maximum height shall be permitted as long as the total visual obstruction above 2.5 feet is no more than 20" across the circle.<sup>28,29</sup>

## Figure X. Traffic Circle Sightlines and Geometry

<sup>27</sup> By national standards it is assumed that drivers' eyes are at three and a half feet and ability to see an object one foot tall on the ground.

<sup>28</sup> A tree in the center of a traffic circle can only create a visual impact when objects are on directly opposite sides of the circle. These specifications to trunk size and vegetation height provide a conservative safety margin for visual impacts.

<sup>29</sup> Sight lines are defined as that horizontal plane (called the sight triangle), from the view of the driver stopped before entering the crosswalk to the corners of the opposite intersection, from 2.5ft above the top of the traffic circle planter curb line to the height of 7-8 feet.



### TREE TRUNKS WIDER THAN 20 INCHES

Tree trunks wider than 20 inches will be permitted with additional traffic calming measures, such as speed tables or cushions<sup>30</sup>, diagonal diverters or flashing beacons to

<sup>30</sup> The Federal Highway Administration website provides data summarizing studies on engineering countermeasures used to manage speeds and lists the speed reductions for different kinds of traffic calming measures. Per the extensive table, Speed Cushions and Tables reduce the 85th %tile Speed by 5 to 9 mph. (US Department of Transportation/Federal Highway Administration. Engineering Speed

ensure slow speeds, additional stop signs or traffic mirrors to increase visibility,<sup>31,32</sup> established around the intersection. City staff and neighborhood traffic circle volunteers will work together to determine what measures are needed and which ones are best suited for installation. Where funding restrictions are a significant restriction, traffic circle coordinators or volunteers will be given a reasonable amount of time for community fundraising to offset the cost of additional traffic calming measures.

## SUMMARY OF POLICY RECOMMENDATIONS

Neighborhood communities and traffic circle volunteers care a great deal for their circle plantings and should be provided an opportunity to bring their trees and vegetation into conformance with the sight line maintenance guidelines within 30 days following notice of adoption or, in the future, of non-compliance. The Forestry Supervisor may provide guidance on how best to prune vegetation and trees to accomplish the sight lines or to suggest alternative plantings whose growth patterns would naturally conform. The Urban Forestry Unit of the Parks Division, will maintain the tree branches above the travelled way to ensure they are at least 14 feet from the road surface.

The City supports community volunteer contributions and recognizes and acknowledges that community volunteers give a considerable amount of free time to maintain the City's open spaces, including traffic circles. Community volunteers are encouraged to contribute in a safe and reasonable manner and to follow guidelines developed by the Community Common Space Stewardship Program.

### Summary of Policy Recommendations for Traffic Circle Vegetation:

- The primary purpose of neighborhood traffic circles is for traffic calming.
- Sightlines should be maintained at a maximum height of 2.5 feet from the top of the traffic circle planter curb and a mature tree canopy should be pruned up to 7-8 feet above the traffic circle planter curb.
- Trees and other vegetation that conform with sightline and pruning maintenance are allowed. Total vegetation and signage extending above the 2.5 foot height maximum should not exceed a 20 inch wide solid sight obstruction.
- Trees with trunks wider than 20 inches will be permitted with additional traffic calming measures established around the intersection to ensure low speeds and safe intersections. City staff and neighborhood traffic circle volunteers will work together to determine what measures are needed and which ones are the most appropriate for installation.

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Management Countermeasures: A Desktop Reference of Potential Effectiveness in Reducing Speed, July 2014)

<sup>31</sup> <https://www.nationalsafetymirror.com/driveway-mirror-traffic-mirrors/>

<sup>32</sup> The trees in the traffic island at Woolsey & Wheeler should be exempted from these rules due to the unique shape of the traffic island, its location outside of the actual intersection, and the presence of traffic dividers.

- Traffic circle volunteers will be provided an opportunity to bring trees and vegetation into conformance with the sightline maintenance guidelines within 30 days following notice<sup>33</sup> of non-compliance, before the City undertakes maintenance to bring the circle vegetation or trees into sightline compliance.
- The City should develop and implement consistent traffic circle signing and speed limit standards for the Program which will be implemented as soon as feasible.

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<sup>33</sup> Notice of non-compliance is a standard vegetation maintenance enforcement procedure. It is recommended that the notice be sent via the Stewardship Program.





Housing Advisory Commission

ACTION CALENDAR

October 27, 2020

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission  
 Subject: Smoke-Free Multi-Unit Housing Ordinance Policy and Enforcement Modifications

RECOMMENDATION

The Commission recommends that City Council:

1. Make a short term referral directing the City Manager to correct current City Policies for enforcing BMC 12.70.035 so that these policies do not contradict the ordinance and BMC 12.70.035 requires that second and third complaints must refer to a violation or violations that occur after the 12.70.035(C) notice has been made.
2. Modify BMC 12.70.035 so that the requirement that signs be posted is enforced as part of the Residential Safety ordinance. Failure to post signage may result in fines, accordingly.
3. Modify BMC 12.70.035 so that repeated failure to provide new tenants with the City's brochure shall be guilty of an infraction. It shall also be an infraction for landlords to tell new tenants, in contradiction to the law, that tobacco smoking by some tenants is permitted.
4. Obtain an analysis of the financial impacts of the recommended modifications to the BMC.

POLICY COMMITTEE RECOMMENDATION

On September 29, 2020, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Hahn/Bartlett) to send to Council a qualified positive recommendation including the following referrals: 1. Refer to staff to explore expanding the Ordinance to buildings with one unit; 2. Refer to staff to explore and consider improvements in the interface between the residential and commercial non-smoking Ordinances in mixed-use buildings; 3. Refer to staff to create a web-based complaint filing mechanism/service; 4. Refer to staff to create special protocols for chronic situations and to consider including requirements for better air filtration and purification as well as other measures to effectively manage chronic cases; 5. Refer to

staff to study the infraction and enforcement mechanisms and determine if they have any benefits and to consider other potential enforcement end points; 6. Refer to staff to look for opportunities for bias in enforcement and mechanisms to better guard against bias while still allowing for maximum action to resolve legitimate complaints; 7. Refer to staff to propose funding sources for enforcement; 8. Refer to staff to collect demographic data around complaints and targets of complaints (as much as possible); and 9. To return to Council with Ordinance amendments to accomplish the following: (a) amend or remove the 10-day language element (b) modify or remove the 2-complainant rule if warranted (c) adjust for the medical cannabis state law changes, (d) propose any and all other improvements beneficial to the Ordinance.

Vote: Ayes – Bartlett, Hahn; Noes – None; Absent – Kesarwani; Abstain – None.

### SUMMARY

This recommendation proposes changes to the Berkeley Municipal Code to increase enforcement and information about the residential smoking policies by improving enforcement and regulation of our current policies.

### FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts for this recommendation are unknown at this time.

### CURRENT SITUATION AND ITS EFFECTS

Under the current laws within the City of Berkeley, multi-unit residential property owners are required to provide signage as well as informational brochures. Despite these requirements, code enforcement and other city programs do not presently cite property owners for the failure to provide adequate signage or information to the tenants.

In addition, there are numerous inconsistencies between the ordinance, the informational materials, and administrative processes that the City of Berkeley utilizes. The recommendations in this report are designed to ensure more effective enforcement while at the same time balancing the due process rights of all parties involved.

At its October 3, 2019 meeting the Housing Advisory Commission made the following recommendations:

Action: M/S/C (Sharenko/Lord) to recommend that City Council:

1. Make a short term referral directing the City Manager to correct current City Policies for enforcing BMC 12.70.035 so that these policies do not contradict the ordinance. Details of the contradictions between policy and law are explained below. Additionally, modify BMC 12.70.035 to require that second and third complaints must refer to a violation or violations that occur after the 12.70.035(C) notice has been made.

2. Modify BMC 12.70.035 so that the requirement that signs be posted is enforced as part of the Residential Safety ordinance. Failure to post signage may result in fines, accordingly.
3. Modify BMC 12.70.035 so that repeated failure to provide new tenants with the City's brochure shall be guilty of an infraction. It shall also be an infraction for landlords to tell new tenants, in contradiction to the law, that tobacco smoking by some tenants is permitted.
4. Obtain an analysis of the financial impacts of the recommended modifications to the BMC.

Vote: Ayes: Berg, Johnson, Lord, Mendonca, Sargent, Sharenko, Simon-Weisberg, Wolfe and Wright. Noes: None. Abstain: None. Absent: Owens (excused).

### BACKGROUND

The Housing Advisory Commission has received numerous complaints of the pitfalls and challenges present in our current system of enforcing the no smoking ordinance. Namely, there appears to be little means of recourse available to tenants, and little advertisement that the City even has a no-smoking policy. Over a number of meetings the HAC has discussed various ideas and strategies to address these concerns. This report presents a number of approaches approved by the Commission after much thought.

### ENVIRONMENTAL SUSTAINABILITY

There is a net improvement to the environment by advancing these policies as they will help to ensure better air quality for residents specifically and more generally in the City of Berkeley as more enforcement will lead to reduced smoking in residential areas.

### RATIONALE FOR RECOMMENDATION

#### **1. Aligning enforcement policy with the law**

The complaint form on the City's website contains a statement of policy (in an "Information Sheet") that is not consistent with ordinance. Item 5 on the information sheet reads (emphasis in the original):

"If it is the second complaint within a six month period a note is made and no additional notice will be sent to the person(s) responsible. The second complaint can be made by the same resident as the first complaint or by a resident in another unit in the same building. **The second complaint must be dated at least 10 days after the date of the notice sent by City of Berkeley to the person(s) responsible.** You may call the Tobacco Prevention Program (see #10) for this information."

The highlighted section is the problem. BMC 12.70.035(D) says:

“If within a six-month period following issuance of a notice under subdivision C, the City receives at least two complaints from residents of at least two separate units of the same multi-unit residence [...] *the person(s) responsible for the violation shall be guilty of an infraction* [...]” [emphasis added].

The 10-day delay rule, imposed by policy, contradicts the plain language of the law which contains no such delay period.

Presumably the delay period is meant to ensure that the person(s) responsible for the violation have time to receive, read, and act upon the warning. It may in fact be a reasonable ground for appeal that the second and third complaints arrived too quickly for the person(s) accused to have corrected the problem. Nevertheless, in individual circumstances, it might also be an unreasonable ground for appeal.

In any event, the ordinance does not support the 10-day delay policy.

It may be helpful to modify BMC 12.70.035(D) to make it clear that second and third complaints must refer to a violation or violations that occur after section (C) notice has been made.

It may be helpful to modify BMC 12.70.035(D) to use the date of delivery of a notice, and for the City to send notices using the USPS confirmed delivery service.

Returning to the policy declarations on the "Information Sheet", the City declares in item 6 (emphasis in the original):

If it is the third complaint, information about the person(s) responsible is sent to the City Enforcement team and a citation may be issued. ***Please note that the issuance of a citation is an absolutely discretionary process based on the City's resources, competing time constraints, and whether it is clear that the complaints are being filed in good faith.*** Only two complaints may be made by tenants in the same unit. All three complaints may not be made by tenants in the same unit.

The Code Enforcement Officer and City Attorney no doubt enjoy broad prosecutorial discretion but the statement above declares a policy wide open for prosecutorial abuse.

Criteria such as "competing time constraints" and "based on the City's resources" are so vague as to mean nothing more than "we'll enforce it if we feel like it". Further, there are no criteria or checks on the judgment of whether or not a complaint was made in good faith.

Such reservations of discretion are intimidating and excessive for what should be, in many cases, a nearly ministerial process of checking the complaint forms and issuing a citation.

The City Manager should form policy that if the Code Enforcement team decides not to issue an infraction, they must clearly state the reasons for their decision and inform the complaint filers of these reasons. Complaint filers must have a right to appeal and, if appropriate, amend their complaints with further evidence.

## **2. Enforce signage violations under the Residential Safety Program**

Smoke free housing is a safety issue and the signage is part of how that condition is maintained. Since such signage is unambiguously part of the condition of the physical structure, it should be treated as a building code requirement enforced under the Residential Safety program.

## **3. Enforcing brochure requirements**

Evidence from the Berkeley Considers survey and heard by HAC commissioners strongly suggests that in many cases, making everyone aware of the ordinance is enough for some tobacco smokers to change their behavior.

The City should take that seriously, and take steps to boost awareness of the ordinance.

Based on anecdotal evidence, tenants seem generally to have never received the brochure that informs them of their rights and responsibilities under the ordinance. In the Berkeley Considers survey, several respondents indicated their surprise at learning there is such an ordinance.

Making systematic violations of the brochure requirement an infraction provides tenants with an alternative mode of complaint that can potentially help resolve ongoing violations without risking personal retaliation for pointing the finger at a particular tobacco smoker or smokers.

Here, prosecutorial discretion can be again aided by policy. Upon credible evidence that a landlord is in violation, the Code Enforcement Officer might (by policy) issue a first warning to the property owner or landlord, and send the brochure to all units.

Finally, in one instance, an ad for tenants advises potential applicants that the building is "slowly transitioning" to non-smoking, implying that smoking is permitted and lawful by existing tenants. Systematically misinforming potential tenants of their rights should be treated as a violation of the brochure provision.

### **ALTERNATIVE ACTIONS CONSIDERED**

The Commission considered allowing the first complaint, the complaint which triggers a warning, to be made in confidence. The commission also considered affirmatively stating that City enforcement officials may provide evidence of violations based on their

personal observations. Objections were raised that such provisions might be unconstitutional and, even if not, would be used to unfairly evict tenants.

CITY MANAGER

See companion report.

CONTACT PERSON

Mike Uberti, Commission Secretary, HHCS, (510) 981-5114



Housing Advisory Commission

ACTION CALENDAR

October 27, 2020

To: Honorable Mayor and Members of the City Council

From: Housing Advisory Commission

Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission

Subject: Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance

RECOMMENDATION

Approve modifications to policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;
- 2) Improve signage related to the ordinance in residential buildings;
- 3) Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be "sworn," and considering other, less threatening language that still expects a complaint be provided under the best of appellant's knowledge;
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury); and
- 5) Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.

POLICY COMMITTEE RECOMMENDATION

No final action was taken by the Health, Life Enrichment, Equity & Community Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.

SUMMARY

At its July 11, 2019 meeting, the HAC took the following actions:

Action: M/S/C (Tregub/Sharenko) to recommend that City Council modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;
- 2) Improve signage related to the ordinance in residential buildings;
- 3) Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge; and
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury).

Vote: Ayes: Johnson, Lewis, Sargent, Tregub, and Wright. Noes: Lord and Sharenko. Abstain: None. Absent: Mendonca (excused), Owens (unexcused), Simon-Weisberg (excused), and Wolfe (excused).

Action: M/S/C (Tregub/Sharenko) to recommend that City Council modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 5) Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.

Vote: Ayes: Johnson, Sargent, Sharenko, Tregub, and Wright. Noes: Lewis and Lord. Abstain: None. Absent: Mendonca (excused), Owens (unexcused), Simon-Weisberg (excused), and Wolfe (excused).

#### FISCAL IMPACTS OF RECOMMENDATION

Unknown direct costs. Staff time would be needed to implement these recommendations and to administer a possibly increased volume of complaints should the process of filing a complaint become less onerous. However, savings in staff time would potentially be realized as a result of implementing the efficiencies being proposed.

#### CURRENT SITUATION AND ITS EFFECTS

The HAC’s recommendation to modify certain policies related to the enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance is a Strategic Plan Priority Project,



advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

Ordinance No. 7,321-N.S., The Berkeley Smoke-Free Multi-Unit Housing Ordinance was adopted in early 2014 and, as of May 1, 2014, prohibits smoking in 100% of multi-unit housing with two or more units. This also includes common areas such as private decks, balconies, and porches of units.<sup>1</sup> Enforcement of the ordinance is complaint-based and modeled after the “Events” section of the Community Noise Ordinance<sup>2</sup> and Barking Dog Ordinance, in that the standard for enforcement is “two non-anonymous citizen noise complaints.” In the case of the Smoke-Free Housing Ordinance, the City must “[receive] at least two complaints from residents of at least two separate units of the same multi-unit residence, or in the case of a two-unit multi-unit residence, from a resident of the other unit of a violation of [the Ordinance] by the same person provided notice...” in order for the complaints to be sustained. Further, both of these notices must be received within “a six month period following issuance of a [first] notice” to the resident allegedly in violation of the Ordinance.<sup>3</sup> The existing complaint form appears to only be available in English on the City website<sup>4</sup> and includes the following information that a complainant is required to acknowledge:

1. I am a resident in a multi-unit residence within the City of Berkeley;
2. This Complaint is not confidential and may be shared with the person responsible for the violation;
3. If this is the 3rd complaint, City of Berkeley Code Enforcement staff will review the complaint and if they find the complaint contains enough information to move forward, they will consider the matter for further action;
4. If an administrative citation is issued, and the recipient(s) appeals, I will be called to testify at an administrative appeal hearing. I agree to make myself available to testify, and understand that if I fail to testify, the citation may be dismissed.”<sup>5</sup>

As part of the declaration, the complainant must also attest to the following statement: “I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”<sup>6</sup>

## BACKGROUND

Over the prior twenty months, the Berkeley Housing Advisory Commission (HAC) received and heard several concerns from members of the public about the difficulty

<sup>1</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

<sup>2</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2009/1n2Dec/2009-12-08\\_Item\\_01\\_Ordinance\\_7122.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2009/1n2Dec/2009-12-08_Item_01_Ordinance_7122.pdf)

<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Level\\_3\\_-\\_Public\\_Health/TobaccoFreeMultiUnitOrdinance.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/TobaccoFreeMultiUnitOrdinance.pdf)

<sup>4</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

<sup>5</sup> [https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Level\\_3\\_-\\_Public\\_Health/SFMUH-ComplaintForm-02-28-18.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/SFMUH-ComplaintForm-02-28-18.pdf)

<sup>6</sup> *Ibid.*

they encountered in an attempt to bring the City of Berkeley to enforce its Smoke-Free Multi-Unit Housing Ordinance. The HAC recommended to the City Council that a Berkeley Considers survey be conducted, an action that was adopted and completed.

The survey results point to similar challenges, primarily associated with:

- 1) The real or perceived difficulty of having a complaint sustained due to the standard applied to the complaint in order for the City to process it;
- 2) The real or perceived onerous nature of filling out and submitting the present complaint form in the manner required by the City;
- 3) The undesirable nature of pursuing action under the Ordinance against a neighboring property owner or tenant, particularly since the complaint is required to be non-anonymous; and
- 4) The perception that, even if the complaint process is followed as required, the City will not enforce it due to the high standard associated with enforcement and complaint-based nature of the enforcement mechanism.

At its March 2019 meeting, the HAC convened a Smoke-Free Housing Ordinance Subcommittee which met in April 2019. Members of the subcommittee reached consensus on several recommendations to the HAC, which were discussed at the April 2019 HAC meeting. Additional feedback was solicited from HAC members as well as members of the public at that meeting. Although the subcommittee did not meet a second time to finalize these recommendations, one of the members of the subcommittee discussed these recommendations with the Eviction Defense Center and the East Bay Community Law Center and modified the draft recommendations so that the idea of empowering inspectors to integrate proactive inspections at the same time that they are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program), exploring the legality of allowing anonymous complaints to be processed, and relaxing the requirement of having to provide two separate complaints within a six-month period in buildings of *all* unit counts were removed from the proposed recommendations that were discussed and approved at the July meeting.

#### ENVIRONMENTAL SUSTAINABILITY

Insofar as the ability of every occupant of multi-family housing to reside in a smoke-free environment has a nexus to environmental sustainability and environmental justice, these recommendations support the City of Berkeley's environmental sustainability goals.

### RATIONALE FOR RECOMMENDATIONS

The recommendations above address the primary challenges associated with enforcement that have been previously described. A brief rationale for each recommendation is presented below.

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;
- 2) Improve signage related to the ordinance in residential buildings;

The recommendations above were made at the request of several members of the public who credibly claimed that the current staffing level to enforce the ordinance and required signage are inadequate to meet the goals of this ordinance.

- 3) Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge; and
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury).

These four recommendations would address the following concerns that the HAC noted from members of the public as well as from survey responses:

- 1) The real or perceived difficulty of having a complaint sustained due to the standard applied to the complaint in order for the City to process it;
- 2) The real or perceived onerous nature of filling out and submitting the present complaint form in the manner required by the City;
- 3) The undesirable nature of pursuing action under the Ordinance against a neighboring property owner or tenant, particularly since the complaint is required to be non-anonymous; and
- 4) The perception that, even if the complaint process is followed as required, the City will not enforce it due to the high standard associated with enforcement and complaint-based nature of the enforcement mechanism.

The current process requires an extremely high bar of evidence and effort for a complainant, and in a situation in which the complainant resides in close quarters with the allegedly offending party, may expose the complainant to possible retaliation (due to the lack of anonymity of the complaint). In addition, while the correctness of a complaint is fundamental to its ability to be processed, using the same language in the complaint form that is seen in a sworn affidavit is likely to intimidate some would-be complainants from undergoing the process of completing and submitting the form.

Furthermore, while the Smoke-Free Multi-Unit Housing Ordinance page on the City of Berkeley website currently includes several forms in Spanish as well as English, the complaint form itself is only available in English. No other languages besides English and Spanish were found anywhere on the site.<sup>7</sup> The requirement that only a hard copy can be submitted and that electronic submission mechanisms are not accepted is overly burdensome, in an age where even police reports can be filed online. The provision that three separate complaints (two of them from separate individuals) must be received within the span of six months shifts the burden of policing onto the complainants rather than City, which is charged with enforcing this ordinance. Each of these recommendations addresses these and related concerns mentioned above.

The final recommendation approved by a separate vote by the HAC is as follows:

- 5) Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.”

The Smoke-Free Housing Subcommittee and several additional members of the HAC and public felt that, with the recent relaxation of state law around the use of recreational (non-medical) cannabis, it would be worthwhile for these two commissions, both comprised of subject matter experts in their respective fields, to study this question. Only further study rather than any concrete actions is recommended at this time.

#### ALTERNATIVE ACTIONS CONSIDERED

Members of the HAC Smoke-Free Housing Subcommittee briefly discussed but dismissed the notion of making changes to the underlying Berkeley Smoke-Free Multi-Unit Housing Ordinance itself. Based on discussions with the eviction defense community, several elements were removed from the initial recommendations. These recommendations that are no longer proposed included the following:

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<sup>7</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

- 1) Empowering inspectors to integrate proactive inspections regarding the smoke-free Ordinance enforcement at the same time that the inspectors are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program);
- 2) Exploring the legality of allowing anonymous complaints to be processed;
- 3) Relaxing the requirement of having to demonstrate two separate complaints within a six-month period in buildings of *all unit sizes*.

Therefore, though some of the recommended actions, if approved, may trigger the need to provide subtle adjustments to the enforcement of the Ordinance, none of the actions above alter the fundamental architecture of the Ordinance.

CITY MANAGER

See companion report.

CONTACT PERSON

Mike Uberti, Commission Secretary, HHCS, (510) 981-5114





Office of the Mayor

CONSENT CALENDAR

October 27, 2020

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: Treatment of Horses at Golden Gate Fields

RECOMMENDATION

Send a letter to the California Horse Racing Board to investigate the treatment and welfare of horses at Golden Gate Fields.

BACKGROUND

Opening in 1941, Golden Gate Fields is the only remaining thoroughbred racetrack in Northern California. The site sits on 140 acres of bayfront property along the Berkeley/Albany border, with the racetrack, stands, and parking located on the Albany side and the stables on the Berkeley side. The stables hold 1,200 horses who are cared for by 400 workers.

As of October 5, 2020, twenty-two (22) horses at Golden Gate Fields have died in 2020, the most recent death occurring on October 1. The latest death is also the 84<sup>th</sup> horse death in California. In 2019, twenty (20) horses died at Golden Gate Fields. Horse racing resumed in May after being paused in March due to COVID-19, although the stadium remains closed to spectators. A horse died as a result of racing during the first day that races resumed.

The racetrack is owned by The Stronach Group, which also operates Santa Anita Park in Arcadia, California. Recently, Santa Anita Park came under scrutiny after 38 horses died there in 2019. In March 2019, The Stronach Group announced some changes to improve safety conditions, including a ban on race day medications, limiting the use of whips, and installing a new safety rail on the track. However, with more horses dying this year it is clear that more must be done to address the health and safety of horses.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1:Letter to the California Horse Racing Board



Gregory L. Ferraro, DVM – Chairman  
C/O CHRB Headquarters  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825

October 27, 2020

**Re: Treatment and Welfare of Horses and Golden Gate Fields**

Dear Chairman Ferraro,

We are writing to express concern over the twenty-two (22) horse deaths that have been reported at Golden Gate Fields this year, as of October 5<sup>th</sup>. Golden Gate Fields, located along the border of the Cities of Berkeley and Albany, is the last thoroughbred racetrack in Northern California and was a popular destination for Bay Area residents before COVID-19 prohibited spectators at the site.

Golden Gate Fields is operated by The Stronach Group, which also operates Santa Anita Park in Arcadia, California. In 2019, 38 horses died at that location, prompting investigations. In response, The Stronach Group implemented new measures at both sites, such as a ban on race day medications, limiting the use of whips, and installing a new safety rail on the track. While we appreciate efforts undertaken last year by The Stronach Group, the fact that more deaths have occurred this year, compared to 2019, shows that more must be done to address the treatment and welfare of racehorses.

Residents have reached out to our offices to express concern over the situation. We respectfully request the California Horse Racing Board investigate this matter. What is causing the deaths of these horses? What measures can be done to prevent such deaths from occurring? The City of Berkeley has long supported the wellbeing of animals, so hearing of these reports of multiple deaths is alarming. Please keep us informed of any actions you take to ensure the safe treatment and wellbeing of horses at Golden Gate Fields.

Sincerely,

The Berkeley City Council





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

October 27, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Recognize the Rights of Nature

RECOMMENDATION

Adopt a resolution to recognize that the natural living world has a right to exist, thrive, regenerate and evolve its life cycles; to protect the ecosystems upon which our own vitality depends; and to transform our human relationship with nature from a property-based to a legal rights-bearing entity.

BACKGROUND

Currently, the legal systems are doing very little to protect our ecosystems from the destruction by economically driven industrialization. In fact, not only is there no regard to the impacts this will have on future generations, but the degradation of our natural world is often encouraged. Currently, our laws view nature as human-owned property, confirming human authority over all of nature. The natural world has no legal standing in a court of law. There needs to be a legal shift in the way we view our human relationship with the natural world. It is our responsibility to live respectfully within the natural order of life. We must redraw the boundaries of the economy taking into consideration the ecological and planetary limits. All rights, including human rights depend on the health and vitality of Earth's living systems. Therefore, the needs of nature must be elevated and protected by legal rights and maintained through life-sustaining systems of exchange and reciprocity.

Five countries and dozens of US communities have recognized the rights of nature and are resolving to provide adequate protection for the health of local ecosystems. It is our responsibility to recognize and respect the rights of the natural world so that we may sustain and protect our environment, and help secure the well-being of future generations.

ENVIRONMENTAL SUSTAINABILITY

From the impacts of climate change, to the tar sands of Alberta to mountaintop removal for coal extraction, to fracking and the destruction of vast tropical rainforests, we have witnessed the horrifying damage these negligent practices are imposing on our environment. This resolution will help provide environmental protection and sustainability.

FINANCIAL IMPLICATIONS

There is no limit on the value of the Rights of Nature.

References:

Global Alliance for the Rights of Nature

<https://therightsofnature.org/what-is-rights-of-nature/#:~:text=Rights%20of%20Nature%20is%20the%20recognition%20and%20honoring%20that%20Nature%20has%20rights.&text=Rather%20than%20treating%20nature%20as,and%20regenerate%20its%20vital%20cycles.>

CONTACT PERSONS

Cheryl Davila

Councilmember District 2

510.981.7120

[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, RECOGNIZING THAT THE NATURAL LIVING WORLD HAS A RIGHT TO EXIST, THRIVE, REGENERATE AND EVOLVE ITS LIFE CYCLES; TO PROTECT THE ECOSYSTEMS UPON WHICH OUR OWN VITALITY DEPENDS

WHEREAS, the natural living world has a right to exist, thrive, regenerate and evolve its life cycles; and

WHEREAS, all rights, including human rights, depend on the health and vitality of Earth's living systems; and

WHEREAS, our current laws view nature as human-owned property, confirming human authority over all of nature; and

WHEREAS, the natural world has no legal standing in a court of law; and

WHEREAS, the current legal systems are doing very little to protect our ecosystems from the destruction by economically driven industrialization; and

WHEREAS, from the impacts of climate change, to the tar sands of Alberta to mountaintop removal for coal extraction, to fracking and the destruction of vast tropical rainforests, we have witnessed the horrifying damage these negligent practices are imposing on our environment; and

WHEREAS, not only is there no regard to the impacts this will have on future generations, but the degradation of our natural world is often encouraged; and

WHEREAS, we must redraw the boundaries of the economy taking into consideration the ecological and planetary limits; and

WHEREAS, there needs to be a legal shift in the way we view our human relationship with the natural world; and

WHEREAS, we must transform our human relationship with nature from a property-based to a legal rights-bearing entity; and

WHEREAS, the needs of nature must be elevated and protected by legal rights, and maintained through life-sustaining systems of exchange and reciprocity; and

WHEREAS, five countries and dozens of US communities have recognized the rights of nature and are dedicated to providing adequate protection for the health of the local ecosystem; and

WHEREAS, it is our responsibility to recognize and respect the rights of the natural world so that we may sustain and protect our environment, and help secure the well-being of future generations.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley recognizes the Rights of our local ecosystem to exist, flourish, and regenerate its natural capacities.

Recognizing these rights places obligations on residents to live within, not above, the natural world, of which we are only one part, and to protect and replenish the ecosystems upon which our mutual well being depends. In essence, it is necessary to transform our human relationship with nature from property-based to a legal rights-bearing entity.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
October 27, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Providing our Unhoused Community with Fire Extinguishers

#### RECOMMENDATION

Direct the City Manager to use existing homeless services funding to develop a program to provide fire extinguishers, fire prevention tools and deploy them through the community based homeless services providers to distribute to our unhoused community.

Short term referral to additionally, require some elements of this program be deployed immediately, with a full program deployment within six months.

#### BACKGROUND

On any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks or in vehicles) according to the [Alameda County 2019 Point-In-Time Count](#). A growing number of residents are housing insecure and at risk of becoming homeless. A majority of unhoused Berkeley residents are people of color, seniors and disabled.

The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program.

Cooking fires and accidents are common among unhoused populations as they often use portable stoves, wood, and charcoal briquettes which lack safety precautions. Combined with strong winds near brushes these small fires have dangerous implications. For example, in 2018, a fire from a stove at a homeless encampment in Bel Air caused a large brush fire that incinerated several homes. It became dangerous very quickly because the homeless population lacked extinguishing equipment and the winds allowed to fire to travel. This same thing occurred multiple times in Malibu. In just May of this year, a homeless encampment in San Jose was on fire and began to spread to Guadalupe River.

Consider the Homeless has acquired and deployed fire extinguishers to those temporarily living in tents and other alternative housing. They have personally delivered those extinguishers and track use, as well as helping to formulate safety plans. Each time an extinguisher is used it must be replaced or refilled.

With the growing climate concerns and fires plaguing California, it is essential that the City does everything it can to protect the safety of our people and preemptively stop the spread of preventable fires. Recently, there have been a few encampment fires. One fire resulted in injuries to one of the encampment residents leading to extensive burns to their body requiring surgeries and extended hospitalization.

### FINANCIAL IMPLICATIONS

An estimate of \$25,000 for the first year, with the purchase of about 500 fire extinguishers to place across encampments and RV and vehicle communities in the City of Berkeley that are easily accessible to our unhoused residents. The average cost of a Fire Extinguishers is \$50. A bulk purchase, as well as reconditioned equipment could result in additional saving. New fire extinguisher equipment comes with approximately a six year warranty. Best Equipment Co. LLC, provided discounted fire extinguishers at the Shake Out last year, for about \$38, \$41.52 with tax. Fire extinguisher boxes to house the extinguishers would require additional costs of approximately \$50 per unit. However, the housing box may not be appropriate for this purpose.

### ENVIRONMENTAL SUSTAINABILITY

Allowing communities to have tools to prevent and stop fires furthers protects other communities and the environment.

### CONTACT PERSONS

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

Sanjita Pamidimukkala  
Eshal Sandhu  
District 2 Interns

### ATTACHMENTS:

1. Resolution

### REFERENCES:

1. Best Equipment Co. LLC 510.655.8882
2. Fire Extinguisher at Home Depot  
<https://www.homedepot.com/p/Kidde-PRO-210-2A-10B-C-Fire-Extinguisher-21029292/100552654>



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
PROVIDING OUR HOUSELESSNESS COMMUNITY WITH FIRE EXTINGUISHERS

WHEREAS, On any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks or in vehicles) according to the [Alameda County 2019 Point-In-Time Count](#). A growing number of residents are housing insecure and at risk of becoming homeless. A majority of unhoused Berkeley residents are people of color, seniors and disabled; and

WHEREAS, The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program.

WHEREAS, Cooking fires and accidents are common among unhoused populations as they often use portable stoves, wood, and charcoal briquettes which lack safety precautions. Combined with strong winds near brushes these small fires have dangerous implications. For example, in 2018, a fire from a stove at a homeless encampment in Bel Air caused a large brush fire that incinerated several homes. It became dangerous very quickly because the homeless population lacked extinguishing equipment and the winds allowed to fire to travel. This same thing occurred multiple times in Malibu. In just May of this year, a homeless encampment in San Jose was on fire and began to spread to Guadalupe River.; and

WHEREAS, Consider the Homeless has acquired and deployed fire extinguishers to those temporarily living in tents and other alternative housing. They have personally delivered those extinguishers and track use, as well as helping to formulate safety plans. Each time an extinguisher is used it must be replaced or refilled; and

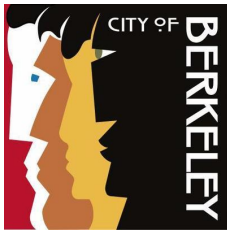
WHEREAS, With the growing climate concerns and fires plaguing California, it is essential that the City does everything it can to protect the safety of our people and preemptively stop the spread of preventable fires. Recently, there have been a few encampment fires. One fire resulted in injuries to one of the encampment residents leading to extensive burns to their body requiring surgeries and extended hospitalization.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California supports not only the increased accessibility of fire extinguishers and fire prevention products for the homeless; and

BE IT FURTHER RESOLVED, the Council of the City of Berkeley hereby direct the City Manager to use existing homeless services funding to develop a program to provide fire extinguishers, fire prevention tools and deploy them through the community based homeless services providers to distribute to our unhoused community.

BE IT FURTHER RESOLVED, the Council of the City of Berkeley hereby does a short term referral to additionally, require some elements of this program be deployed immediately, with a full program deployment within six months.





Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR  
October 27, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin (Co-Sponsor)

Subject: Convert 62nd Street between King St, and Adeline St. into a One-Way Line that exits in the direction of Adeline St.

RECOMMENDATION

Refer to the City Manager to convert 62nd Street between King St. and Adeline St. into a one-way lane that exits to Adeline and blocks motorists from entering 62nd Street through Adeline Street.

CURRENT SITUATION

At the intersection of 62nd Street between Adeline and King Streets, dangerous driving behavior has been observed threatening pedestrians, cyclists, and motorists. These observed behaviors include speeding, not stopping at stop signs, and not yielding for pedestrians, all of which have led to near-miss collisions. Though there are stop signs and traffic circles to deter speeding, many drivers ignore the stop signs off of Adeline Street and through 62nd Street, especially during rush hours. Delivery trucks, such as UPS, have also been spotted running these stop signs. Furthermore, it has been difficult to report these incidents as many cars driving these streets lack license plates.

These conditions increase the risks of car accidents and endanger pedestrians and bicyclists. The risk to bicyclists is especially dangerous in this area because 62nd Street feeds directly into the bicycle thoroughfare on King Street. Residents at this intersection have observed near misses almost every day, particularly during rush hours when both cars and bicyclists commute through the 62nd Street and King Street intersection on a regular basis. This area also receives a lot of traffic by pedestrians, cars, and bicyclists on Farmers Market Days (Tuesdays), and furthermore, there are a total of seventeen children and numerous families with pets that live on 62nd Street. Multiple pedestrians and bicyclists have already been injured as a result of these traffic issues. By sheer luck, none of these accidents have been fatal, but the City must support infrastructure that promotes pedestrian safety and reduces traffic collisions in order to avoid a tragedy.

BACKGROUND

The intersection of 62nd Street and King Street, which is located near the border of Oakland, has had numerous issues with crime. In recent years, illegal dumping, gunfire, and various traffic violations have proliferated. This year alone, there have already been

at least three reported cases of gun-related crimes at this intersection. Most recently, there have been reports of gunfire on August 12, 2020<sup>1</sup>.

In order to deter traffic violations, traffic circles and stop signs have been installed. Unfortunately, as mentioned previously, these measures have been insufficient in curbing the issue of reckless driving and preventing traffic collisions and confusion. Further work needs to be done in order to deter traffic violations and ensure pedestrian and bike safety.

Based on community consultations, many people have supported transitioning this busy intersection into a one-way block, including all the residents who are at the most dangerous parts of the 62nd Street corridor between Adeline and King Street. Doing this would contain the traffic flow, make it easier for pedestrians to cross the street, and decrease the number of traffic violations. Those wishing to access the neighborhood can do so a half block from 62nd and Adeline by making a right turn at Adeline and King St. Here, the turn is more likely to slow traffic coming into the neighborhood because it is a sharper right turn rather than a gentle turn that does not promote slowing down. Although this item is not a silver bullet in addressing all of the problems, it is a needed step in order to bring some order to the area.

The Council should refer to the Public Works Department to formulate a plan that would convert 62nd Street into a one-way lane between King St. and Adeline St. to block off motorists who enter from Adeline St. If this item passes, the Department should move forward with this request once its staff has addressed their immediate priorities.

#### RATIONALE FOR RECOMMENDATION

In Berkeley, street safety is a priority. Based on consultations with constituents and reported crimes, action must be taken to substantially decrease traffic violations and prevent the potential for serious injury at this intersection. The urgency for this action is particularly high given the number of young children who live at or near this intersection as well as patrons of the Farmers Market, and cyclists who use the King St. bike boulevard.

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

In December of 2013, the City Council adopted the Complete Streets Policy which is determined to create a “comprehensive, integrated transportation network with infrastructure and design that allows safe and convenient travel”<sup>2</sup> for all users. This includes pedestrians, persons with disabilities, motorists, bicyclists, users, and operators of public transportation, seniors, children, youth, and families.

The Complete Streets Policy goal is to “provide safe, comfortable, and convenient travel along and across streets.”<sup>3</sup> If the City is dedicated to creating a community of traffic

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<sup>1</sup> <https://www.dailycal.org/2020/08/17/berkeley-police-department-responds-to-reports-of-gunfire/>

<sup>2</sup> <https://www.cityofberkeley.info/completestreetspolicy/>

<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley%20Complete%20Street%20Resolution%2012%2011%2012.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%20Complete%20Street%20Resolution%2012%2011%2012.pdf)

safety that protects all pedestrians from auto-related accidents, the Council should look into transitioning parts of 62nd Street into a one-way lane.

#### CONSULTATION OVERVIEW

The District 3 Office and the Berkeley Police Department have met with constituents to discuss the rampant issues in this neighborhood. Constituent concerns with safety, along with their demands on converting 62nd Street into a one-way lane, have informed this recommendation.

#### ENVIRONMENTAL SUSTAINABILITY

No adverse effects on the environment. A one-way lane conversion will help mitigate traffic, promote pedestrian safety, and create a safer intersection.

#### FISCAL IMPACTS

Staff time and additional costs to be determined by the Public Works Department.

#### CONTACT PERSON

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Katie Ly

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**SOPHIE HAHN**

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 shahn@cityofberkeley.info

CONSENT CALENDAR

October 27, 2020

To: Honorable Members of the City Council  
 From: Vice Mayor Sophie Hahn (Author) and Mayor Jesse Arreguin (Co-Sponsor)  
 Subject: Support for Berkeley Mutual Aid

RECOMMENDATION

Refer to the City Manager and to the November FY2020 AAO budget adjustment process to identify existing resources, or propose a new allocation of funds, to provide emergency financial support to Berkeley Mutual Aid (BMA) to allow the organization to continue its highly valued programs and services addressing the needs of Berkeley residents sheltering-in- place during the COVID-19 health emergency. Support required for BMA to continue providing critical services to the community is \$3,000 per month, starting as soon as possible and continuing until 3 months after the COVID-19 emergency order is lifted.

SUMMARY

The outbreak of COVID-19, and subsequent orders by the Health Officer imposing measures to control its spread, have created heightened needs across Berkeley, as well as a groundswell of neighbors who want to help. Since mid-March, Berkeley Mutual Aid has been serving residents of Berkeley who are at high risk for COVID-19 by matching them with volunteers who can meet their basic needs, including providing essential supplies (e.g., food, toiletries, prescriptions) and navigating social services. To ensure that BMA can continue this work, and potentially become a long-term volunteer coordination partner for the City, this measure refers to the City Manager to identify and allocate, or recommend to the City Council, funds to support BMA so the organization can hire a coordinator to manage the important and growing responsibilities of the organization.

BACKGROUND

Since mid-March, [Berkeley Mutual Aid \(BMA\)](#) has been serving residents of Berkeley who are at high risk for COVID-19 by matching them with volunteers who can meet their basic needs. This includes pairing lower-risk neighbors with higher-risk neighbors who need essential supplies (e.g., food, toiletries, prescriptions), help navigating social services, or connecting to overcome social isolation. BMA estimates that it has facilitated more than 15,000 volunteer hours of neighbors pitching in to help some of Berkeley's most vulnerable and impacted residents stay safe and well.

In addition, BMA has expanded to help meet a broader community need for food aid, personal protective equipment (PPE) supplies, financial assistance, emotional support, and navigation of various social services. The organization has partnered the City's Office of Emergency Services (OES), Senior Centers, the Berkeley Health Department, and other mutual aid groups and NGOs that are working to support the Berkeley community. In addition, BMA works to expand access to other support systems, for example, with volunteers who pick up the City's Tuesday Grab 'n Go lunches and deliver them to seniors at their homes. BMA's work serves members of the public in every zip code throughout Berkeley, and provides a vital hub to help ensure all volunteer and community efforts are successful.

In September, BMA celebrated six-months since volunteers first took action to create the concept, launch a website and rapidly deploy their "matching" services. Over time, the number of volunteers and community members-in-need has significantly increased, and the organization has taken on additional roles and mandates. BMA's all-volunteer board members, who have worked long hours to make all of these benefits for the community possible, need the support of a paid coordinator so the organization can continue meeting Berkeley residents' needs in what is becoming a long-term pandemic.

Providing financial support to BMA will help the City by: (1) intaking, matching, and managing volunteers providing mutual aid and members of the public in need of help; (2) obtaining food, supplies and materials and coordinating donations for Berkeley residents who most need them; and (3) building a sustainable, community-centered organization that can serve in other emergencies, such as wildfires and earthquakes, and provide ongoing community volunteer opportunities, matching, coordination and management, and support for vulnerable residents.

BMA has risen to the challenge of the COVID-19 emergency in providing mutual aid to Berkeley residents who need it. As the organization approaches the limits of what an all-volunteer board can achieve, the City should provide financial support for BMA so the organization can continue to provide mutual aid during the current COVID-19 and for the long term.

#### FISCAL IMPACTS

Cost: \$36,000 annually. Savings: The ability to mobilize volunteers in a coordinated, organized manner through Berkeley Mutual Aid means less vulnerable citizens going without the help and support they need. Assigning volunteers to help with basic needs like grocery shopping, picking up prescriptions, etc. - at no cost to the resident - reduces exposure for vulnerable individuals who are able to shelter in place more consistently, thereby reducing disease transmission and potential severe cases - for the City and our hospitals to manage. In addition, managing a large influx of generous volunteers is a function the City is not fully able to handle at this time, so Berkeley Mutual Aid provides a meaningful service in a time of crisis that might otherwise be a burden or cost for the City. The cost associated with helping to make this organization viable over the long term of the COVID-19 crisis, especially in light of the many months the organization has



already operated with all volunteer labor (7+), is very small in light of the many benefits to the community and reductions in potential costs to our public health system and City.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-981-7150 (ofc); 510-682-5905 (cell)

ATTACHMENT

1. Fact Sheet: Berkeley Mutual Aid (BMA)

# Fact Sheet: [Berkeley Mutual Aid \(BMA\)](#)

August 2020

Berkeley Mutual Aid (BMA) is a volunteer, community-based effort that started in response to the COVID shelter-in-place mandates in March 2020. BMA is currently a project of the Berkeley Disaster Preparedness Neighborhood Network, a 501(c)3 nonprofit dedicated to supporting our community in preparation for various disasters.

We exist to provide a platform and infrastructure for neighbors to help neighbors. Our focus is on “Solidarity, not Charity,” recognizing the contributions of everyone in the network. We believe that building a stronger social safety net benefits everyone in the community, and we plan to sustain BMA’s community-building services beyond the COVID crisis that brought it into being.

Our primary work involves pairing volunteers who feel a deep desire to help with a buddy who may be more at risk, or more in need. These matches provide ongoing connections and potentially lifesaving support that people can rely on in the safest way possible. Our [Safety Protocols](#) are constantly reviewed and updated by medical professionals. Our community is updated to any significant changes.

While we started solely as a matching platform, we’ve accomplished so much more in five months. From March to August, we estimate BMA has directly organized more than 15,000 hours of volunteer labor to provide a range of support, including:

1. **Matching people with a healthy volunteer “buddy”**(more than 475 matches to date, representing approximately 8,500 volunteer hours) to ensure basic needs are met on an ongoing basis, including grocery shopping and picking up prescriptions or other essentials. We support people who are elderly, have significant health risks, are facing financial hardship, or are caring for people with these risks. Just over a fourth of our requesters have self-identified as needing financial assistance. We try to provide emergency financial help for those who cannot afford the essentials. Some of these pairs have been to help low-income families struggling to pay for food, and we estimate that these have provided at least \$10,000 in food assistance.
2. **Creating connectedness and collective resilience**(100 “chat buddy” matches to date, representing about 3,200 volunteer hours) at a time when comfort and connection are especially critical to our wellbeing. For people who indicate they are feeling isolated and lonely through shelter-in-place, a social “buddy” will check in weekly and make sure each neighbor is okay. We have also welcomed over 50 participants to supportive virtual gatherings that help create collective resilience and connection and offered space for self-care activities like improv and meditation.
3. **Help navigating social assistance programs**(more than 50 people helped, representing nearly 3,000 volunteer hours)—food, unemployment, childcare—through referrals, introductions, and follow-up. COVID is forcing many people to confront new and evolving challenges, financially, emotionally, and logistically. This is especially hard for folks without digital access, a challenge faced by approximately 15% of requesters in our network.
4. **Case management assistance** led by a team of neighbors with social work, psychology, and crisis counseling skills, for people whose needs are especially complex in terms of behavioral health, mental health, financial needs, physical health, and/or housing. Our case managers do not act in a professional capacity but as caring neighbors who can contribute a high level of expertise for people who need it.
5. **Addressing the most pressing supply-chain challenges**. We are helping get PPE to hospitals, masks and hand sanitizer to the elderly, first aid supplies to protesters, and food donations to elderly and low-income people, both directly and through partnerships with other organizations. This includes donating more than \$3,000 worth of supplies to Berkeley’s Meals on Wheels, providing over \$1,000 in direct emergency food/supplies assistance, distributing fresh-picked fruit to local food aid organizations, and distributing hundreds of fabric masks and hand sanitizer to at-risk populations.

## Our Approach

BMA conducts outreach and builds our network through flyers, [online signups](#), phone (510-519-6770), partnership with The City of Berkeley, other local nonprofits (including Meals on Wheels, Women's Daytime Drop-in Center, Senior Centers, Berkeley Aging Services Division, J-Sei, Berkeley Mental Health, 2-1-1 Alameda County, Alameda County Social Services, and others), and the members of BMA. Outreach and our intake, matching, and case management team is bilingual in Spanish and English. We are developing a team to expand those systems to include Mandarin and Cantonese.

Although, as the name implies, BMA's focus is on Berkeley, we understand that disasters pay no attention to municipal boundaries, so our support extends beyond to include Albany, El Cerrito, Kensington, Emeryville, Oakland, and Richmond.

We also work with other mutual aid organizations to support each other, including East Bay Resilience Hub, NorCal Resiliency Network, Halcyon Help, South Berkeley Mutual Aid, Oakland at Risk, Hayward Helping Hands, El Cerrito Mutual Aid, and others. We also connect with an international collective of mutual aid groups, sharing ideas and resources. We recently led a session on [Mutual Aid for Seniors](#), and our notes on the subject were widely shared. Every two weeks, BMA's steering team meets with a representative of Berkeley's Office of Emergency Services and the Berkeley Health Department to exchange information.

By phone and email, BMA volunteers field a range of public questions ranging from "Where can I get a mask?" to "Is there help for me to avoid eviction?" BMA is constantly researching to find resources and information that speak to the needs expressed by the community.

BMA also promotes the outreach efforts of [Berkeley Disaster Prep Neighborhood Network](#) to get individuals and communities to better prepare for other disasters during this pandemic. So far, efforts have included Zoom sessions on [improvising leadership in disaster response](#) and surviving COVID-19. A future session on mental health in a pandemic is already planned. BMA encourages volunteers to serve as evacuation buddies in case of a wildfire, ensuring that seniors who may otherwise miss a lifesaving evacuation alert will be more connected and informed.

## Communications

The BMA community stays informed and connected via a weekly [newsletter](#) that goes out to more than 800 recipients. The BMA newsletter includes calls to action, resources, and suggestions for ways that people can volunteer beyond its own mutual aid network. Resources are also kept timely and up to date on the BMA [Community Resources](#) page.

## New Initiatives

BMA has taken on initiatives to make sure that everyone in Berkeley has access to masks and hand sanitizer, beginning with its most vulnerable populations. Its [Need a Mask | Make a Mask](#) program connects those who need masks with those who have the skills to create them. BMA uses the same infrastructure to distribute hand sanitizer to individuals and groups as well, working with UC Berkeley students who have been making gallons in their labs.

BMA has also developed exciting initiatives such as the Community [Gleaning Project](#), which engages volunteers to pick fruit from trees at homes that have bounty beyond what they can use themselves, and redistribute it to people in need through Strawberry Creek Park Coalition (serving unhoused people), Meals on Wheels, and the Berkeley Food Pantry. In this project BMA will be able to give free, fresh, healthy, and locally sourced food to people in need, while ensuring that the process takes place in accordance with strict anti-infection safety protocols. The first pilot pick, in mid-August, delivered approximately 60 pounds of fruit.

## Conclusion

The COVID-19 pandemic has laid bare fundamental gaps in the social safety net in the United States, forcing impossible choices for many, and creating new stressors for people already struggling on the edge. Through mutual aid and solidarity, Berkeley Mutual Aid strives to shine a light in this dark moment, showing ourselves and each other that there is enough for everyone and that by working together, we can get through this. We are building a stronger, safer, and more connected community. We protect us!





Lori Droste  
Councilmember District 8

Consent Calendar  
October 27, 2020

**To:** Honorable Mayor and Members of the City Council  
**From:** Councilmember Lori Droste, Mayor Jesse Arreguin, Councilmember Rigel Robinson  
**Subject:** Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration

### **Recommendation**

Refer to the City Manager and the Facilities, Infrastructure, Transportation, Environment and Sustainability Policy Committee to develop ordinance language to make the temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to become permanent. Ordinance language should include:

- *Merchant opt-out:* To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders should automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation.
- *Fee waivers:* Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits should be waived for all transitioning permits.
- *Protocols for transfer of parklets if businesses change, turn over, etc.*

### **Background**

Since the parklet pilot program began in 2013, the City of Berkeley has explored the use of parklets to improve the pedestrian environment, support commercial areas, and re-

envision public spaces. By 2018, the City had six parklets and City Council adopted a parklets ordinance to make the program permanent.<sup>1</sup>

With the rise of COVID-19, the City has adopted new public health orders to protect the safety of residents by mandating social distancing protocols and new rules around indoor dining, recreation, and gatherings. Parklets have emerged as a safe way for restaurants to allow patrons to eat outside with ample space in between diners. Salons and gyms have utilized parklets to move services outside. Currently, 29 businesses have applied for outdoor commerce permits (which includes both sidewalk seating and parklets) with 13 of those applications for parklets.

To support businesses as quickly as possible, the City passed an urgency ordinance<sup>2</sup> to establish outdoor dining and commerce in the public right of way. As currently written, the simplified application process as well as the permit for outdoor dining and commerce will last as long as the City's declaration of emergency. The fee waiver associated with this ordinance lasts up to one year (as of June 2020).

When the City's declaration of emergency ends, these permits and the outdoor dining and commerce structures in the public right of way will expire.

### **Financial Implications**

The installation of parklets (conversion of on-street parking spaces into public spaces and amenities) may result in a slight reduction in parking revenues over time. Fee waivers will also have financial implications.

### **Contact**

Councilmember Lori Droste, District 8, 510-981-7180

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/05\\_May/Documents/2018-05-15\\_Item\\_08\\_Establishment\\_of\\_the\\_Parklet.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-15_Item_08_Establishment_of_the_Parklet.aspx)

<sup>2</sup> <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>



Police Review Commission

## INFORMATION CALENDAR

October 27, 2020

To: Honorable Mayor and Members of the City Council  
 From: Police Review Commission  
 Submitted by: Kitty Calavita, Chairperson, Police Review Commission  
 Subject: Police Review Commission Work Plan for 2020-2021

### INTRODUCTION

The Police Review Commission submits its work plan for the year beginning July 2020, in compliance with the 2016 City Council directive for commissions to submit work plans at the beginning of each fiscal year.

### CURRENT SITUATION AND ITS EFFECTS

The Commission adopted the attached work plan at its September 9, 2020 meeting. (M/S/C: Mikiten/Chang; Ayes: Calavita, Chang, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey; Noes: None; Abstain: None; Absent: Allamby.)

The work plan includes a list of policy subjects that the Commission is or anticipates addressing in this fiscal year. Foremost among those subjects is the Citywide effort to transform community safety; the Commission expects to participate in the upcoming process of envisioning and shaping a reimagined police department. As time and resources permit, the Commission would like more training about police procedures and tactics, and to learn more about training that our police officers receive. Additionally, the Commission would like to conduct more outreach to ensure that the public is aware of the Commission's existence and role. Finally, the Commission's role in hearing complaints of alleged police misconduct will continue.

If the ballot measure to establish a new Police Accountability Board and Director of Police Accountability position is passed by the voters this November, the current Commission should be phased out by June 30, 2021, which coincides with the period covered by this work plan.

### BACKGROUND

The Police Review Commission was established by ordinance in 1973 to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

Policy work is carried out by the Commission with support from staff, while complaint investigations are handled by staff with commissioner involvement if a case proceeds to hearing. Historically, review of police policies, practices and procedures was largely determined by the Commission itself, with some review generated by members of the public or the City Council but, in light of the heightened scrutiny of law enforcement and push for racial equity, more referrals have been coming from the City Council since June of this year. The number of complaint investigations and hearings remain externally driven.

ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects or opportunities are associated with the subject of this report.

POSSIBLE FUTURE ACTION

While the attached work plan reflects the Commission's priorities as of the date of its adoption, it is subject to change throughout the year should more urgent or important matters arise. These matters may take precedence as a result of Council referrals, incidents involving the police, or requests from the community.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

No fiscal impacts of possible future action are anticipated for the current fiscal year.

CONTACT PERSON

Katherine J. Lee, Police Review Commission Officer, 510-981-4960

Attachments:

- 1: Police Review Commission Work Plan for 2020-2021





Police Review Commission

## **Police Review Commission 2020-2021 Work Plan**

### **Commission mission statement**

The general purpose of the Police Review Commission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department. (B.M.C. sec. 3.32.010.)

### **Goal #1: Participate in the process to transform community safety in the City of Berkeley.**

#### a. Resources

PRC staff, BPD and other City staff, and consultants.

#### b. Program activities

The City Council, in a reflection of the community's desires, has directed the City Manager to embark on a process of re-imagining community safety in the City, which includes limiting the role of law enforcement and identifying elements of police work that can be achieved through alternative programs, policies, systems, and community investments. As the body tasked with reviewing police policies, practices and procedures, the PRC has a valuable perspective on the current work of our police force, and expects to participate, with other community stakeholders, in envisioning and shaping a reimagined police department that sheds some responsibilities – such as mental health responses and traffic enforcement – and employs alternative approaches to remaining duties where appropriate.

#### c. Outputs

Recommendations for programs, structures, and initiatives to transform community safety in the City, especially as they relate to changes in the current scope of responsibilities of the Police Department.

**Goal #2: Review and set BPD policies, practices, and procedures.**

a. Resources

PRC staff, BPD staff, meeting space or videoconferencing capability.

b. Program activities

A policy review may be initiated by the Commission, by a City Council referral, the Police Department, or a member of the public. The initial review steps may be undertaken by the Commission, a commission subcommittee, or staff, depending on the nature and breadth of the policy, practice, or procedure in question. The review could include: holding meetings and hearings to receive input from community members; meeting with and asking questions of the BPD; studying current policies, practices, and procedures; gathering policies from other jurisdictions; and surveying the literature regarding best practices.

If a subcommittee or staff perform the initial work, it will be presented to the full Commission for review and approval.

c. Outputs

Based on the information gathered, the Commission will make a recommendation to the BPD, City Manager or City Council about a change in a policy, practice, or procedure.

d. Outcomes

The desired change is a new or improved policy, practice, or procedure. If new, it will provide guidance where it did not previously exist or was not well-documented. A revised policy, practice, or procedure will reflect a change to conform with new laws, to embrace best practices that have changed since the original policy was established, or to better align with community values.

This fiscal year, policy review must be considered in the context of the overarching effort to transform community safety.

e. Specific policies, practices, or procedures to be addressed in the current fiscal year will include ongoing, recurring, and new reviews.

Topics for which review was begun last fiscal year and will continue:

- New or revised policies and practices to address disparities in BPD pedestrian and traffic stop, citation, search, and arrest rates; and other

efforts to ensure unbiased policing. (Note that three PRC members are on the Mayor's Working Group on Fair & Impartial Policing.)

- Complete conversion of all BPD General Orders into Lexipol policies.
- Surveillance Acquisition Policies and Surveillance Technology Use Policies. Under the Surveillance Technology Use and Community Safety Ordinance, the PRC reviews these policies when new technologies or new uses of existing technologies are proposed, and makes a recommendation to the Council.

Matters for which review has begun or is anticipated to start this year:

- Uses of tear gas in narrowly defined circumstances.
- Evaluation of a proposed ordinance regulating Police Acquisition and Use of Controlled Equipment, as referred from the Council Agenda & Rules Committee.
- Assessment of use of body-worn cameras and re-visiting of policy recommendations made in March 2018.

Recurring topics:

- Memoranda of understanding and mutual aid pacts with other law enforcement agencies (an annual process).

Not all reviews of police policies, practices, or procedures can be anticipated in advance, as some issues are undertaken based on a request from the City Council or a civilian. Also, the PRC may undertake a review in response to particular police activity or incident.

### **Goal #3: Process complaints regarding individual police officer misconduct.**

#### a. Resources

PRC staff are responsible for carrying out this goal, with critical participation by Commissioners. BPD staff are also involved.

#### b. Program activities

Staff will receive complaints of alleged misconduct by police officers, conduct an investigation, and, if warranted, prepare the case for a hearing before a Board of Inquiry. Rotating panels of three Commissioners serve as the BOI, except in death cases, where the Commission sits as a whole.

Cases may be closed without a hearing; the reasons for such closures include: mediation between the complainant and subject officer is completed; the complainant withdraws the complaint; or the complainant does not cooperate in the investigation.

c. Outputs

Following a BOI hearing, a Findings Report will be sent to the Chief of Police and City Manager, who may rely on the PRC's findings in determining whether to impose discipline.

Based on prior years, it is anticipated that about seven BOI hearings will be held this fiscal year.

d. Outcomes

By providing a venue for investigation of complaints that is separate from the Police Department, civilians may be more willing to file complaints, and view the process as more objective than investigations conducted by the Police Department internally. Addressing problematic behavior identified by the PRC may result in corrective action or discipline. Police officers' awareness of the PRC's complaint process may influence their behavior in a positive way.

**Goal #4: Participate in training.**

a. Resources

PRC staff and BPD staff

b. Program activities

Presently, Commissioners are not subject to any mandatory or prescribed course of training, other than the training that all commission chairs and vice-chairs must complete. Each Commissioner receives a 2-hour orientation from PRC staff covering topics relevant to service on the commission, the role of Commissioners and PRC staff in reviewing policy and processing complaints, and service on Boards of Inquiry. Commissioners are to meet with the Chief of Police and schedule a ride-along.

Currently, additional training on the organization of the BPD, police policies, relevant law, and officer training occurs sporadically. In light of an October 2018 Council referral asking the PRC to explore mandatory

training requirements, the Commission has asked the PRC Chair and PRC Officer to arrange for ongoing training.

c. Outputs

The results will be Commissioners who are better and more uniformly knowledgeable about police procedures, staffing and organization, training, tactics, and relevant law.

d. Outcomes

The outcome will be policy reviews and Board of Inquiry decisions that are based on a deeper understanding of police work and police-community relations such that both the police and the community will have more confidence in the work of the PRC.

**Goal #5: Conduct outreach activities.**

a. Resources

PRC staff

b. Program activities

The Commission, through its Outreach Subcommittee, will develop and implement activities and strategies to better inform the community about the PRC's mission and services, including its policy review function and intake of civilian complaints about officer misconduct as an agency independent of the Police Department.

c. Outputs

The results will include increased presence at community fairs and other events; speaking to community groups, churches, and the like; holding Commission meetings at various locations; updated literature describing the Commission's work; a revamped website.

d. Outcomes

The outcome will be larger numbers of community members who are aware of the PRC and informed about its services and activities.



| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                             |
|-------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                                             |
| Sept. 29                                                                      | 1. Vision 2050                                                                              |
| Oct. 20                                                                       | 1. Proposed Navigable Cities Framework<br>2. UC Berkeley Long Range Development Plan Update |
| Jan. 12                                                                       | 1. Update: Zero Waste Priorities<br>2. Undergrounding Task Force Update                     |
| Feb. 16                                                                       | 1. BMASP/Berkeley Pier-WETA Ferry<br>2.                                                     |
| March 16                                                                      | 1.<br>2.                                                                                    |

| Unscheduled Workshops                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------|
| 1. Cannabis Health Considerations<br>2. Berkeley Police Department Hiring Practices (referred by the Public Safety Committee) |

| Unscheduled Presentations (City Manager)                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------|
| 1. Systems Realignment<br>2. Digital Strategic Plan/FUND\$ Replacement/Website Update<br>3. Update: Berkeley's 2020 Vision |

|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>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</b> <i>(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)</i></p> <p><b>From: Councilmember Harrison</b></p> <p><b>Recommendation:</b></p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.</li> </ol> <p><b>Financial Implications:</b> See report<br/> Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                                                                                                                                                                                        |
| 2. | <p><b>7. Adopt a Resolution to Upgrade Residential and Commercial Customers to 100% Greenhouse Gas Emissions-Free Electricity Plan and Municipal Accounts to 100% Renewable Plan</b> <i>(Reviewed by the Facilities, Infrastructure, Transportation, Environment &amp; Sustainability Committee) (Referred from the April 21, 2020 agenda)</i></p> <p><b>From: Councilmember Harrison (Author), Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)</b></p> <p><b>Recommendation:</b> 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 (&gt;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.</p> <p><b>Financial Implications:</b> See report<br/> Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p> |
| 3. | <p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p><b>Financial Implications:</b> None<br/> Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 4. | <p><b>Vote of No Confidence in the Police Chief</b></p> <p><b>From: Councilmember Davila (Author)</b></p> <p><b>Recommendation:</b> Adopt a resolution taking a Vote of No Confidence in the Police Chief.</p> <p><b>Financial Implications:</b> See report<br/> Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120<br/> <i>Note: Item referred to the Agenda &amp; Rules Committee as unfinished business from the 9/15/2020 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 11/14/20.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |



| CITY CLERK DEPARTMENT                                 |                      |                       |                                         |                   |
|-------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS      |                      |                       |                                         |                   |
| BEFORE THE CITY COUNCIL                               |                      |                       |                                         |                   |
| Address                                               | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                      |                      |                       |                                         |                   |
| 12 Indian Rock Path (single-family residence)         | ZAB                  | 10/6/2020             |                                         |                   |
|                                                       |                      |                       |                                         |                   |
|                                                       |                      |                       |                                         |                   |
| <b>Public Hearings Scheduled</b>                      |                      |                       |                                         |                   |
| 1346 Ordway St (legalize additions)                   | ZAB                  |                       |                                         | 10/13/2020        |
| 0 (2435) San Pablo Ave (construct mixed-use building) | ZAB                  |                       |                                         | 1/19/2021         |
|                                                       |                      |                       |                                         |                   |
|                                                       |                      |                       |                                         |                   |
| <b>Remanded to ZAB or LPC</b>                         |                      |                       |                                         |                   |
|                                                       |                      |                       |                                         |                   |
|                                                       |                      |                       |                                         |                   |
|                                                       |                      |                       |                                         |                   |
| <b>Notes</b>                                          |                      |                       |                                         |                   |
|                                                       |                      |                       |                                         |                   |
|                                                       |                      |                       |                                         |                   |
|                                                       |                      |                       |                                         |                   |

10/2/2020





Office of the City Manager

May 6, 2020

To: Honorable Mayor and Members of the City Council

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

Subject: **Resumption of certain Board and Commission meetings**

As you are aware, on March 12, 2020, I directed that most board and commission meetings be suspended for at least 60 days in order to help minimize the spread of COVID-19. Exceptions can be made if a board or commission has time-sensitive, legally mandated business to complete, subject to approval by the City Manager and Health Officer. On April 13, 2020, the City Council Agenda & Rules Committee recommended that this action remain in effect until it is determined by the City Manager, as the Director of Emergency Services, and the Health Officer that conditions are appropriate to resume meetings, while maintaining the health and safety of the community.

The purpose of this memo is to notify you that as of today, the Health Officer and I are authorizing certain board and commission meetings to resume with a virtual meeting format. In-person board/commission meetings are not authorized until further notice. Board/commission meetings will be held via Zoom, similar to the format being used by the City Council and City Council policy committees that have resumed meetings during the Shelter-in-Place Order.

Resuming certain board/commission meetings is necessary at this time to enable action on a range of time-sensitive issues. Examples include pending land use permit applications (some of which carry legal mandates for action within set time frames), land use policy efforts which are time-sensitive to address the acute housing crisis, and input required for pending tax decisions, such as to the Disaster and Fire Safety Commission regarding tax rates under Measure GG.

Board and commission meetings will be scheduled with enough lead time to allow agendas to be finalized, applicants and interested parties to be contacted, and public hearing notices to be posted. Staff are contacting board members/commissioners to let them know that certain boards/commissions are resuming. Members of the public may also reach out to commission secretaries (contact information is included on each commission webpage) to inquire about dates of future board/commission meetings.

Depending on the board/commission, initial virtual meetings will be scheduled in late May and June. Some commission meetings will take longer than others to schedule, as some of the same staff who are responsible for preparing commission meeting packets and notices are also serving as Disaster Service Workers. We appreciate everyone's patience as we move forward with next steps.

Boards/commissions that are authorized to resume meeting remotely are:

- Ashby and North Berkeley BART Station Zoning Standards Community Advisory Group
- Design Review Committee
- Disaster & Fire Safety Commission
- Fair Campaign Practices Commission
- Homeless Services Panel of Experts
- Housing Advisory Commission (limited to quasi-judicial activities)
- Joint Subcommittee on the Implementation of State Housing Laws
- Landmarks Preservation Commission
- Open Government Commission
- Personnel Board
- Planning Commission
- Police Review Commission
- Zoning Adjustments Board

I will consider authorizing additional boards/commissions to resume meeting on a case-by-case basis.

Web-based platforms allow board members/commissioners, staff, applicants, and members of the public to participate from their respective shelter-in-place locations. Commissioners who do not have access to a computer or internet will be provided with hard copies of all materials and can participate via phone.

Departments are organizing training on online meeting facilitation for staff and commission chairs, and we will hold practice runs to test out the technology.

Please contact me directly with any questions or concerns.

cc: Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

## Section 1. Boards and Commissions

Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee  
Fair Campaign Practices Commission  
Housing Advisory Commission (limited to quasi-judicial activities)  
Joint Subcommittee on the Implementation of State Housing Laws  
Landmarks Preservation Commission  
Open Government Commission  
Personnel Board  
Planning Commission  
Police Review Commission  
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

### Category B

Animal Care Commission  
Cannabis Commission  
Civic Arts Commission  
Children, Youth, and Recreation Commission  
Commission on Aging  
Commission on Disability  
Commission on Labor  
Commission on the Status of Women  
Community Environmental Advisory Commission  
Community Health Commission  
Disaster and Fire Safety Commission  
Elmwood Business Improvement District Advisory Board  
Energy Commission  
Homeless Commission  
Homeless Services Panel of Experts  
Housing Advisory Commission  
Human Welfare and Community Action Commission  
Measure O Bond Oversight Committee  
Mental Health Commission  
Parks and Waterfront Commission  
Peace and Justice Commission  
Public Works Commission  
Solano Avenue Business Improvement District Advisory Board  
Sugar-Sweetened Beverage Product Panel of Experts



Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council


For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

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

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk







Lori Droste  
Councilmember, District 8

## **ACTION CALENDAR**

June 30, 2020

**To:** Honorable Mayor and Members of the City Council

**From:** Councilmember Lori Droste (Author) and Councilmembers Rigel Robinson (Co-Sponsor) and Rashi Kesarwani (Co-Sponsor)

**Subject:** Commission Reorganization for Post-COVID19 Budget Recovery

### **RECOMMENDATION**

- 1) Reorganize existing commissions with the goal of achieving 20 total commissions.
- 2) Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions.
- 3) Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions.
- 4) Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.

## **PROBLEM/SUMMARY STATEMENT**

Demand for city workers staffing commissions is larger than the City's ability to supply it at an acceptable financial and public health cost. Thirty-seven commissions require valuable city staff time and funding that could be better spent providing essential services. The COVID-19 pandemic has impacted the City of Berkeley in a myriad of ways, resulting in enormous once-in-a-lifetime socioeconomic and public health impacts. While the City Manager and department heads are addressing how to best prepare and protect our residents, particularly our most vulnerable, they are also required to oversee an inordinate amount of commissions for a medium-sized city at a significant cost.

The City of Berkeley faces many challenges, including the COVID-19 pandemic and its resultant budget and staffing impacts. Prior to the onset of COVID-19, the City Council and staff spent significant Council time on items originating with the City's advisory commissions. As the Shelter in Place is gradually lifted, critical city staff will resume staffing these 37 commissions. As a result, too much valuable staff time will continue to be spent on supporting an excessive amount of commissions in Berkeley rather than addressing the basic needs of the City.

## **BACKGROUND**

### **Review of Existing Plans, Programs, Policies, and Laws**

The City of Berkeley has approximately thirty-seven commissions overseen by city administration, most of which have at least nine members and who are appointed by individual councilmembers. These commissions were intended to be a forum for public participation beyond what is feasible at the City Council, so that issues that come before the City Council can be adequately vetted.

Some commissions are required by charter or mandated by voter approval or state/federal mandate. Those commissions are the following:

1. Board of Library Trustees (charter)
2. Business Improvement Districts (state mandate)
3. Civic Arts Commission (charter)
4. Community Environmental Advisory Commission (state/federal mandate--CUPA)
5. Fair Campaign Practices Commission/Open Government (ballot measure)
6. Homeless Services Panel of Experts (ballot measure)
7. Housing Advisory Commission (state/federal mandate)
8. Human Welfare and Community Action (state/federal mandate)
9. Measure O Bond Oversight Committee (ballot measure)
10. Mental Health Commission (state/federal mandate)
11. Personnel (charter)

- 12. Police Review Commission (ballot measure)
- 13. Sugar-Sweetened Beverages (ballot measure)

Berkeley must have its own mental health commission because of its independent Mental Health Division. In order to receive services, the City needs to have to have an advisory board. Additionally, Berkeley’s Community Environmental Advisory Commission is a required commission in order to oversee Certified Unified Program Agency (CUPA) under California’s Environmental Protection Agency. Additionally, some commissions serve other purposes beyond policy advisories. The Children, Youth and Recreation Commission, Housing Advisory Commission, and the Human Welfare and Community Action Commission advise Council on community agency funding. However, some of the aforementioned quasi-judicial and state/federal mandated commissions do not need to stand independently and can be combined to meet mandated goals.

In comparison to neighboring jurisdictions of similar size, Berkeley has significantly more commissions. The median number of commissions for these cities is 12 and the average is 15.

| Comparable Bay Area City | Population (est.) | Number of Commissions | Links                                                                                                                                                                                                         |
|--------------------------|-------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Berkeley                 | 121,000           | 37                    | <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/External%20Roster.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - Commissions/External%20Roster.pdf</a> |
| Antioch                  | 112,000           | 6                     | <a href="https://www.antiochca.gov/government/boards-commissions/">https://www.antiochca.gov/government/boards-commissions/</a>                                                                               |
| Concord                  | 130,000           | 14                    | <a href="https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm">https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm</a>                                             |
| Daly City                | 107,000           | 7                     | <a href="http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm">http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm</a>         |
| Fairfield                | 117,000           | 7                     | <a href="https://www.fairfield.ca.gov/gov/comms/default.asp">https://www.fairfield.ca.gov/gov/comms/default.asp</a>                                                                                           |
| Fremont                  | 238,000           | 15                    | <a href="https://www.fremont.gov/76/Boards-Commissions-Committees">https://www.fremont.gov/76/Boards-Commissions-Committees</a>                                                                               |
| Hayward                  | 160,000           | 12                    | <a href="https://www.hayward-ca.gov/your-government/boards-commissions">https://www.hayward-ca.gov/your-government/boards-commissions</a>                                                                     |
| Richmond                 | 110,000           | 29                    | <a href="https://www.ci.richmond.ca.us/256/Boards-and-Commissions">https://www.ci.richmond.ca.us/256/Boards-and-Commissions</a>                                                                               |
| San Mateo                | 105,000           | 7                     | <a href="https://www.cityofsanmateo.org/60/Commissions-Boards">https://www.cityofsanmateo.org/60/Commissions-Boards</a>                                                                                       |

|           |         |    |                                                                                                                                                           |
|-----------|---------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sunnyvale | 153,000 | 10 | <a href="https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804">https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804</a> |
| Vallejo   | 122,000 | 17 | <a href="http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192">http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192</a>                                 |

### Consultation and Outreach

To understand the impact on various departments and staffing capacity, the following table shows which departments are responsible for overseeing various commissions.

| Commission Name                                                | Overseeing Department<br>(Total Commissions in<br>Department) |
|----------------------------------------------------------------|---------------------------------------------------------------|
| Animal Care Commission                                         | City Manager (7)                                              |
| Civic Arts Commission                                          | City Manager (7)                                              |
| Commission on the Status of Women                              | City Manager (7)                                              |
| Elmwood BID Advisory Board                                     | City Manager (7)                                              |
| Loan Administration Board                                      | City Manager (7)                                              |
| Peace and Justice Commission                                   | City Manager (7)                                              |
| Solano Ave BID Advisory Board                                  | City Manager (7)                                              |
|                                                                |                                                               |
| Cannabis Commission                                            | Planning (8)                                                  |
| Community Environmental Advisory Commission                    | Planning (8)                                                  |
| Design Review Committee                                        | Planning (8)                                                  |
| Energy Commission                                              | Planning (8)                                                  |
| Joint Subcommittee on the Implementation of State Housing Laws | Planning (8)                                                  |
| Landmarks Preservation Commission                              | Planning (8)                                                  |
| Planning Commission                                            | Planning (8)                                                  |
| Zoning Adjustments Board                                       | Planning (8)                                                  |
|                                                                |                                                               |
| Children, Youth, and Recreation Commission                     | Parks (3)                                                     |
| Parks and Waterfront Commission                                | Parks (3)                                                     |
| Youth Commission                                               | Parks (3)                                                     |
|                                                                |                                                               |
| Commission on Aging                                            | Health, Housing, and<br>Community Services<br>(HHCS) (10)     |
| Commission on Labor                                            | HHCS (10)                                                     |
| Community Health Commission                                    | HHCS (10)                                                     |

|                                                               |                     |
|---------------------------------------------------------------|---------------------|
| Homeless Commission                                           | HHCS (10)           |
| Homeless Services Panel of Experts                            | HHCS(10)            |
| Housing Advisory Commission                                   | HHCS (10)           |
| Human Welfare & Community Action Commission                   | HHCS (10)           |
| Measure O Bond Oversight Committee                            | HHCS (10)           |
| Mental Health Commission                                      | HHCS (10)           |
| Sugar-Sweetened Beverage Product Panel of Experts             | HHCS (10)           |
|                                                               |                     |
| Disaster and Fire Safety Commission                           | Fire (1)            |
|                                                               |                     |
| Commission on Disability                                      | Public Works (5)    |
| Public Works Commission                                       | Public Works (5)    |
| Traffic Circle Task Force                                     | Public Works (5)    |
| Transportation Commission                                     | Public Works (5)    |
| Zero Waste Commission                                         | Public Works (5)    |
|                                                               |                     |
| Fair Campaign Practices Commission/Open Government Commission | City Attorney (1)   |
|                                                               |                     |
| Personnel Board                                               | Human Resources (1) |
|                                                               |                     |
| Police Review Commission                                      | Police (1)          |
|                                                               |                     |
| Board of Library Trustees                                     | Library (1)         |

Gray=charter  
 Red=state/federal mandate  
 Yellow=quasi-judicial  
 Blue=ballot initiative  
 Orange=state/federal mandate and quasi-judicial  
 Green=quasi-judicial and ballot initiative

The departments that staff more than five commissions are Health, Housing, and Community Services (10 commissions), Planning (8 commissions), and the City Manager’s department (7 commissions). At the same time, some smaller departments (e.g. the City Attorney’s office) may be impacted just as meaningfully if they have fewer staff and larger individual commission workloads.

With the recent addition of policy committees, proposed legislation is now vetted by councilmembers in these forums. Each policy committee is focused on a particular

content area aligned with the City of Berkeley's strategic plan and is staffed and an advisory policy body to certain city departments. Members of the public are able to provide input at these committees as well. The policy committees currently have the following department alignment:

### **Department and Policy Committee alignment**

1. **Agenda and Rules**—all departments
2. **Budget and Finance**—City Manager, Clerk, Budget, and Finance
3. **Land Use and Economic Development**—Clerk, Planning, HHCS, City Attorney, and City Manager (OED)
4. **Public Safety**—Clerk, City Manager, Police, and Fire
5. **Facilities, Infrastructure, Transportation, Environment and Sustainability** (Clerk, City Manager, Planning, Public Works, and Parks)
6. **Health, Equity, Life Enrichment, and Community** (Clerk, City Manager, HHCS)

### **CRITERIA CONSIDERED**

#### **Effectiveness**

*How does this proposal maximize public interest?* For this analysis, the effectiveness criterion includes analysis of the *benefits* to the entire community equitably with specific emphasis on public health, racial justice and safety.

#### **Fiscal Impacts/Staffing Costs**

*What are the costs?* The fiscal impact of the proposed recommendation and various alternatives considered includes direct costs of commissions.

#### **Administrative Burden/Productivity Loss**

*What are the operational requirements or productivity gains or losses from this proposal?*

The administrative burden criterion guides the analysis in considering operational considerations and productivity gains and losses. While operational considerations and tradeoffs are difficult to quantify in dollar amounts, productivity losses were considered in its absence.

#### **Environmental Sustainability**

The environmental sustainability criterion guides legislation in order to avoid depletion or degradation of the natural resources and allow for long-term environmental quality.

## **ALTERNATIVES**

### **Alternative #1–The Current Situation**

The current situation is the status quo. The City of Berkeley would retain all commissions and no changes would be made.

### **Alternative #2–Collaborative Approach with Quantity Parameters**

This approach would specify a specific number (20) of commissions the City of Berkeley should manage and set parameters around individual department responsibilities. Furthermore, it requires a collaborative approach and outreach to address specific policy areas by referring it to the Council policy committees for further analysis and specific recommendations.

### **Alternative #3–Committee Alignment, Mandated and Quasi-Judicial Commissions**

This alternative would consist of five commissions aligned directly with the policy committees in addition to quasi-judicial bodies and ones required by charter, ballot measure or law.

- *Budget and Finance Commission*
- *Facilities, Infrastructure, Transportation, Environment and Sustainability Commission (state/federal mandate--CUPA)*
- *Health, Equity, and Life Enrichment*
- *Land Use and Economic Development*
- *Public Safety*
- Board of Library Trustees (charter)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission (state/federal mandate--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Housing Advisory Commission (state/federal mandate)
- Human Welfare and Community Action (state/federal mandate)
- Landmarks Commission (quasi-judicial)
- Measure O Bond Oversight Committee (ballot measure)
- Mental Health Commission (state/federal mandate)
- Planning (quasi-judicial)
- Personnel (charter)
- Police Review Commission (ballot measure)
- Sugar-Sweetened Beverages (ballot measure)
- Zoning Adjustments Board (quasi-judicial)

**Alternative #4: Extreme Consolidation**

This alternative represents a prescriptive approach with maximum consolidation in content area and mandated commissions, absent charter amendments.

- Board of Library Trustees (charter)
- Business Improvement District (state/federal mandate)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission/Energy/Zero Waste (state/federal--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Human Welfare and Community Action (state/federal mandate)
- Measure O Bond Oversight Committee (ballot measure)/Housing Advisory Commission (state/federal mandate)
- Mental Health Commission (state/federal mandate)
- Personnel (charter)
- Planning Commission (quasi-judicial and appeals)
- Board of Appeals (land use appeals)
- Police Review Commission (ballot measure)
- Health and Sugar-Sweetened Beverages (ballot measure)

**PROJECTED OUTCOMES (CRITERIA X ALTERNATIVES)**

|                                       | <b>Current Situation</b> | <b>Collaborative Approach</b> | <b>Policy Committee Alignment</b> | <b>Extreme Consolidation</b> |
|---------------------------------------|--------------------------|-------------------------------|-----------------------------------|------------------------------|
| <b>Benefit/ Effectiveness</b>         | medium                   | high                          | medium                            | low                          |
| <b>Cost</b>                           | high                     | medium                        | low                               | low                          |
| <b>Administrative Burden</b>          | high                     | low                           | low                               | medium                       |
| <b>Relative Environmental Benefit</b> | low                      | medium                        | medium                            | high                         |

**Current Situation and Its Effects (Alternative #1)**

*Effectiveness of the Current Situation*

Commissions serve a vital role in the City of Berkeley’s rich process of resident engagement. An analysis of agendas over the past several years shows that the



commissions have created policy that have benefited the community in meaningful and important ways. In 2019, approximately two-thirds of commission items submitted to Council passed. From 2016-2019, an average of 39 items were submitted by commissions to Council for consideration. Every year roughly 15-18 (~40-45%) commissions do not submit any items for Council policy consideration in any given year. The reason for this varies. Some commissions don't submit policy recommendations (BIDs) and some commissions recommendations may not rise to Council level at all or come to Council as a staff recommendation (e.g. ZAB and DRC). Additionally, a few commissions struggle to reach monthly quorum as there are currently 64 vacancies on the various commissions, excluding alternative commissioners.

It is also important to consider equitable outcomes and the beneficiaries as well. For example, the City's Health, Housing and Community Development department serves an important role in addressing COVID-19, racial disparities, inequitable health outcomes, affordable housing, and other important community programs. Additionally, Health, Housing, and Community Development also staffs ten commissions, more than many cities of Berkeley's size. Council needs to wrestle with these tradeoffs to ensure that we seek the maximum benefit for *all* of the Berkeley community, particularly our most vulnerable.

*Staffing Costs*

Based upon preliminary calculations of staff titles and salary classifications, the average staff secretary makes roughly \$60-\$65/hour. Based upon recent interviews with secretaries and department heads, individual commission secretaries work anywhere from 8-80 hours a month staffing and preparing for commission meetings. To illustrate this example, a few examples are listed below.

| Commission                        | Step 5 Rate of Pay | Reported Hours a Month | Total <b>Direct</b> Cost of Commission <b>per Month</b> |
|-----------------------------------|--------------------|------------------------|---------------------------------------------------------|
| Animal Care                       | \$70.90            | 8                      | \$567.20                                                |
| Landmarks Preservation Commission | \$57.96            | 80                     | \$4,636.80                                              |
| Design Review Commission          | \$52.76            | 60                     | \$3,165.60                                              |
| Peace and Justice                 | \$60.82            | 32                     | \$1946.24                                               |

It is extremely challenging to estimate a specific cost of commissions in the aggregate because of the varying workload but a safe estimate of salary costs dedicated to commissions would be in the six-figure range.

Many commissions--particularly quasi-judicial and land use commissions-- require more than one staff member to be present and prepare reports for commissions. For example, Zoning Adjustment Board meetings often last five hours or more and multiple staff members spend hours preparing for hearings. The Planning Department indicates that *in addition* to direct hours, additional commission-related staff time adds an extra 33% staff time. Using the previous examples, this means that the Landmarks Preservation Commission would cost the city over \$6,000 in productivity while the Design Review Commission would cost the City over \$4,000 a month.

#### *Productivity Losses and Administrative Burden*

Current productivity losses are stark because of the sheer amount of hours of staffing time dedicated to commissions. As an example, in 2019 one of the City of Berkeley's main homeless outreach workers staffed a commission within the City Manager's department. She spent approximately 32 hours a month working directly on commission work. While this is not a commentary on a particular commission, this work directly impacted her ability to conduct homeless outreach. The Joint Subcommittee on the Interpretation of State Housing Laws is another example. Planners dedicate 50 hours a month to that commission. Meanwhile, this commission has limited ability in affecting state law and the City Attorney's office is responsible for interpreting state law. While this commission does important work on other issues, there is little nexus in interpreting state housing laws and could be disbanded and consolidated with an existing commission. If this commission were disbanded, the current planner could dedicate significant hours to Council's top priorities in Planning. This year's top Council priority is the displacement of Berkeley's residents of color and African Americans (Davila).

#### *Environmental Sustainability*

The current commission structure doesn't have a large impact on the environment but, in relative terms, is the most burdensome because of the potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs associated with a large number of commissions.

## **ALTERNATIVES CONSIDERED**

### **Effectiveness**

#### *Alternative #2--Collaborative approach*

While the outcome is unknown, a collaborative approach with a specified target quantity of commissions and departmental responsibility would likely yield significant benefit to the community. Due to the projected budget cuts, city staff will need to have more bandwidth to deliver baseline services and priority projects. Civic engagement will still be retained due to a myriad of ways to provide public input but more importantly, current commissioners and civic partners are invited to provide feedback to the policy committees for consideration. Additionally, this approach is a less prescriptive approach which allows Council to acknowledge that the current number of commissions is unsustainable and impacts baseline services. Instead of recommending specific commission cuts at this moment, this approach simply allows Council to state an appropriate number of commissions (20) and acknowledge the severe staffing impacts of the current configuration. Furthermore, twenty commissions is a reasonable starting point, especially when considering that most area cities that are approximately Berkeley's size have seven commissions.

#### *Alternative 3--Policy Committee Alignment*

This approach would yield some benefit in that commissions would reflect current policy committees and would directly advise those bodies. This is beneficial because commissions directly aligned with policy committees would be an independent civic replica of the appointed policy committee bodies. It further retains mandated commissions. However, this prescriptive approach doesn't allow for flexibility in retaining historically important commissions and it does not address the benefit of potentially consolidating two commissions that address the same policy content area. For instance, it may be possible to combine the sugar-sweetened beverage oversight panel with the Health, Life, and Equity commission or the CEAC with the Facilities, Infrastructure, Transportation, Environment and Sustainability.

#### *Alternative 4--Extreme Consolidation--*

This approach is the most drastic alternative and the overall effectiveness is likely low, mainly due to potential community backlash due to Berkeley's long history of civic engagement. Furthermore, the Planning Commission would likely become overburdened and less effective because land use appeals would have to be routed through the Planning Commission.

## **Costs/Fiscal Impact**

### *Alternative 2--Collaborative Approach*

The fiscal impact of the Collaborative Approach is unknown at this time because this recommendation does not prescribe specific commission consolidations or cuts. However, if commissions are reorganized such that Berkeley will have 20 instead of 38, there will be significant direct cost savings. One can reasonably assume that the direct financial cost could reduce to almost half the current amount.

### *Alternative 3--Policy Committee Alignment*

The fiscal impact of Policy Committee Alignment would yield significant savings due to commission consolidation. One can reasonably assume that the direct financial cost could reduce to more than half the current amount.

### *Alternative 4--Extreme Consolidation*

Extreme Consolidation would yield the most savings due to commission consolidation. One can reasonably assume that the direct financial cost would reduce to 25%-30% of the current amount spent on commission work.

## **Productivity**

### *Alternative 2--Collaborative Approach*

The most glaring impact on the current commission structure is administrative impacts and productivity. Whether City Council consolidates commissions or not, attributable salary costs will still exist. The primary benefit of pursuing the Collaborative Approach would center on productivity. The City of Berkeley is likely to garner significant productivity gains by specifying a target number of commissions overall and within departments. Using the Peace and Justice and Joint Subcommittee on the Interpretation of State Housing Laws examples above, more staff will be able to focus on core services and priority programs. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

### *Alternative 3--Policy Committee Alignment*

This alternative likely will yield the same productivity benefits as the collaborative approach, if not more. The City of Berkeley would likely garner significant productivity gains by specifying less than twenty commissions. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

*Alternative 4–Extreme Consolidation*

This alternative would likely provide the most productivity gains and lessen administrative burdens overall. However, there could be unintended consequences of productivity within the planning department absent additional policy changes. For example, the quasi-judicial Zoning Adjustments Board and Planning Commission agendas are packed year round. It is unclear whether eliminating one of these commissions would lessen the administrative burden and increase productivity in the Planning Department or whether those responsibilities would merely shift commissions. At the same time, the Planning Department could benefit from reducing commissions to increase productivity within the planning department.

**Environmental Sustainability**

*Alternative 2–Collaborative approach*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

*Alternative 3--Policy Committee Alignment*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

*Alternative 4–Extreme Consolidation*

This alternative would have negligible impacts on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs.

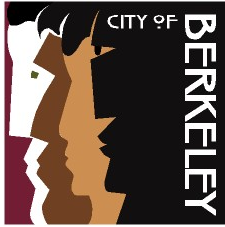
**RATIONALE FOR RECOMMENDATION**

The Collaborative Approach is the best path forward in order to pursue Berkeley's commitment to

- Create affordable housing and housing support services for our most vulnerable community members
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment
- Champion and demonstrate social and racial equity
- Provide an efficient and financially-healthy City government
- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities
- Foster a dynamic, sustainable, and locally-based economy
- Create a resilient, safe, connected, and prepared City

- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community
- Attract and retain a talented and diverse City government workforce

The status quo—37 commissions— is too costly and unproductive. At the same time, civic engagement and commission work absolutely deserve an important role in Berkeley. Consequently, this legislation retains commissions but centers on overall community benefit, staff productivity, and associated costs. This is imperative to address, especially in light of COVID-19 and community demands for reinvestment in important social services.



[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.<sup>1</sup> 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.<sup>2</sup> 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

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

<sup>2</sup> <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.”<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> 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.

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

<sup>4</sup> <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.<sup>5</sup> 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*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*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.

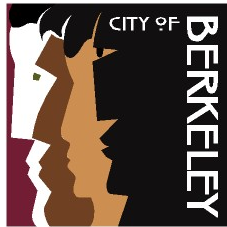
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of 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.<sup>6</sup>

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

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<sup>6</sup> <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.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> 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.<sup>2</sup> 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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<sup>2</sup> 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

FCPC COMMISSIONERS  
December 9, 1991  
Page 2

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.<sup>1/</sup> (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.

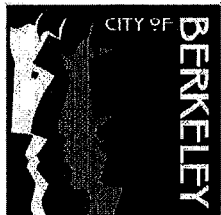
As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>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 3.4<sup>1</sup>. 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*.<sup>2</sup> The per diem rate covers the meal, tax,

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

<sup>2</sup> 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.<sup>3</sup> 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.

<sup>3</sup> 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 3.14<sup>4</sup>, on the City's intranet<sup>5</sup>, 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**

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

<sup>5</sup> 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**

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### **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.

- 
- 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

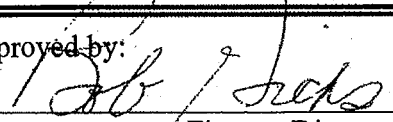
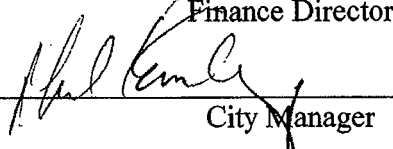
### DEFINITIONS

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

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.

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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]

A.R. NUMBER: 3.9  
ORIGINAL DATE: 07/94  
POSTING DATE: 11/3/16  
PAGE 1 of 9 PAGES

# CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

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

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## 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.

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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 10<sup>th</sup> 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.



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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).

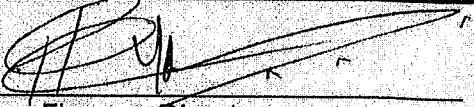
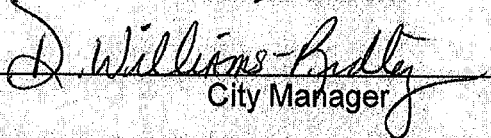
**Payment Documentation:** Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original 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

|                                                      |                                                                                                                       |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <b>RESPONSIBLE DEPARTMENT:</b><br>Finance Department | Approved by: <br>Finance Director |
| <b>TO BE REVIEWED/REVISED:</b><br>Every year         | <br>City Manager                  |

## Attachment A

| JOB CODE | REP UNIT | CLASSIFICATION TITLES<br>INELIGIBLE FOR A TRAVEL<br>ADVANCE | JOB CODE | REP UNIT | CLASSIFICATION TITLES<br>INELIGIBLE FOR A TRAVEL<br>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.

\*\*\*\*\*

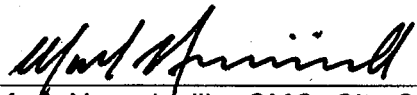
The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

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](http://www.irs.gov) or [www.policyworks.gov/perdiem](http://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.

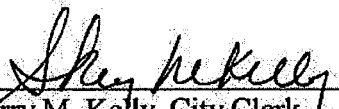
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

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**

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**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, Commissioners<sup>1</sup>, 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 expenses<sup>2</sup> (see Resolution 63,412-NS)
  4. Commissioner and Library Trustee<sup>3</sup> payments<sup>Note</sup> (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)\*

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

<sup>2</sup> Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

<sup>3</sup> 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.



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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 Commissioners<sup>4</sup> 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.

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<sup>4</sup> 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 1<sup>st</sup> 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.

- 
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.

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**EXCEPTIONS**

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

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

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**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

CONSENT CALENDAR

July 28, 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](#)).

POLICY COMMITTEE RECOMMENDATION

On June 29, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Wengraf) to make a Positive Recommendation to the City Council that the item be referred to the Agenda & Rules Committee to be considered with other related referrals from the Fair Campaign Practices Commission. The item will be calendared for the Consent Calendar on the July 28, 2020 agenda. Vote: All Ayes.

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.<sup>1</sup> 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.

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<sup>1</sup> 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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## GOVERNMENT CODE - GOV

**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.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> 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.<sup>2</sup> 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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<sup>2</sup> 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](http://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](mailto: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



Open Government Commission

ACTION CALENDAR
September 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Open Government Commission
 Submitted by: Brad Smith, Chair, Open Government Commission
 Subject: Relinquishments and grants from Councilmembers' office budgets

RECOMMENDATION

Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

FISCAL IMPACT OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The issue of D-13 accounts (Council Budget Funds) being used for purposes other than office expenses has been raised at the OGC. While commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers' names to the donation may provide unfair advantage to an incumbent.

The two main concerns identified by some commissioners with the current practice are:

1. Councilmembers are able to initiate grants to organizations, at their discretion, which may raise their public profile.
2. Attaching the name of a Councilmember to a grant from the City of Berkeley may confer an advantage for the incumbent over would-be challengers.

The current practice was established in the early 2000's because councilmembers were granting public money to individuals and organizations, without approval of the Council.

This led to a concern about the potential for corruption and favoritism. The City Attorney established the existing system, though because the councilmembers' names are attached to the grants, some concern remains.

From recent discussion at OGC, commissioners are in general agreement that ending the practice of attaching the name of a councilmember to a grant will help to alleviate the main concerns: 1 & 2 above. At the OGC's April 23, 2020 meeting, commissioners unanimously approved forwarding a recommendation to Council to not include the name of an individual councilmember attached to a discretionary grant.

A review of the grants and relinquishment of funds from city council members for 2019 amounts to \$30,130. These are funds that could have been used for office, travel (on city business) and other expenses.

Commission members have discussed recommending to Council for consideration options to address the issue:

1. An amendment requiring that all disbursements from the General Fund be designated as coming from the Council as a whole, without individual names attached to the donations.
2. Create another account specifically for discretionary grants, without reducing the D-13 account budget, to allow Councilmembers to continue recommending a grant or donation to a particular organization, without an individual name attached to the donation.
3. Eliminate discretionary grants.

BACKGROUND

On May 21, 2020, the OGC directed four of its members to draft a proposed recommendation to Council related to relinquishment of Councilmembers' office budget funds.

On June 18, 2020, the OGC voted to present this recommendation to Council.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

RATIONALE FOR RECOMMENDATION

An advisory committee will enable collaborative discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

ALTERNATIVE ACTIONS CONSIDERED

The OGC has discussed recommending removal of councilmember names from office budget relinquishments, banning relinquishments for grants to organizations, and

creating and funding a separate account for donations to organizations that Council would control, but which would not have councilmember names attached to it.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Brad Smith, Chair, Open Government Commission

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION CREATING A TEMPORARY JOINT ADVISORY COMMITTEE TO
REVIEW COUNCIL OFFICE BUDGET RELINQUISHMENTS AND GRANTS

WHEREAS, pursuant to Berkeley Municipal Code § 2.06.190.A.2, the Open Government Commission (“OGC” or “Commission”) may “advise the City Council as to any . . . action or policy that it deems advisable to enhance open and effective government in Berkeley”; and

WHEREAS, while Commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers’ names to the donation may raise the public profile of a Councilmember and provide unfair advantage to an incumbent; and

WHEREAS, the Commission has expressed a desire to work collaboratively with the City Council to consider recommendations governing grants made from relinquishments of funds from Councilmembers’ office budgets.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that a temporary joint advisory committee consisting of three (3) members of the City Council and three (3) members of the Open Government Commission is hereby created to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers’ office budgets.

BE IT FURTHER RESOLVED that the City Council and the Open Government Commission each shall, as soon as practicable and by majority vote, appoint three members to the committee created by this resolution.

BE IT FUTHER RESOLVED that the committee created by this resolution shall hold its first meeting within 60 days of passage of this resolution and at that first meeting shall determine the need for any subsequent meetings and shall adopt a schedule for any such subsequent meetings.